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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 13, 2000, at 9:00 a.m.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 7372 of November 8, 2000

National American Indian Heritage Month, 2000

By the President of the United States of America

A Proclamation

American Indians, Alaska Natives, and Native Hawaiians are a special part of the tapestry of our Nation's history. As keepers of a rich and ancient cultural heritage, Native Americans share with all of us the beauty of their art, the power of their songs, and the grace of their people. As individuals, they have distinguished themselves in virtually every field, from the arts to the sciences, from the world of sports to the world of commerce.

This month, we celebrate the culture and contributions of the first Americans. We also remember with sorrow the suffering they endured because of past Federal actions and policies that had long-term and often devastating consequences for Native Americans and their culture. But, as the new millennium dawns, there is reason for optimism. During my 1999 New Markets tour of the Pine Ridge reservation in South Dakota and my visit to the Navajo Nation in New Mexico in April of this year, I saw firsthand a strength of spirit and hope sweeping through Indian Country. The Vice President and I have worked with tribes to foster this hope—through economic development initiatives and improved education and health care.

We still have much to accomplish, however. While my Administration has worked hard to bridge the digital divide and bring the Information Superhighway to Indian Country, some areas still do not have telephone and power lines. We continue striving to provide American Indians with the tools they need to strengthen family and community life by fighting poverty, crime, alcohol and drug abuse, and domestic violence, and we are working with tribes to improve academic achievement and strengthen tribal colleges.

We are also seeking to ensure that tribal leaders have a voice equal to that of Federal and State officials in addressing issues of concern to all our citizens. I reaffirmed that commitment to tribal sovereignty and self-determination by issuing this month a revised Executive Order on Consultation and Coordination with Indian Tribal Governments. This order builds on prior actions and strengthens our government-to-government relationship with Indian tribes by ensuring that all Executive departments and agencies consult with Indian tribes and respect tribal sovereignty as the agencies consider policy initiatives that affect Indian communities.

This year, my Administration proposed the largest budget increase ever for a comprehensive Native American initiative for health care, education, infrastructure, and economic development. Just last month, as part of the Department of the Interior appropriations legislation, I signed into law one segment of this budget initiative that includes significant investments for school construction in Indian Country and the largest funding increase ever for the Indian Health Service. These are the kinds of investments that will empower tribal communities to address an array of needs and, ultimately, to achieve a better standard of living.

Back in 1994, when I first met with the tribal leaders of more than 500 Indian nations at the White House, I saw the strength and determination that have enabled Native Americans to overcome extraordinary barriers and protect their hard-won civil and political rights. Since then, by working

together, we have established a new standard for Federal Indian policy—one that promotes an effective government-to-government relationship between the Federal Government and the tribes, and that seeks to ensure greater prosperity, self-reliance, and hope for all Native Americans. While we cannot erase the tragedies of the past, we can create a future where all of our country's people share in America's great promise.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2000 as National American Indian Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, local, and tribal levels, to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of November, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–29297
Filed 11–13–00; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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Wednesday, November 15, 2000

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–36–AD; Amendment 39–11984; AD 2000–18–52]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc.—Manufactured Model OH–13E, OH–13H, and OH–13S Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2000–18–52 which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. (BHTI)-manufactured Model OH–13E, OH–13H, and OH–13S helicopters by individual letters. This AD requires a liquid penetrant or eddy current inspection of the threads on each main rotor blade grip (grip) for a crack. The inspections must be accomplished within 100 hours time-in-service (TIS) since initial installation on any helicopter or within 10 hours TIS for grips with 100 or more hours TIS and thereafter at intervals not to exceed 200 hours TIS. This AD also establishes a retirement life of 1200 hours TIS for affected grips. This amendment is prompted by the results of an investigation of an August 1998 accident in which a grip failed on a BHTI Model 47G–2 helicopter due to a fatigue crack. The OH–13E, OH–13H, and OH–13S helicopters use the same grips as the Model 47G–2 helicopters. The actions specified by this AD are intended to prevent failure of a grip. loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective November 30, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–18–52, issued on September 1, 2000, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 16, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–36–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

FOR FURTHER INFORMATION CONTACT: Marc Belhumeur, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5177, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On May 12, 1987, the FAA issued AD 86–06–08R1, Docket No. 86–ASW–10 (52 FR 24135, June 29, 1987), which amended AD 86–06–08 (51 FR 11300, April 2, 1986). Those AD's required an initial and repetitive fluorescent dye penetrant inspection of each grip on BHTI Model 47 helicopters and on BHTI-manufactured Model OH–13E, OH–13H, and OH–13S helicopters. On August 31, 2000, the FAA issued AD 2000–58–51, Docket No. 2000–SW–35–AD, that superseded those previous AD's, changed the compliance time, and established a retirement life for the grips on the BHTI Model 47 series helicopters. To address the same unsafe condition as is addressed for the Model 47 series helicopters in AD 2000–58–51, the FAA issued Emergency AD 2000–18–52 on September 1, 2000 for BHTI-manufactured Model OH–13E, OH–13H, and OH–13S helicopters. The emergency AD requires a liquid penetrant or eddy current inspection of the threads on each grip for a crack. The inspections must be accomplished within 100 hours TIS since initial installation on any helicopter or within 10 hours TIS for grips with 100 or more hours TIS, and thereafter at intervals not to exceed 200 hours TIS. That emergency AD also establishes a retirement life of 1200 hours TIS for affected grips. That action was prompted by the results of an investigation of an August 1998 accident in which a grip failed on a BHTI Model 47G–2 helicopter due to a fatigue crack. An analysis of Australian field service data revealed fatigue cracks in the majority of the grips inspected. Since issuance of Emergency AD 2000–18–52, other cracked grips with less than 1200 hours TIS have been discovered. The OH–13E, OH–13H, and OH–13S helicopters use the same grips as the Model 47G–2 helicopters. This condition, if not corrected, could result in failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other BHTI-manufactured Model OH–13E, OH–13H, and OH–13S helicopters of the same type design, the FAA issued Emergency AD 2000–18–52 to prevent failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter. The AD requires the following:

- Within the first 100 hours TIS since initial installation on any helicopter or within the next 10 hours TIS if 100 hours TIS has been exceeded, conduct a liquid penetrant or eddy current inspection of the grip threads for a crack.
- Thereafter, conduct the liquid penetrant or eddy current inspection at intervals not to exceed 200 hours TIS.
- If a crack is detected, before further flight, replace the cracked grip with an airworthy grip.
- Establish a retirement life of 1200 hours TIS.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the above actions are required at the specified time intervals, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on September 1, 2000 to

all known U.S. owners and operators of BHTI-manufactured Model OH–13E, OH–13H, and OH–13S helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 300 helicopters of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per helicopter to accomplish either inspection, and that the average labor rate is $60 per work hour. Required parts, if a grip needs to be replaced, will cost approximately $4,000 per grip (there are two grips on each helicopter). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,580,000, assuming one inspection per helicopter and replacement of both grips on each helicopter.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed 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. 2000–SW–36–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–18–52 Gifton McCreay (Formerly Aerodyne Systems Engineering, LTD., Formerly Texas Helicopter Corp.), Continental Copters, Inc., Teryjon Aviation Inc., Hawkeye Rotor and Wing Flight School: Amendment 39–11984. Docket No. 2000–SW–36–AD.

Applicability: Bell Helicopter Textron, Inc. (BHTI)-manufactured Model OH–13E, OH–13H, and OH–13S helicopters, with main rotor blade grips, part number (P/N) 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, 47–120–252–11, 74–120–252–11, and 74–120–135–5, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main rotor blade grip (grip), separation of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 100 hours time-in-service (TIS) since initial installation on any helicopter or within 10 hours TIS for grips with 100 or more hours TIS, conduct a liquid penetrant or eddy current inspection of the grip threads for a crack. Thereafter, conduct the liquid penetrant or eddy current inspection at intervals not to exceed 200 hours TIS. If a crack is detected, before further flight, replace the cracked grip with an airworthy grip.

(b) On or before 1200 hours TIS, replace each grip with an airworthy grip. This AD establishes a retirement life of 1200 hours TIS for grips, P/N 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, 47–120–252–11, 74–120–252–11, and 74–120–135–5.

(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, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

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

(e) This amendment becomes effective on November 30, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–18–52, issued September 1, 2000, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on November 2, 2000.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–29050 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–03–AD; Amendment 39–11981; AD 2000–23–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Spey 555–15, –15H, –15N, and –15P Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Rolls-Royce (RR) plc. Spey 555–15, –15H, –15N, and –15P turbofan engines, that requires modification of the low pressure (LP) turbine stage 2 nozzle guide vane (NGV) support ring seal assembly. This amendment is prompted by two instances of disk drive arm damage. In both cases, heavy damage to the stage 1 LP turbine-to-stage 2 LP turbine disk drive arm occurred as a result of an out-of-balance condition following the failure of a stage 2 LP turbine blade. The actions specified by this AD are intended to prevent damage to the disk drive arm which could result in loss of stage 1 LP turbine-to-stage 2 LP turbine disk drive, a turbine overspeed condition, and possible uncontained disk failure and damage to the airplane.

DATES: Effective date December 20, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 20, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone No. 011–44–1332–242–424; FAX No. 011–44–1332–245–418. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone No. 781–238–7176; fax No. 781–238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Rolls-Royce (RR) plc. Spey 555–15, –15H, –15N, and –15P turbofan engines was published in the **Federal Register** on July 7, 2000 (65 FR 41884). That action proposed to require modification of the low pressure (LP) turbine stage 2 nozzle guide vane (NGV) support ring seal assembly in accordance with Service Bulletin (SB) No. Sp 72–1063, dated May 1999.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Impact

There are approximately 310 engines of the affected design in the worldwide fleet. The FAA estimates that 60 engines installed on aircraft of U.S. registry would be affected by this AD. It will take approximately 2.0 work hours per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. Since this action is a rework of existing parts, there is no required parts cost. Based on these figures, the FAA estimates the total cost impact of the proposed AD on U.S. operators to be $7,200.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–23–11 Rolls-Royce: Amendment 39–11981. Docket 2000–NE–03–AD.

Applicability: Rolls-Royce (RR) plc. Spey 555–15, –15H, –15N, and –15P turbofan engines. These engines are installed on but not limited to Fokker F.28 Mark series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the disk drive arm which could result in loss of stage 1 LP turbine-to-stage 2 LP turbine disk drive, a turbine overspeed condition and possible uncontained disk failure, and damage to the airplane, do the following:

Rework Instructions

(a) Within three years after the effective date of this AD, rework the low pressure (LP) turbine stage 2 nozzle guide vane (NGV) support ring seal assembly in accordance with paragraphs 2.A. through 2.C. of the Accomplishment Instructions of RR service

bulletin (SB) No. Sp 72–1063, dated May 1999.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

(d) The rework shall be done in accordance with the following Rolls-Royce service bulletin: (SB) No. Sp 72–1063, dated May 1999. 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 Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone No. 011–44–1332–242–424; fax No. 011–44–1332–245–418. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date of This AD

(e) This amendment becomes effective on December 20, 2000.

Issued in Burlington, Massachusetts, on November 6, 2000.

Donald Plouffe,

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

[FR Doc. 00–28960 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–104–AD; Amendment 39–11977; AD 2000–23–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300 and all Model A300–600 and A310 series airplanes, that currently requires performing a pitch trim system test to detect any continuity defect in the autotrim function, and follow-on corrective actions, if necessary. This amendment requires repetitive inspections of the autotrim function to detect such defects, and corrective actions, if necessary. This amendment also expands the applicability to include additional airplanes. 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 prevent a sudden change in pitch due to an out-of-trim condition combined with an autopilot disconnect, which could result in reduced controllability of the airplane.

DATES: Effective December 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 20, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; 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 2000–02–04, amendment 39–11522 (65 FR 3799, January 25, 2000), which is applicable to certain Airbus Model A300 and all Model A300–600 and A310 series airplanes, was published in the **Federal Register** on June 12, 2000 (65 FR 36801). The action proposed to supersede AD 2000–02–04 to continue to require performing a pitch trim system test to detect any continuity defect in the autotrim function, and follow-on corrective actions, if necessary. The action also proposed to require repetitive inspections of the autotrim function to detect such defects, and corrective actions, if necessary.

Comments

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

Request To Revise Applicability

The manufacturer, Airbus, requests that the applicability of the proposed AD be revised to exclude Model A300–600 series airplanes on which Airbus Modification 12277 has been accomplished during production. In addition, since the issuance of the proposed AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, issued French airworthiness directive 2000–115–304(B) R2, dated July 12, 2000, as revised by Erratum, dated August 9, 2000, to exclude those airplanes from the applicability. The FAA concurs with the commenter's request, and has revised the applicability of this final rule accordingly.

Request To Revise Reporting Requirement

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the reporting requirement specified in the proposed AD be revised to require that inspection findings be reported to Airbus on a monthly basis, rather than 10 days following each inspection. The commenter states that since any necessary corrective actions would occur immediately as a result of the inspection findings, monthly reporting would not affect the safe operation of the airplane. For certain airlines, monthly reporting would greatly simplify the administrative tasks associated with ongoing reporting.

The FAA concurs partially. The FAA agrees that corrective actions, if necessary, would be required prior to further flight; therefore, extension of the compliance time in question will not affect the safe operation of the airplane. However, the FAA considers that requiring report submittals on a monthly basis could lead to possible misinterpretation as to the specific deadline for submission of each report.

In light of this, the FAA has revised the final rule to require submission of each report within 30 days after accomplishing each inspection (for inspections accomplished after the effective date of this AD), or within 30 days after the effective date of the AD (for inspections accomplished prior to the effective date of this AD). Operators are provided with additional time to

submit each report, and may choose to combine submittals of all reports for the past 30 days, which would reduce the administrative burden. Paragraph (b) of this AD has been revised accordingly.

Conclusion

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

Interim Action

This is considered to be interim action for Model A300–600 and A310 series airplanes. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking for these airplanes.

Cost Impact

There are approximately 120 airplanes of U.S. registry that will be affected by this AD. The inspection that is required by this AD will 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 the required action on U.S. operators is estimated to be $7,200, 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.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11522 (65 FR 3799, January 25, 2000), and by adding a new airworthiness directive (AD), amendment 39–11977, to read as follows:

2000–23–07 Airbus Industrie: Amendment 39–11977. Docket 2000–NM–104–AD. Supersedes AD 2000–02–04, Amendment 39–11522.

Applicability: This AD applies to the airplanes listed in Table 1. of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

Airbus model	Description
A300 B2–203 airplanes and A300–B4–203 airplanes	In a forward facing cockpit version, as listed in Airbus Service Bulletin A300–22A0115, Revision 02, dated March 7, 2000.
A310 series airplanes	All.
A300–600 series airplanes	On which Airbus Modification 12277 has not been accomplished during production.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a sudden change in pitch due to an out-of-trim condition combined with an autopilot disconnect, which could result in reduced controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD: Perform an inspection of the autotrim function by testing the flight control computer (FCC)/flight augmentation computer (FAC) integrity in logic activation of the autotrim, in accordance with Airbus Service Bulletin A300–22A6042, Revision 01 (for Model A300–600 series airplanes); A300–22A0115, Revision 02 (for Model A300 series airplanes); or A310–22A2053, Revision 01 (for Model A310 series airplanes); all dated March 7, 2000; as applicable. If any discrepancy is found, prior to further flight, perform all applicable corrective actions (including trouble-shooting, replacing the FCC and/or FAC, retesting, checking the wires between certain FCC and FAC pins, and repairing damaged wires) in accordance with the applicable service bulletin. Repeat the inspection thereafter at intervals not to exceed 500 flight hours.

(1) For airplanes on which the pitch trim system test has been performed in accordance with the requirements of AD 2000–02–04, amendment 39–11522: Inspect within 500 flight hours after accomplishment of the test required by that AD, or within 20 days after the effective date of this AD, whichever occurs later.

(2) For all other airplanes: Inspect within 20 days after the effective date of this AD.

Reporting Requirement

(b) For all inspections required by paragraph (a) of this AD: At the applicable time specified by paragraph (b)(1) or (b)(2) of this AD, submit a report of the inspection results (both positive and negative findings) to AI/SE–D32 Technical Data and

Documentation Services, Airbus Industrie Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; fax (+33) 5 61 93 28 06.

(1) For inspections accomplished after the effective date of this AD: Submit the report within 30 days after performing the inspection.

(2) For inspections accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance

(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, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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.

Special Flight Permits

(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.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A300–22A6042, Revision 01, including Appendix 01, dated March 7, 2000; Airbus Service Bulletin A300–22A0115, Revision 02, including Appendix 01, dated March 7, 2000; or Airbus Service Bulletin A310–22A2053, Revision 01, including Appendix 01, dated March 7, 2000; as applicable. 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–115–304(B) R2, dated July 12, 2000, as revised by Erratum, dated August 9, 2000.

(f) This amendment becomes effective on December 20, 2000.

Issued in Renton, Washington, on November 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28967 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–114–AD; Amendment 39–11978; AD 2000–23–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that requires replacement of the flight control computers (FCC) with new, improved FCC's having updated software installed. This amendment also requires, for some airplanes, modification of the wiring of the FCC's. The actions specified by this AD are intended to prevent autopilot reversions in certain flight conditions, which could result in misunderstanding by the flight crew and consequent reduced ability to take appropriate action. This action is intended to address the identified unsafe condition.

DATES: Effective December 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 20, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; 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, 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) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes was published in the **Federal Register** on August 25, 2000 (65 FR 51775). That action proposed to require replacement of the flight control computers (FCC) with new, improved FCC's having updated software installed. That action also proposed to require, for some airplanes, modification of the wiring of the FCC's.

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

The FAA estimates that 116 airplanes of U.S. registry will be affected by this proposed AD.

It will take as much as 17 work hours per airplane to accomplish the required replacements, at an average labor rate of $60 per work hour. Required parts will cost as much as $5,064 per airplane. Based on these figures, the cost impact of the required replacements on U.S. operators is estimated to be as much as $705,744, or $6,084 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required modification of the wiring, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required modification on U.S. operators is estimated to be $6,960, or $60 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–23–08 Airbus Industrie: Amendment 39–11978. Docket 2000–NM–114–AD.

Applicability: Model A310 series airplanes equipped with flight control computers (FCC) having part number (P/N) B350AAM4 or B470ABM2, and Model A300–600 series airplanes equipped with FCC's having P/N B470AAM2; certificated in any category; except those airplanes on which Airbus Modification 11899 or 11900 (Airbus Service Bulletin A310–22–2048 or A310–22–2049 or A300–22–6038) has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent autopilot reversions in certain flight conditions, which could result in misunderstanding by the flight crew and consequent reduced ability to take appropriate action, accomplish the following:

Replacement of FCC's and Modification of Wiring

(a) Within 26 months after the effective date of this AD, replace the FCC's with new, improved FCC's having updated software installed; and modify the wiring, as applicable; in accordance with paragraph (a)(1), (a)(2), or (a)(3), as applicable.

(1) For Airbus Model A310 series airplanes equipped with FCC's having P/N B350AAM4: Replace the FCC's in accordance with Airbus Service Bulletin A310–22–2048, Revision 01, dated March 6, 2000.

(2) For Airbus Model A310 series airplanes equipped with FCC's having P/N B470ABM2: Replace the FCC's in accordance with Airbus Service Bulletin A310–22–2049, Revision 02, dated March 6, 2000. Prior to or concurrent with the replacement, modify the wiring in accordance with Airbus Service Bulletin A310–22–2051, Revision 02, dated March 8, 2000.

(3) For Airbus Model A300–600 series airplanes equipped with FCC's having P/N B470AAM2: Replace the FCC's in accordance with Airbus Service Bulletin A300–22–6038, dated August 24, 1999. Prior to or concurrent with the replacement, modify the wiring in accordance with Airbus Service Bulletin A300–22–6040, Revision 02, dated March 6, 2000.

Note 2: Accomplishment of the actions required by paragraph (a) of this AD prior to the effective date of this AD in accordance with Airbus Service Bulletin A310–22–2048, dated December 13, 1999; A310–22–2049, dated August 24, 1999, or Revision 01, dated December 13, 1999; A310–22–2051, dated August 26, 1999, or Revision 01, dated December 13, 1999; or A300–22–6040, dated August 26, 1999, or Revision 01, dated December 13, 1999; is acceptable for compliance with the applicable actions specified in that paragraph.

Note 3: The Airbus service bulletins reference SEXTANT Service Bulletins B350AAM–22–008, B470AAM–22–013, and B470ABM–22–012, each dated September 29, 1999, as additional sources of service information for accomplishing the replacement required by this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. 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 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A310–22–2048, Revision 01, dated March 6, 2000; Airbus Service Bulletin A310–22–2049, Revision 02, dated March 6, 2000; Airbus Service Bulletin A310–22–2051, Revision 02, dated March 8, 2000; Airbus Service Bulletin A300–22–6038, dated August 24, 1999; and Airbus Service Bulletin A300–22–6040, Revision 02, dated March 6, 2000; as applicable. 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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.

Note 5: The subject of this AD is addressed in French airworthiness directive 2000–137–305(B), dated August 21, 2000.

Effective Date

(e) This amendment becomes effective on December 20, 2000.

Issued in Renton, Washington, on November 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28966 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–129–AD; Amendment 39–11976; AD 2000–23–06]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, that requires replacement of defective hydraulic tubing in the left and right wings with new hydraulic tubing. 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 prevent the loss of hydraulic pressure which could result in reduced controllability of the airplane.

DATES: Effective December 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 20, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. 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, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

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 EMBRAER Model EMB–145 series airplanes was published in the **Federal Register** on August 15, 2000 (65 FR 49775). That action proposed to require replacement of defective hydraulic tubing in the left and right wings with new hydraulic tubing.

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

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD. The estimated number of work hours required to accomplish the required replacement depends on the serial number of the airplane and ranges from 6 to 28 work hours. The average labor rate is estimated to be $60 per work hour, and the materials required will be available at no charge from EMBRAER.

Based on the information available, the cost of the AD on U.S. operators is estimated to range from $360 to $1,680 per airplane. The maximum total cost for airplanes registered in the U.S., therefore, will be $5,040.

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. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–23–06 Empresa Brasileira de Aeronautica S.A (EMBRAER): Amendment 39–11976. Docket 2000–NM–129–AD.

Applicability: Model EMB–145 series airplanes; serial numbers 145010, 145011, and 145013 through 145016 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of hydraulic pressure due to failed hydraulic tubing and the consequent reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 800 flight hours after the effective date of this AD, replace hydraulic tubing in the left and right wings with new tubing, in accordance with EMBRAER Service Bulletin 145–29–0003, dated November 13, 1997.

Alternative Methods of Compliance

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

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

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to

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

Incorporation by Reference

(d) The replacement shall be done in accordance with EMBRAER Service Bulletin 145–29–0003, dated November 13, 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; 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 Brazilian airworthiness directive 98–01–03, dated January 15, 1998.

Effective Date

(e) This amendment becomes effective on December 20, 2000.

Issued in Renton, Washington, on November 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28965 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–133–AD; Amendment 39–11979; AD 2000–23–09]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires a one-time inspection to detect wear of the hydraulic pump hoses, and corrective action, if necessary. This AD also requires relocation of the clip that secures the left forward hold-open rod of both nacelles. The actions specified by this AD are intended to prevent chafing and consequent rupture of the hydraulic line and loss of hydraulic pressure, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 20, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. 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, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

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 EMBRAER Model EMB–120 series airplanes was published in the **Federal Register** on July 26, 2000 (65 FR 45934). That action proposed to require a one-time inspection to detect wear of the hydraulic pump hoses, and corrective action, if necessary. That action also proposed to require relocation of the clip that secures the left forward hold-open rod of both nacelles.

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

Request for Inclusion of Alternative Methods of Compliance

The commenter requests that the proposed rule be revised to include alternative methods of accomplishing the actions other than those specified in the service bulletin referenced in the proposed rule. The commenter explains that it has accomplished both actions required by the proposed rule using other methods of accomplishment.

The FAA does not concur with the commenter's request to include alternative methods of compliance in the final rule. However, the FAA would consider a request for an approval of an alternative method of compliance in accordance with the provision of paragraph (c) of this AD, provided that appropriate justification accompanies the request.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 200 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to inspect the hydraulic hoses, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $12,000, or $60 per airplane.

It will take approximately 1 work hour per airplane to relocate the clip, at an average labor rate of $60 per work hour. Required parts will cost approximately $15 per airplane. Based on these figures, the cost impact of the clip relocation on U.S. operators is estimated to be $15,000, or $75 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–23–09 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–11979. Docket 2000–NM–133–AD.

Applicability: Model EMB–120 series airplanes, certificated in any category, having serial numbers listed in EMBRAER Service Bulletin 120–29–0047, Change 01, dated October 22, 1996.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the hydraulic line and loss of hydraulic pressure due to chafing, which could result in reduced controllability of the airplane, accomplish the following:

Inspection and Corrective Actions

(a) Within 75 flight hours after the effective date of this AD, perform a general visual inspection to detect discrepancies (wear, chafing, or scores) of all hydraulic pump hoses installed in both nacelles, in accordance with Part I of EMBRAER Service Bulletin 120–29–0047, Change 01, dated October 22, 1996. Prior to further flight, perform all applicable corrective actions in accordance with the service bulletin.

Note 2: Accomplishment, prior to the effective date of this AD, of the inspection in accordance with Part I of EMBRAER Service Bulletin 120–29–0047, dated August 22, 1996, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Clip Relocation

(b) Within 75 flight hours after the effective date of this AD, relocate the clip that secures the left forward hold-open rod of both nacelles in accordance with Part II of EMBRAER Service Bulletin 120–29–0047, Change 01, dated October 22, 1996.

Alternative Methods of Compliance

(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, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

Special Flight Permits

(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.

Incorporation by Reference

(e) The actions shall be done in accordance with EMBRAER Service Bulletin 120–29–0047, Change 01, dated October 22, 1996. 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Brazilian airworthiness directive 96–12–01, dated December 13, 1996.

(f) This amendment becomes effective on December 20, 2000.

Issued in Renton, Washington, on November 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28964 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–293–AD; Amendment 39–11973; AD 2000–23–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, that requires a one-time general visual inspection for proper rigging of the liftdumper micro switches installed in the left- and right-hand sides of the pedestal; a functional check of the micro switches; and re-rigging the cam, if necessary. The actions specified by this AD are intended to detect and correct improper rigging of the liftdumper micro switches, which could result in inadvertent extension of the liftdumpers during takeoff roll. This action is intended to address the identified unsafe condition.

DATES: Effective December 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 20, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. 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) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes was published in the **Federal Register** on September 19, 2000 (65 FR 56509). That action proposed to require a one-time general visual inspection for proper rigging of the liftdumper micro switches installed in the left- and right-hand sides of the pedestal; a functional check of the micro switches; and re-rigging the cam, if necessary.

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

The FAA estimates that 23 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,520, or $240 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. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–23–03 Fokker Services B.V.: Amendment 39–11973. Docket 2000–NM–293–AD.

Applicability: All Model F.28 Mark 1000, 2000, 3000, and 4000 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct improper rigging of the liftdumper micro switches, which could result in inadvertent extension of the liftdumpers during takeoff roll, accomplish the following:

Inspection and Functional Check

(a) Within 2 months after the effective date of this AD: Perform a one-time general visual inspection for proper rigging of the liftdumper micro switches installed in the left- and right-hand sides of the pedestal; and a functional check of the micro switches; as specified in Fokker Service Bulletin F28/27–186, including Manual Change Notification MCNM F28–020, dated May 8, 2000. Perform the inspection and the check in accordance with the Accomplishment Instructions of the service bulletin. If the micro switches are not rigged within the specifications provided in the service bulletin, prior to further flight, re-rig the cam in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Fokker Service Bulletin F28/27–186, including Manual Change Notification MCNM F28–020, dated May 8, 2000. 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 Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. 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.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 2000–073, dated May 31, 2000.

Effective Date

(e) This amendment becomes effective on December 20, 2000.

Issued in Renton, Washington, on November 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28962 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–35–AD; Amendment 39–11983; AD 2000–18–51]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting superseding Airworthiness Directive (AD) 2000–18–51 which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. (BHTI) Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters by individual letters. This AD requires recurring liquid penetrant or eddy current inspections of the main rotor blade grip (grip) threads for a crack. If a crack is detected, this AD requires, before further flight, replacing the cracked grip with an airworthy grip. This AD also establishes a retirement life of 1,200 hours time-in-service (TIS) for each grip. This amendment is prompted by the results of an investigation of an August 1998 accident in which a grip failed on a BHTI Model 47G–2 helicopter due to a fatigue crack. An analysis of the field service data revealed fatigue cracks in 70 percent of the grips inspected. The actions specified by this AD are intended to prevent failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective November 30, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–18–51, issued on August 31, 2000, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 16, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–35–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9–asw–adcomments@faa.gov.

FOR FURTHER INFORMATION CONTACT: Marc Belhumeur, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5177, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: The FAA issued AD 86–06–08R1 on May 12, 1987 (52 FR 24135, June 29, 1987), which amended AD 86–06–08 (51 FR 11300, April 2, 1986). Those AD's required an initial and repetitive fluorescent dye penetrant inspection of each grip. On August 31, 2000, the FAA issued Emergency AD 2000–18–51, for BHTI Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters. That emergency AD supersedes AD 86–06–08 and AD 86–06–08R1 and requires recurring liquid penetrant or eddy current inspections of the grip threads for a crack. If a crack is detected, the AD requires, before further flight, replacing the cracked grip with an airworthy grip. The AD also establishes a retirement life of 1,200 hours TIS for each grip. That action was prompted by the results of an investigation of an August 1998 accident in which a grip failed on a BHTI Model 47G–2 helicopter due to a fatigue crack. An analysis of Australian field service data revealed fatigue cracks in the majority of the grips inspected. Since issuance of Emergency AD 2000–18–51, other cracked grips with less than 1200 hours TIS have been discovered. This condition, if not corrected, could result in failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other BHTI Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters of the same type designs, the FAA issued Emergency AD 2000–18–51 to prevent failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter. The AD requires the following for grips, part number (P/N) 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, and 47–120–252–11, and for grips manufactured under Parts Manufacturer Approval, P/N 74–120–252–11 and 74–120–135–5:

- Within 100 hours TIS since initial installation on any helicopter or within 10 hours TIS for grips with 100 or more hours TIS, conduct a liquid penetrant or eddy current inspection of the grip threads for a crack.
- Thereafter, conduct the liquid penetrant or eddy current inspection of the grip threads at intervals not to exceed 200 hours TIS.
- If a crack is detected, before further flight, replace the cracked grip with an airworthy grip.
- Establish a retirement life of 1200 hours time-in-service (TIS) for each grip.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the above actions are required at the specified time intervals, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on 2000–18–51 to all known U.S. owners and operators of BHTI Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 1000 helicopters of U.S. registry will be

affected by this AD, that it will take approximately 10 work hours per helicopter to accomplish either inspection, and that the average labor rate is $60 per work hour. Required parts, if a grip needs to be replaced, will cost approximately $4,000 per grip (there are two grips on each helicopter). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,600,000, assuming one inspection per helicopter and replacement of both grips on each helicopter.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed 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. 2000–SW–35–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 39–5260 (51 FR 11300, April 2, 1986) and Amendment 39–5626 (52 FR 24135, June 29, 1987) and by adding a new airworthiness directive to read as follows:

2000–18–51 Bell Helicopter Textron, Inc.: Amendment 39–11983. Docket No. 2000–SW–35–AD. Supersedes AD 86–06–08, Amendment 39–5260, and AD 86–06–08 R1, Amendment 39–5626, Docket No. 86–ASW–10.

Applicability: Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters, with main rotor blade grips, part number (P/N) 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, 47–120–252–11, 74–120–252–11 and 74–120–135–5, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main rotor blade grip (grip), separation of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 100 hours time-in-service (TIS) since initial installation on any helicopter or within 10 hours TIS for grips with 100 or more hours TIS, conduct a liquid penetrant or eddy current inspection of the grip threads for a crack. Thereafter, conduct the liquid penetrant or eddy current inspection at intervals not to exceed 200 hours TIS. If a crack is detected, before further flight, replace the cracked grip with an airworthy grip.

(b) On or before 1200 hours TIS, replace each grip with an airworthy grip. This AD establishes a retirement life of 1200 hours TIS for grips, P/N 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, 47–120–252–11, 74–120–252–11, and 74–120–135–5.

(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, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

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

(e) This amendment becomes effective on November 30, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–18–51, issued August 31, 2000, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on November 2, 2000.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–29049 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114, 123, 128, 132, 134, 141, 145, 146, 148, 151, 152, 177, 181, and 191

[T.D. 00–81]

Technical Amendments to the Customs Regulations

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by making certain technical corrections to various authority citations to reflect amendments to the Harmonized Tariff Schedule of the United States made by the President's Proclamation of October 2, 2000, to implement the United States-Caribbean Basin Trade Partnership Act.

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings, (202) 927–1415.

SUPPLEMENTARY INFORMATION:

Background

In Chapter I of the Customs Regulations (19 CFR chapter I) there are many general and specific authority citations and some sections that reference certain General Note provisions of the Harmonized Tariff Schedule of the United States (HTSUS). *See,* T.D. 95–29. Due to recent amendments to the HTSUS, many of the General Notes provisions have been renumbered. Thus, those general and specific authority citations and sections in the Customs Regulations that reference certain General Note provisions are no longer accurate.

On May 18, 2000, the United States-Caribbean Basin Trade Partnership Act was enacted. To implement certain provisions of this Act, on October 2, 2000, the President issued Proclamation 7351 (65 FR 59329), the Annex of which modified the HTSUS by, among other things, redesignating certain of the General Notes of the HTSUS. Specifically, HTSUS General Notes 16–21 were redesignated as HTSUS General Notes 18–23, respectively. Some of the former General Notes are referenced in the general or specific authority citations for 24 parts and in 3 sections of the Customs Regulations (19 CFR parts 7, 10, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114, 123, 128, 132, 134, 141, 145, 146, 148, 151, 152, 177, 181, and 191, and §§ 24.23, 141.4, and 152.13).

This document corrects those HTSUS General Note references in the Customs Regulations.

Inapplicability of Public Notice and Comment Requirement and Delayed Effective Date Requirement

Because these amendments merely correct certain authority citation referencing errors in the Customs Regulations, pursuant to 5 U.S.C. 553(b)(B), Customs finds that good cause exists for dispensing with notice and public procedure as unnecessary. For these same reasons, pursuant to 5 U.S.C. 553(d)(3), Customs finds that good cause exists for dispensing with the requirement for a delayed effective date.

The Regulatory Flexibility Act

Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. *et seq.*).

Executive Order 12866

These amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings.

Amendments to the Regulations

Chapter I of the Customs Regulations (19 CFR chapter I) is amended as set forth below:

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The authority citation for part 7 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

2. The general authority citation for part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

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PART 11—PACKING AND STAMPING; MARKING

3. The authority citation for part 11 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Notes 22 and 23, Harmonized Tariff Schedule of the United States), 1624.

PART 12—SPECIAL CLASSES OF MERCHANDISE

4. The general authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

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PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

5. The general authority citation for part 18 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624.

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PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

6. The general authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624;

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PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

7. The general authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

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§ 24.23 [Removed and added]

8. In § 24.23:

a. The parenthetical reference in paragraph (c)(1)(iii) to "(General Note 3(c)(v), HTSUS)" is removed and added, in its place, is the reference "(General Note 7, HTSUS)";

b. The parenthetical reference in paragraph (c)(1)(iv) to "(General Note 20(c)(ii)(B), HTSUS)" is removed and added, in its place, is the reference "(General Note 4(b)(i), HTSUS)"; and

c. The reference in paragraph (c)(1)(v) to "General Note 16, HTSUS" is

removed and added, in its place, is the reference "General Note 18, HTSUS".

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

9. The authority citation for part 54 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22; Section XV, Note 5, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 101—GENERAL PROVISIONS

10. The general authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

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PART 102—RULES OF ORIGIN

11. The authority citation for part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

PART 111—CUSTOMS BROKERS

12. The general authority citation for part 111 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624, 1641.

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PART 114—CARNETS

13. The authority citation for part 114 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

14. The general authority citation for part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

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PART 128—EXPRESS CONSIGNMENTS

15. The authority citation for part 128 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

PART 132—QUOTAS

16. The general authority citation for part 132 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

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PART 134—COUNTRY OF ORIGIN MARKING

17. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1304, 1624.

PART 141—ENTRY OF MERCHANDISE

18. The general authority citation for part 141 continues, and the specific authority for § 141.4 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

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Section 141.4 also issued under 19 U.S.C. 1202 (General Note 18; Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Note 4, Harmonized Tariff Schedule of the United States), 1498;

* * * * *

§ 141.4 [Removed and added]

19. In § 141.4:

a. The reference in paragraph (b)(1) to "General Note 16" is removed and added, in its place, is the reference "General Note 18"; and

b. The reference in the introductory text of paragraph (c) to "General Note 16(e)" is removed and added, in its place, is the reference "General Note 18(e)".

PART 145—MAIL IMPORTATIONS

20. The general authority citation for part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624;

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PART 146—FOREIGN TRADE ZONES

21. The authority citation for part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

22. The general authority citation for part 148 is revised to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 22, Harmonized Tariff Schedule of the United States);

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PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

23. The general authority citation for part 151 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 22 and 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

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PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

24. The general authority citation for part 152 continues, and the specific authority for § 152.13 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624.

* * * * *

Section 152.13 also issued under 19 U.S.C. 1202 (General Note 19, Harmonized Tariff Schedule of the United States (HTSUS)).

§ 152.13 [Removed and added]

25. In § 152.13:

a. The reference in both paragraphs (b)(1) and (b)(2) to "General Note 17" is removed and added, in its place, is the reference "General Note 19";

b. The reference in the introductory text of paragraph (c) and in paragraphs (c)(1), (c)(2), and (c)(3) to "General Note 17" is removed and added, in its place, is the reference "General Note 19"; and

c. The references in paragraph (d) to "General Note 17" are removed and added, in their place, are the references "General Note 19".

PART 177—ADMINISTRATIVE RULINGS

26. The general authority citation for part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624.

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PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

27. The authority citation for part 181 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624, 3314.

PART 191—DRAWBACK

28. The general authority citation for part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1313, 1624.

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Dated: November 8, 2000.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 00–29091 Filed 11–14–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 93F–0319]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of hydrogenated butadiene/acrylonitrile copolymers, intended for contact with food in repeated use applications. This action is in response to a petition filed by Zeon Chemicals, Inc.

DATES: This rule is effective November 15, 2000. Submit written objections and requests for a hearing by December 15, 2000. The Director of the Office of the Federal Register approves the incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR 51 of certain publications in § 177.2600(c)(4)(i) (21 CFR 177.2600(c)(4)(i)), as of November 15, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of October 4, 1993 (58 FR 51632), FDA announced that a food additive petition (FAP 3B4377) had been filed by Zeon Chemicals, Inc., Three Continental Towers, suite 1012, 1701 Golf Rd., Rolling Meadows, IL 60008 (now 4111 Bells Lane, Louisville, KY 40211). The petition proposed to amend the food additive regulations to provide for the safe use of acrylonitrile-butadiene copolymer, hydrogenated, intended for contact with food in repeated use applications. (The additive is currently listed in the regulation under the nomenclature hydrogenated butadiene/acrylonitrile copolymers, and this nomenclature will be retained.)

In FDA's evaluation of the safety of this food additive, the agency reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain residual amounts of acrylonitrile and butadiene as impurities resulting from its manufacture. These chemicals have been shown to cause cancer in test animals. Residual amounts of impurities are commonly found as constituents of chemical products, including food additives.

II. Determination of Safety

Under the general safety standard of section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive. (Scott *v.* FDA, 728 F.2d 322 (6th Cir. 1984).)

In evaluating the safety of a food additive, FDA customarily reviews the available data on each relevant chemical impurity to determine whether the chemical induces tumors in animals or humans. If FDA concludes that the chemical impurity causes cancer in animals or humans, the agency calculates the unit cancer risk for the chemical and the upper bound limit of lifetime human cancer risk from the chemical's presence in the additive (Ref. 1).

In some instances, the available data and information may not allow the agency to determine whether a particular chemical impurity is a carcinogen. However, the available data may suggest, but not establish definitively, that the impurity poses a human cancer risk. In such circumstances, the agency may perform a risk assessment based upon the assumption that the impurity is carcinogenic. This approach permits the agency to determine whether there is a reasonable certainty that no harm will result from the petitioned use of the additive, even though the carcinogenic status of the impurity is not clearly established.

FDA followed this approach to determine whether there is a reasonable certainty that no harm will result from the use of hydrogenated butadiene/acrylonitrile copolymers; in so doing, FDA assumed that butadiene, an impurity in the additive, is a human carcinogen. In inhalation studies, butadiene has been reported to induce, in mice and rats, tumors at the site of exposure (lungs) as well as a variety of tumors at numerous other sites (Refs. 2 to 4). However, FDA does not believe that these inhalation studies are necessarily determinative of the carcinogenic potential of butadiene when administered orally, the most likely route of human exposure to food additives. Because no long-term studies are available in which butadiene was administered orally, the agency performed a risk assessment for butadiene based on a twofold assumption: That butadiene would induce tumors in animals and humans if administered orally and that its potency by the oral route of exposure would be no greater than its potency by the inhalation route of exposure. In FDA's view, this is a conservative assumption (Ref. 5). Using this procedure, FDA estimated the upper bound limit of lifetime human cancer risk from butadiene under the proposed conditions of use of hydrogenated butadiene/acrylonitrile copolymers.

III. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, hydrogenated butadiene/acrylonitrile copolymers, will

result in exposure to no greater than 5 parts per trillion of the additive in the daily diet (3 kilograms (kg)) or an estimated daily intake of 15 nanograms per person per day (ng/p/d) (Ref. 6).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 7), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and, as noted above, using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by acrylonitrile and butadiene, the carcinogenic chemicals that may be present as impurities in the additive. The risk evaluation of acrylonitrile and butadiene has two aspects: (1) Assessment of exposure to the impurities from the petitioned use of the additive, and (2) extrapolation of the risk observed in animal bioassays to the conditions of exposure to humans.

A. Acrylonitrile

FDA has estimated the exposure to acrylonitrile from the petitioned use of the additive as a component of repeated use food-contact articles to be no more than 0.095 parts per trillion in the daily diet (3 kg), or 0.29 ng/p/d (Ref. 6). The agency used data from a long-term rodent bioassay on acrylonitrile conducted by Quast et al. (Ref. 8) to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused astrocytomas of the nervous system, papillomas and carcinomas of the tongue, papillomas and carcinomas of the stomach, and Zymbal's gland carcinomas in male and female rats. The authors also reported carcinomas of the small intestine and the mammary gland in female rats.

Based on the agency's estimate that exposure to acrylonitrile will not exceed 0.29 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 5.45×10^{-10}, or 0.5 in a billion (Ref. 9). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to acrylonitrile is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to acrylonitrile would result from the petitioned use of the additive.

B. Butadiene

The scientific literature contains a variety of information regarding the carcinogenic potential of butadiene. As noted, in a long-term inhalation study butadiene has been reported to induce a variety of tumors including in the hematopoietic system, heart, lung, forestomach, liver, Harderian gland, brain, and kidney in male and female mice and tumors of the ovaries and mammary gland in female mice (Ref. 2). Butadiene also has been reported to induce tumors of the pancreas and testis in male rats and tumors of the uterus, mammary gland, and thyroid in female rats in a long-term inhalation study (Refs. 3 and 4).

No long-term studies are available in which butadiene was administered to test animals orally. Generally, FDA does not rely on inhalation studies to assess the potential carcinogenicity and cancer potency of substances in food, for which the most likely route of human exposure is oral. However, in order to determine whether there is a reasonable certainty that no harm would result from the presence of butadiene as an impurity in the subject additive, the agency has assumed that butadiene is an oral carcinogen and has performed a worst-case risk assessment of the carcinogenic potential of butadiene using data from the inhalation study on female mice. FDA has relied on this study because it is the sex, species, and study that demonstrated the highest unit cancer risk for butadiene.

FDA has estimated the exposure to butadiene from the petitioned use of the subject additive would not exceed 0.0016 part per trillion in the daily diet (3 kg), or 4.8 picogram per person per day (pg/p/d) (Ref. 6). Based on this estimate and the assumption that butadiene would induce tumors with the same potency in an oral study as it did in the mice inhalation study, FDA estimates that the upper-bound limit of lifetime human risk from butadiene exposure as a result of the petitioned use of the subject additive would be 1.12×10^{-10}, or 0.1 in a billion (Refs. 5 and 10). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to butadiene is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to butadiene would result from the petitioned use of the additive.

C. Need for Specifications

The agency also has considered whether specifications are necessary to control the amount of acrylonitrile and butadiene as impurities in the food additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which acrylonitrile and butadiene may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper-bound limits of lifetime human risk from exposure to acrylonitrile and butadiene are very low, 0.5 in a billion and 0.1 in a billion, respectively.

IV. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive in repeated use food-contact articles is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 177.2600 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paperwork Reduction Act of 1995

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

VII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by December 15, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Lorentzen, R., "FDA Procedures for Carcinogenic Risk Assessment," *Food Technology*, vol. 38, pp. 108–111, 1984.

2. "Toxicology and Carcinogenesis Studies of 1,3-Butadiene (CAS No. 106–99–0) in B6C3F1 Mice (Inhalation Studies)," National Toxicology Program, Technical Report Series, No. 434.

3. Owen, P. E. et al., "Inhalation Toxicity Studies with 1,3-Butadiene. Two Year Toxicity/Carcinogenicity Study in Rats," *American Industrial Hygiene Association Journal*, 48:407–413, 1987.

4. Owen, P. E. et al., "Inhalation Toxicity and Carcinogenicity Study of 1,3-Butadiene in Sprague-Dawley Rats," *Environmental Health Perspectives*, 86:19–25, 1990.

5. Memorandum dated March 3, 2000, from the Division of Health Effects Evaluation to the Chairman of the CFSAN Cancer Assessment Committee and Quantitative Risk Assessment Committee, "A worst-case estimate of human cancer risk from exposure to 1,3-butadiene as an impurity in all approved and petitioned uses of 1,3-butadiene-based polymers in food-contact applications, and in several petitioned food additives and pre-market notifications."

6. Memorandum dated March 25, 1994, from Chemistry Review Branch to Indirect Additives Branch, "FAP 3B4377 (MATS# 711, M2.1)—Zeon Chemicals, Inc. Submission dated 4–21–93. Hydrogenated acrylonitrile butadiene elastomers (HNBR) as components of repeat-use articles."

7. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, and J. K. Marquis, New York, NY, pp. 24–33, 1985.

8. Quast, J. F., C. E. Wade, C. G. Humiston, R. M. Carreon, E. A. Hermann, C. N. Park, and B. A. Schwetz, "A Two Year Toxicity and Oncogenicity Study With Acrylonitrile Incorporated in the Drinking Water of Rats," Toxicology Research Laboratory, Health and Environmental Sciences, Dow Chemical USA, Midland, MI 48640, final report dated January 22, 1980, corrections dated November 17, 1980.

9. Memorandum dated July 10, 2000, from the Division of Health Effects Evaluation to the Division of Petition Control, "FAP 3B4377: Worst-Case Cancer Risk Assessment for Acrylonitrile."

10. Memorandum dated April 3, 2000, from the Division of Petition Control to the Quantitative Risk Assessment Committee, "Estimation of the Upper-Bound Lifetime Risk for Butadiene—FAP 3B4377."

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.2600 is amended in paragraph (c)(4)(i) by revising the entry for "Hydrogenated butadiene/acrylonitrile copolymers" to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(i) * * *

* * * * *

Hydrogenated butadiene/acrylonitrile copolymers (CAS Reg. No. 88254–10–8) produced when acrylonitrile/butadiene copolymers are modified by hydrogenation of the olefinic unsaturation to leave either: (1) Not more than 10 percent *trans* olefinic unsaturation and no α, β-olefinic unsaturation as determined by a method entitled "Determination of Residual α, β-Olefinic and Trans Olefinic Unsaturation Levels in HNBR," developed October 1, 1991, by Polysar Rubber Corp., 1256 South Vidal St., Sarnia, Ontario, Canada N7T 7MI; or (2) 0.4 percent to 20 percent olefinic unsaturation and Mooney viscosities greater than 45 (ML 1 + 4 @ 100 °C), as determined by ASTM Standard Method D1646–92, "Standard Test Method for Rubber—Viscosity and Vulcanization Characteristics (Mooney Viscometer)," which are both incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these methods may be obtained from the Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. A copy of ASTM Standard Method D1646–92 may also be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959.

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Dated: November 6, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–29164 Filed 11–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 883

[Docket No. FR–4532–C–02]

RIN 2502–AH46

Increased Distributions to Owners of Certain HUD-Assisted Multifamily Rental Projects; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; technical correction.

SUMMARY: This document makes a technical amendment to the final rule that was published October 13, 2000 (65 FR 61072), which adds an exception to current limits on distributions to owners for HUD-assisted multifamily rental projects.

EFFECTIVE DATE: November 13, 2000.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grants Administration, Department of Housing and Urban Development, 451 7th St. SW., Washington DC 20410, 202–708–2866. (This not a toll-free number.) For hearing- and speech-impaired persons, these numbers may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On October 13, 2000 (65 FR 61072), HUD published a final rule adding an exception to current limits on distributions to owners for HUD-assisted multifamily rental projects. Two errors in part 883 of the final rule need correction.

Accordingly, FR Doc. 00–26247, Increased Distributions to Owners of Certain HUD-Assisted Multifamily Rental Projects, published in the **Federal Register** on October 13, 2000 (65 FR 61072), is corrected as follows:

1. On page 61075, first column, in instruction 11, correct part "881" to read "883".

2. On page 61075, first column, correct the heading for "§ 883.205" to read "§ 883.306."

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 00–29098 Filed 11–14–00; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[A.G. Order No. 2333–2000]

RIN 1105–AA76

Access to Documents by Former Employees of the Department

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures under which former employees of the Department of Justice may request access to documents that they originated, reviewed, or signed while employees of the Department, for the purpose of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority. The rule designates component heads and the Assistant Attorney General for Administration as the deciding officials.

DATES: This rule is effective November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Stuart Frisch, General Counsel, or Evelyn Tang, Attorney-Advisor, Office of the General Counsel, Justice Management Division, U.S. Department of Justice, 1331 Pennsylvania Avenue NW., Suite 520N, (202) 514–3452.

SUPPLEMENTARY INFORMATION:

A. Background

Whom Does This Rule Affect?

This rule applies to former employees of the Department who, after they leave the Department, have a need for access to Department documents that they originated, reviewed, or signed while employed by the Department, for the purpose of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority.

What Does This Rule Do?

A legitimate concern has been raised by current and former Department employees, that after they leave the Department, they may still be called upon to respond to official inquiries into their handling of matters at the Department. This is especially likely in the case of high-level employees. Without access to relevant documents to refresh their memories, it may be difficult to respond to such inquiries. To address this concern, this regulation establishes a procedure for former employees to request access to documents that they originated, reviewed, or signed while at the Department. As a general rule, former employees will be provided access to the documents if they are responding to an official inquiry by a federal, state, or local government entity or professional licensing authority—for example, responding to a Congressional committee request, an investigation by an Inspector General, an investigation by a state or local law enforcement agency, or a disciplinary action by a bar association. The Department may deny or limit access where providing the requested access would be unduly burdensome. This rule does not create a right enforceable at law by a party against the United States.

What Type of Documents Does the Rule Cover?

The rule covers only documents that a former employee originated, reviewed, or signed while employed by the Department. Documents include memoranda, drafts, reports, notes, written communications, and documents stored electronically that are in the possession of the Department.

B. Administrative Procedure Act

This rule is a rule of agency organization, procedure, and practice; it is therefore exempt from the notice requirement of 5 U.S.C. 553(b) and is made effective upon issuance.

C. Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This rule merely establishes procedures under which former employees of the Department of Justice may, for the purpose of responding to an official inquiry, request access to documents they originated, reviewed, or signed while employed by the Department.

D. Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866. The Department has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

E. Unfunded Mandates Reform Act of 1995

This rule will not, in the aggregate, result in this expenditure by state, local, and tribal governments, or by the private sector, of $100,000,000 or more

in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Small Business Regulatory Enforcement Fairness Act of 1996

The Department has determined that this action pertains to agency management and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804). Therefore, the reports to Congress and the General Accounting Office specified by the SBREFA are not required.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, Sunshine Act.

For the reasons stated in the preamble, Title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

2. Add Subpart G to Part 16 to read as follows:

Subpart G—Access to Documents by Former Employees of the Department

Sec. 16.300 Access to documents for the purpose of responding to an official inquiry.

16.301 Limitations.

Subpart G—Access to Documents by Former Employees of the Department

§ 16.300 Access to documents for the purpose of responding to an official inquiry.

(a) To the extent permitted by law, former employees of the Department shall be given access to documents that they originated, reviewed, or signed while employees of the Department, for the purpose of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority. Documents include memoranda, drafts, reports, notes, written communications, and documents stored electronically that are in the possession of the Department. Access ordinarily will be provided on government premises.

(b) Requests for access to documents under this section must be submitted in writing to the head of the component where the employee worked when originating, reviewing, or signing the documents. If the employee requesting access was the Attorney General, Deputy Attorney General, or Associate Attorney General, the request may be granted by the Assistant Attorney General for Administration. This authority may not be delegated below the level of principal deputy component head.

(c) The written request should describe with specificity the documents to which access is sought (including time periods wherever possible), the reason for which access is sought (including the timing of the official inquiry involved), and any intended disclosure of any of the information contained in the documents.

(d) The requester must agree in writing to safeguard the information from unauthorized disclosure and not to further disclose the information, by any means of communication, or to make copies, without the permission of the Department. Determinations regarding any further disclosure of information or removal of copies shall be made in accordance with applicable standards and procedures.

§ 16.301 Limitations.

(a) The Department may deny or limit access under this subpart where providing the requested access would be unduly burdensome.

(b) Access under this subpart to classified information is governed by Executive Order 12958 and 28 CFR 17.46. Requests for access to classified information must be submitted to (or will be referred to) the Department Security Officer and may be granted by the Department Security Officer in consultation with the appropriate component head.

(c) Nothing in this subpart shall be construed to supplant the operation of other applicable prohibitions against disclosure.

(d) This subpart is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.

Dated: November 7, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–29208 Filed 11–14–00; 8:45 am]

BILLING CODE 4410–C5–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in December 2000. Interest assumptions are also published on the PBGC's web site (www.pbgc.gov).

EFFECTIVE DATE: December 1, 2000.

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, 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 regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022). (See the PBGC's two final rules published March 17, 2000, in the **Federal Register** (at 65 FR 14752 and 14753). Effective May 1, 2000, these rules changed how the interest

assumptions are used and where they are set forth in the PBGC's regulations.)

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during December 2000, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during December 2000, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during December 2000.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 7.00 percent for the first 25 years following the valuation date and 6.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for November 2000) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 5.25 percent for the period during which a benefit is in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for November 2000.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during December 2000, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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 amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. 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. In appendix B to part 4022, Rate Set 86, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
86	12–1–00	1–1–01	5.25	4.50	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 86, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
86	12–1–00	1–1–01	5.25	4.50	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

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

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

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used To Value Benefits

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
December 2000	.0700	1–25	.0625	>25	N/A	N/A

Issued in Washington, DC, on this 8th day of November 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–29231 Filed 11–14–00; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–111]

Drawbridge Operation Regulations: Siesta Key Bridge (SR 758), Sarasota, Sarasota County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Siesta Key Drawbridge (SR 758) across the Gulf Intracoastal Waterway, mile 71.6, Sarasota, Sarasota County, Florida. This deviation allows the drawbridge owner to provide single leaf openings for vessel traffic. This temporary deviation is required November 22, 2000 from 8 a.m. until 4 p.m., to allow the bridge owner to safely complete maintenance to the drawbridge.

DATES: This deviation is effective on November 22, 2000, from 8 a.m. until 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Siesta Key Drawbridge (SR 758) across the Gulf Intracoastal Waterway at Sarasota, FL has a vertical clearance of 21 feet above mean high water (MHW) measured at the center in the closed position. On October 30, 2000 the owner, requested a deviation from the current operating regulation in 33 CFR 117.35 which requires the drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary maintenance to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR

117.35 for the purpose of maintenance of the drawbridge. Under this deviation, the Siesta Key Drawbridge (SR 758) need only provide single leaf openings. The deviation is effective on November 22, 2000 from 8 a.m. until 4 p.m.

Dated: November 7, 2000.

G.E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 00–29101 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–112]

Drawbridge Operation Regulations: Stickney Point Bridge (SR 72), Sarasota, Sarasota County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Stickney Point Drawbridge (SR 72) across the Gulf Intracoastal Waterway, mile 68.6, Sarasota, Sarasota County, Florida. This deviation allows the drawbridge owner to provide single leaf openings for vessel traffic. This temporary deviation is required November 20, 2000 from 8 a.m. until 4 p.m., to allow the bridge owner to safely complete maintenance to the drawbridge.

DATES: This deviation is effective on November 20, 2000 from 8 a.m. until 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Stickney Point Drawbridge (SR 72) across the Gulf Intracoastal Waterway at Sarasota, FL has a vertical clearance of 18 feet above mean high water (MHW) measured at the center in the closed position. On October 30, 2000 the owner, requested a deviation from the current operating regulation in 33 CFR 117.35 which requires the drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary maintenance to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of maintenance of the drawbridge. Under this deviation, the Stickney Point Drawbridge (SR 72) need only provide single leaf openings. The deviation is effective on November 20, 2000 from 8 a.m. until 4 p.m.

Dated: November 7, 2000.

G.E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 00–29102 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–110]

Drawbridge Operation Regulations: Cortez Bridge (SR 64), Bradenton, Manatee County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Cortez Drawbridge (SR 64) across the Gulf Intracoastal Waterway, mile 87.4, Bradenton, Manatee County, Florida. This deviation allows the drawbridge owner to provide single leaf openings for vessel traffic. This temporary deviation is required November 27, 2000 from 8 a.m. until 4 p.m., to allow the bridge owner to safely complete maintenance to the drawbridge.

DATES: This deviation is effective on November 27, 2000 from 8 a.m. until 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Cortez Drawbridge (SR 64) across the Gulf Intracoastal Waterway at Sarasota, FL has a vertical clearance of 25 feet above mean high water (MHW) measured at the center in the closed position. On October 30, 2000 the owner, requested a deviation from the current operating regulation in 33 CFR 117.35 which requires the drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary maintenance to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of maintenance of the drawbridge. Under this deviation, the Cortez Drawbridge (SR 64) need only provide single leaf openings. The deviation is effective on November 27, 2000 from 8 a.m. until 4 p.m.

Dated: November 7, 2000.

G.E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 00–29103 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–109]

Drawbridge Operation Regulations; Boynton Beach Boulevard Bridge, Atlantic Intracoastal Waterway, Boynton Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Boynton Beach Boulevard Drawbridge (S.R. 804) across the Atlantic Intracoastal Waterway, mile 1035.0, Boynton Beach, Palm Beach County, Florida. This deviation allows the drawbridge owner or operator to open only a single leaf for vessel traffic. A four hour advanced notice is required for a double leaf opening. This temporary deviation is required from November 14, 2000 until December 31, 2000 to allow the bridge owner to safely complete repairs to the drawbridge.

DATES: This deviation is effective on November 14, 2000, until December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Boynton Beach Boulevard Drawbridge (S.R. 804) across the Atlantic Intracoastal Waterway at Boynton Beach, FL has a vertical clearance of 21 feet above mean high water (MHW) measured at the fenders in the closed position and a horizontal clearance of 125 between fenders. On October 30,

2000 Archer Western Contractors, representatives of the owner, requested a deviation from the current operating regulation in 33 CFR 117.35 which requires the drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary repairs to the drawbridge.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of safely completing repairs. Under this deviation, the Boynton Beach Boulevard Drawbridge (S.R. 804) need only open a single leaf, with a four hour advanced notice for a double leaf opening. The deviation is effective from November 14, 2000 until December 31, 2000.

Dated: November 7, 2000.

G.E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 00–29104 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–25–7197a; A–1–FRL–6882–7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Rate-of-Progress Emission Reduction Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. The revision establishes 15 percent and post-1996 rate-of-progress (ROP) plans for the Springfield Massachusetts serious ozone nonattainment area. The intended effect of this action is to approve this SIP revision as meeting the requirements of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on December 15, 2000.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, (617) 918–1046.

SUPPLEMENTARY INFORMATION:

This **SUPPLEMENTARY INFORMATION** section is organized as follows:

A. What Action Is EPA Taking Today?

EPA is approving 15 percent and post-96 ROP plans submitted by the Commonwealth of Massachusetts for the Springfield serious ozone nonattainment area. On September 27, 1999 (64 FR 51944), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of these ROP plans. A supplementary proposed rule was published on November 30, 1999 (64 FR 66829) that provided additional information on the automobile inspection and maintenance (I/M) program to be used in Massachusetts and the timing of 15% and 9% ROP plan reductions. The formal SIP revision was submitted by Massachusetts on April 1, 1999, and amended on June 25, 1999, and September 9, 1999.

B. Are the 1990 Emission Estimates Used in the ROP Calculations Consistent With Those Approved in the Base Year Inventory?

The 1990 base year inventory found in the ROP plans for the Western Massachusetts area matches the base year inventory for this area EPA approved in the July 14, 1997 **Federal Register** (62 FR 37510), with one exception. The NO_X emission estimate for non-road engines approved in the July 14, 1997 **Federal Register** document was 19.9 tons per summer day (tpsd); this value was lowered to 17 tpsd in the inventory used in the Springfield area's ROP target emission level calculations. EPA's discussions with Massachusetts indicate that the 17 tpsd estimate used in the ROP plans is incorrect. On September 15, 2000 Massachusetts submitted a letter to EPA confirming that 19.9 tpsd is the correct NO_X non-road base year emission estimate for the Springfield area, and submitted a revised target level calculation utilizing the correct value, 19.9 tpsd.

C. What Are the Springfield Area's 1999 Emission Target Levels?

The 1999 emission target levels for the Springfield area are 115 tpsd for VOC, and 100 tpsd for NO_X. The States' projected, controlled emissions for 1999 are both expected to equal the 1999 emission target levels for VOC and NO_X.

D. What Is the Status of the Commonwealth's I/M Program?

The Commonwealth began its automobile I/M program on October 1, 1999, but experienced routine start-up difficulties which required that full enforcement of the program be delayed for two and one half months. The Commonwealth began fully enforcing the I/M program on December 15, 1999.

In a separate action in the rules section of today's **Federal Register**, EPA is publishing a limited approval for the Commonwealth's I/M program. EPA has considered whether the ROP plans should also receive limited approval and determined that full approval of the ROP plans is more appropriate. Essentially, the issues that cause EPA to limit its approval of the I/M program have no impact on achieving the reductions necessary to support these ROP plans. The Commonwealth began fully enforcing its motor vehicle emissions testing program on December 15, 1999, and has continued to operate the program since that time without encountering major difficulties. It is the testing of motor vehicles and subsequent requirement that high polluting vehicles be repaired to emit less pollution that achieves the emission reductions attributable to automobile I/M programs. The reason EPA is not granting full approval of the Commonwealth's I/M program pertain to requirements that Massachusetts fully document that the I/M program complies with the provisions of section 182(c)(3) of the CAA. Achievement of these conditions, although necessary for full approval of the I/M program, are not prerequisite to achieving the relatively low level of emission reductions from the program on which these ROP plans rely. The I/M program as currently implemented, and which is fully enforceable in the SIP pursuant to our limited approval, is accomplishing the minimal emission reductions needed to support the ROP plans, and therefore full approval of the ROP plans is appropriate.

E. When Is the Commonwealth Expected To Meet Its 1999 Emission Target Levels?

EPA believes that it is unlikely the Commonwealth met its emission target levels by November 15, 1999, but that it now meets these emission levels.

The EPA's September 27, 1999 proposed approval of the Commonwealth's ROP plans noted that these plans relied, to a small degree, on the emission reductions from the I/M program scheduled to begin on October 1, 1999. However, the delayed enforcement of this program described above, and more conservative assumptions of the amount of credit derived from the program that Massachusetts is implementing as noted in the November 30, 1999 supplementary proposed rule, delayed the achievement of the emission reductions expected from this program. Based on the amount of vehicles subject to emission testing each month once the Commonwealth began enforcing this program on December 15, 1999, EPA believes the estimated reductions from I/M needed for the 15 percent and post-96 ROP plans were achieved and surpassed by the end of April, 2000, prior to the beginning of the ozone season. EPA believes that these reductions were achieved as expeditiously as practicable and that no other reasonable emissions control strategy would have allowed the Commonwealth or EPA to achieve these reductions sooner.

F. Has Massachusetts Revised Its Stage II Regulation?

EPA's September 27 , 1999 proposed approval of the Commonwealth's ROP plans noted compliance issues associated with this rule. Massachusetts committed, in its one hour ozone attainment demonstration submittal, to address these issues by modifying its Stage II regulation to enhance the compliance assurance mechanisms designed into the rule. Massachusetts held a public hearing on its proposed revisions to its Stage II, gasoline vapor recovery regulation on January 20, 2000. The Commonwealth submitted the revised Stage II rule to EPA for parallel processing on August 9, 2000, and EPA proposed approval of this rule on August 21, 2000 (65 FR 50669). When EPA acts on the attainment demonstration, we will evaluate whether Massachusetts has adequately addressed the compliance issues associated with this rule. Enforcement of the Stage II rule currently approved in the SIP supports these ROP plans.

G. Has the Commonwealth Submitted a Contingency Plan?

Massachusetts has not submitted a contingency plan. Sections 172(c)(9) and 182(c)(9) of the federal Clean Air Act (CAA) require that contingency measures be implemented if an area misses an ozone SIP milestone, or does not attain the NAAQS by the applicable date. Massachusetts has not met its obligation to submit a contingency plan for the Springfield serious nonattainment area.

H. What Are the Current Conformity Budgets for the Springfield Area?

The Commonwealth's revised ROP plans contain motor vehicle emission budgets for the year 1999. However, the Massachusetts DEP submitted an ozone attainment demonstration plan to EPA in 1998 that contains mobile source emission budgets for Western Massachusetts for 2003. Since the year 2003 budgets are more restrictive, cover a time frame later than the ROP plans (which include the current transportation analyses milestone years), and are based on the attainment plan, these 2003 VOC and NO_X budgets take precedence over motor vehicle emission budgets for earlier years. The specific 2003 budgets for the Springfield area are 23.770 tpsd for VOC, and 49.110 tpsd for NO_X.

Other specific requirements of the ROP plans and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving rate-of-progress emission reduction plans for the Springfield, Massachusetts ozone nonattainment area as a revision to the Massachusetts SIP. These plans meet the requirements of sections 182(b)(1) and 182(c)(2) of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for

the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements..

Dated: September 20, 2000.

Mindy S. Lubber,

Regional Administrator, EPA—New England.

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

PART 52—[AMENDED]

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

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

Subpart W—Massachusetts

2. Section 52.1129 is added to subpart W to read as follows:

§ 52.1129 Control strategy: Ozone.

Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on April 1, 1999, and supplemented on June 25, 1999 and September 9, 1999. The revisions are for the purpose of satisfying the rate of progress requirements of sections 182(b)(1) and 182(c)(2)(B) of the Clean Air Act for the Springfield, Massachusetts serious ozone nonattainment area.

[FR Doc. 00–29066 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–014–7195D; A–1–FRL–6882–5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires an enhanced inspection and maintenance program in Massachusetts. The intended effect of this action is to provide limited approval of the inspection and maintenance program which has been operating in Massachusetts since October 1, 1999. This action is being taken in accordance with the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on December 15, 2000.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), SW., Washington, DC; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Peter X. Hagerty, (617) 918–1049.

SUPPLEMENTARY INFORMATION: On September 27, 1999 (64 FR 51937), and on November 30, 1999 (64 FR 66829), EPA published Notices of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPRs proposed approval of an enhanced inspection and maintenance (I/M) program once the Massachusetts Department of Environmental Protection (DEP) submitted supplemental documentation. Massachusetts submitted the formal SIP revision on May 14, 1999.

The September 27, 1999, proposed rulemaking notice stated that prior to final action, Massachusetts must submit certain items which had not yet been supplied by the program contractor. These items included requirements specified in the following sections of the EPA I/M Rule: Network Type and Program Evaluation—40 CFR 51.353, Test Procedures and Standards—40 CFR 51.357, Test Equipment—40 CFR 51.358, Quality Control—40 CFR 51.359, Quality Assurance—40 CFR 51.363, and On-road Testing—40 CFR 51.371. The November 30, 1999 supplemental notice indicated that Massachusetts could not claim full I/M 240 credit for the Massachusetts I/M program, but EPA believed the program would achieve at least low enhanced program credit, therefore proposed approval was still appropriate.

In response to the September 27, 1999, **Federal Register** document, Massachusetts made the following submissions: Test Procedures and Equipment Specifications on February 1, 2000, and Acceptance Test Protocol on March 15, 2000. These submittals were designed to better define the information required in Test Procedures and Standards—40 CFR 51.357, and Test Equipment—40 CFR 51.358. With these two submissions the Massachusetts I/M SIP now meets the requirements of these two sections of the EPA rule. On March 15, 2000 Massachusetts also submitted Overt Audit Software Specifications which addresses part of the requirements for Quality Assurance, 40 CFR 51.363. On July 14, 2000, Massachusetts submitted a Draft Quality Assurance and Quality Control Plan. In a letter dated August 8, 2000 EPA provided minor comments on this plan.

The following sections still require additional information to meet the requirements of the I/M rule: Network Type and Program Evaluation—40 CFR 51.353, Quality Control—40 CFR Part 51.359, Quality Assurance—40 CFR 51.363 and On-road Testing—40 CFR 51.371. These requirements were explained in the NPR and will not be restated here. In response to the Supplementary Proposed Rule

published in the **Federal Register** on November 30, 1999, EPA and the DEP have had extensive discussions concerning a comparison testing program between EPA's IM240 test and the Massachusetts I/M test. A testing program has been designed and will soon be started. DEP will provide EPA with copies of the work orders to initiate this program once they have been issued. The results of this program will enable EPA to assign appropriate emission reduction credit for the Massachusetts I/M program.

Massachusetts has been successfully operating a transient testing program with a 31 second test and NYTEST equipment, which is expected to provide high emitter identification rates which are close to the rates provided by IM240 testing. This expectation is based on testing of the NYTEST equipment by New York and the 31 second test by Oregon. Although we cannot at this time assign appropriate program credit, this will be done once the comparison testing is completed.

Interim Credit—There is no data available at this time to assign appropriate emission reduction credit for the combination of test type and equipment that the Commonwealth is implementing. Nevertheless, even if one makes extremely conservative assumptions about the efficacy of the Massachusetts test, EPA's mobile modeling shows that the I/M program demonstrates at least compliance with low enhanced I/M program performance standard, and it therefore meets the requirement for this aspect of the program. Moreover, this conservative estimate of the performance standard still provides sufficient emission reduction credits to support the 15% and 9% rate of progress plans EPA is approving elsewhere in today's **Federal Register**. EPA's analysis of these conservative assumptions is available in a technical support document in the docket for the November 30, 1999 **Federal Register** Notice.

Other specific requirements of the I/M rule and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is providing limited approval of the Massachusetts inspection and maintenance program as a revision designed to strengthen the Massachusetts SIP.

This action will make the I/M program an enforceable part of the Massachusetts SIP, but DEP must still supplement the program to get full approval and meet the I/M requirements of the Act. Edward Kunce, acting Commissioner of DEP submitted this plan revision on May 14, 1999 with subsequent submissions on February 1, 2000, and March 15, 2000, as a revision to the SIP. The Commonwealth must submit to EPA additional information on Network Type and Program Evaluation—40 CFR 51.353, On-road Testing—40 CFR 51.371 and a final QA/QC plan to meet the requirements of Quality Control—40 CFR 51.359, and Quality Assurance—40 CFR 51.363, prior to EPA giving full approval to the Massachusetts I/M SIP. EPA will then publish a subsequent final rulemaking notice in the **Federal Register**, when the State submits the needed information. This approval action will remain a part of the SIP until EPA takes final action fully approving or disapproving the revised I/M SIP submittal.

Massachusetts DEP Regulation 310 CMR 60.02 "Regulations for the Enhanced Motor Vehicle Inspection and Maintenance Program" replaces completely the existing regulation 310 CMR 7.20 "Motor Vehicle Inspection and Maintenance Emission Analyzer Approval Process and Inspection Requirements and Procedures." Regulation 310 CMR 7.20 will be removed from both the table identifying the SIP in the Code of Federal Regulations (CFR) and from the files where EPA incorporates by reference Massachusetts rules into the SIP.

Massachusetts Registry of Motor Vehicles Regulation 540 CMR 4.00 entitled "Periodic Annual Staggered Safety and Combined Safety and Emissions Inspection of All Motor Vehicles, Trailers, Semi-trailers and Converter Dollies" although part of the previous I/M program was not incorporated by reference and was not listed in Table 52.1167. This regulation which was revised for the enhanced I/M program and effective October 1, 1999 will be incorporated by reference and added to table 52.1167.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in

accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 20, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

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

PART 52—[AMENDED]

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

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

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(122) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(122) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on May 14, 1999, February 1, 2000 and March 15, 2000.

(i) Incorporation by reference.

(A) Regulation 310 CMR 60.02 entitled "Regulations for the Enhanced Motor Vehicle Inspection and Maintenance Program" which became effective on October 1, 1999, and a September 17, 1999, Notice of Correction submitted by the Secretary of State indicating the effective date of the regulations.

(B) Sections 4.01, 4.02, 4.03, 4.04(1), (2), (3), (5), (15) 4.05(1), (2), (12)(d), (12)(e), (12)(o) 4.07, 4.08, and 4.09 of Regulation 540 CMR 4.00 entitled "Periodic Annual Staggered Safety and Combined Safety and Emissions Inspection of All Motor Vehicles, Trailers, Semi-trailers and Converter Dollies' which became effective on May 28, 1999."

(ii) Additional materials.

(A) Letters from the Massachusetts Department of Environmental Protection dated May 14, 1999, February 1, 2000, and March 15, 2000, submitting a revision to the Massachusetts State Implementation Plan.

(B) Test Procedures and Equipment Specifications submitted on February 1, 2000.

(C) Acceptance Test Protocol submitted on March 15, 2000.

§ 52.1167 [Amended]

3. Table 52.1167 is amended by removing Regulation 310 CMR 7.20 "Motor Vehicle Inspection and Maintenance Emission Analyzer Approval Process and Inspection Requirements and Procedures."

4. In § 52.1167 the Table 52.1167 is amended by adding new entries in numerical order for "310 CMR 60.02" and 540 CMR 4.00" to read as follows,

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 60.02	Regulations for the enhanced Motor Vehicle Inspection and Maintenance Program	5/14/99	11/15/00	65 FR 68900	122	Replaces requirements for I/M tests with enhanced I/M test requirements.
540 CMR 4.00	Periodic Annual Staggered Safety and Emissions Inspection of Motor Vehicles	5/13/99	11/15/00	65 FR 68900	122	Revises Requirements for Inspections and Enforcement of I/M Program

[FR Doc. 00–29067 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WI96–01–7327a; FRL–6901–3]

Approval and Promulgation of Implementation Plans; Wisconsin Designation of Areas for Air Quality Planning Purposes; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On November 5, 1999, the Wisconsin Department of Natural Resources (WDNR) submitted a request to the Environmental Protection Agency (EPA) to redesignate a portion of the City of Rhinelander (Oneida County) Wisconsin from a primary sulfur dioxide (SO_2) nonattainment area to attainment. In this action EPA is approving the State's request, because it meets all of the Clean Air Act (Act) requirements for redesignation.

If EPA receives adverse comments on this action, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

DATES: This "direct final" rule is effective January 16, 2001, unless EPA receives adverse or critical comments by December 15, 2000. If the rule is withdrawn, EPA will publish timely notice in the **Federal Register**.

ADDRESSES: Send written comments to Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Madeline Rucker at (312) 886–0661, before visiting the Region 5 Office.)

A copy of this redesignation is available for inspection at this Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION:

I. Background

This Supplementary Information section is organized as follows:

A. What action is EPA taking?
B. Why was this SIP revision submitted?
C. Why can we approve this request?
D. What requirements must be met for approval of a redesignation, and how did the state meet them?

A. What Action Is EPA Taking?

We are approving the State of Wisconsin's request to redesignate a portion of the City of Rhinelander (Oneida County) from a primary SO_2 nonattainment area to attainment of the SO_2 NAAQS. We are also approving the maintenance plan for this area into the Wisconsin SO_2 SIP.

B. Why Was This SIP Revision Submitted?

WDNR believes that the City of Rhinelander is now eligible for redesignation because EPA approved Wisconsin's SO_2 SIP in 1995 and SO_2 monitors in Rhinelander have not recorded exceedances of either the primary or secondary SO_2 air quality standards since 1986.

C. Why Can We Approve This Request?

Consistent with the Act's requirements, EPA developed procedures for redesignation of nonattainment areas that are in a September 4, 1992, memorandum from John Calcagni, EPA, titled, *Procedures for Processing Requests to Redesignate Areas to Attainment.* This EPA guidance document contains a number of conditions that a State must meet before it can request a change in designation for a federally designated nonattainment area. That memorandum and EPA's Technical Support Document set forth the rationale in support of the redesignation of Rhinelander's SO_2 nonattainment area to an attainment status.

D. What Requirements Must the State Meet for Approval of a Redesignation and How Did the State Meet Them?

1. The State Must Show That the Area Is Attaining the Applicable NAAQS

There are two components involved in making this demonstration:

a. Ambient air quality monitoring representative of the area of highest concentration must show no more than one exceedance annually; and

b. EPA approved air quality modeling must show that the area in question meets the applicable standard.

The first component relies on ambient air quality data representative of the area of highest concentration. The primary 24-hour concentration limit of the SO_2 NAAQS is 365 micrograms per cubic meter ($\mu g/m^3$). The primary annual concentration limit is 80 $\mu g/m^3$. According to 40 CFR 50.4, an area must show no more than one exceedance annually. WDNR's monitoring data satisfies the first component, indicating that there has been no exceedance of the 24-hour concentration limit since 1986. Monitoring data for the annual concentration limit goes back to 1994 and indicates no exceedance of the annual limit since that time.

The second component relies on supplemental EPA approved air quality modeling. Air quality modeling, however, could not be used in this case because the modeling under-predicted actual ambient air concentrations due to the unique topography of the area. Under EPA modeling guidelines, ambient data (*i.e.*, a rollback analysis) may be used to determine appropriate emission limits. A rollback analysis takes a monitored ambient exceedance recorded during a specific set of facility operating conditions and determines the amount of the exceedance due to each of the source's SO_2-emitting operations in use at that time. These estimates are then linearly "rolled back" to acceptable SO_2 emission limits that provide for attainment of the NAAQS under that set of operating conditions. The State submitted emission limits determined by using the rollback analysis in an October 21, 1994 SIP revision. EPA approved these limits into the Wisconsin SO_2 SIP by EPA on December 7, 1994 at 59 FR 63046.

Therefore, WDNR satisfied the second component by supplying monitoring information as a substitute for the modeling demonstration requirement, showing that the area has been in attainment of the SO_2 NAAQS since 1987.

2. The SIP for the Area Must Be Fully Approved Under Section 110(k) of the Act and Must Satisfy all Requirements That Apply to the Area

WDNR submitted the Rhinelander SO_2 SIP revision to EPA on October 21, 1994 to fulfill the requirements of section 110 and part D of the Act. The state's submittal consisted primarily of an August 22, 1994 Consent Order (AM–94–38) between the state and the Rhinelander Paper Company (RPC). EPA approved the permanent requirements of the consent order for RPC into the federally enforceable SO_2 SIP on December 7, 1994 at 59 FR 63046.

3. EPA Has Determined That the Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions

Pursuant to the August 22, 1994 Consent Order, RPC must meet certain emissions limits. EPA approved these permanent requirements into the federally enforceable SIP on December 7, 1994. In addition, if RPC exceeds the emission limits contained in the order, WDNR can enforce those conditions under Chapter NR 494, Wisconsin Administrative Code, and section 144.423 (now 285.83) and 144.426 (now 285.87), Wis. Stats.

4. The State Has Met All Applicable Requirements Under Section 110 and Part D of the Act That Were Applicable Prior to Submittal of the Complete Redesignation Request

Section 110(a)(2) of the Act contains the general requirements for nonattainment plans. Part D contains the general requirements applicable to all areas that are designated nonattainment based on a violation of the NAAQS. These requirements are satisfied by EPA's December 7, 1994 approval of the nonattainment plan that Wisconsin submitted on October 21, 1994 for the control of SO_2 emissions in the Rhinelander area.

A PSD program will replace the requirements of the part D new source review program after redesignation of the area. To ensure that the PSD program will become fully effective immediately upon redesignation, either EPA must delegate the Federal PSD program to the State or the State must make any needed modifications to its rules to have the approved PSD program apply to the affected area upon redesignation. EPA fully approved Wisconsin's PSD program, effective June 28, 1999.

5. EPA Has Fully Approved a Maintenance Plan, Including a Contingency Plan, for the Area Under Section 175A of the Act

Section 107(d)(3)(E) of the Act states that, for an area to be redesignated, EPA must fully approve a maintenance plan that meets the requirements of section 175A. Section 175A of the Act requires states to submit a SIP revision that provides for the maintenance of the NAAQS in the area for at least 10 years after approval of the redesignation. The basic components needed to ensure proper maintenance of the NAAQS are: attainment inventory, maintenance demonstration, verification of continued attainment, ambient air monitoring network, and a contingency plan. EPA is approving the maintenance plan in today's action as discussed below.

a. *Attainment Inventory.* RPC is the only significant source of SO_2 emissions in the area.

b. *Maintenance Demonstration and Verification of Continued Attainment.* As discussed earlier, air quality modeling is not applicable in this case because the model under-predicted the SO_2 impacts for Rhinelander. The SIP approved by EPA on December 7, 1994 contained Consent Order AM–94–38. Conditions cited in this consent order do not expire and therefore provide for maintenance of the SO_2 NAAQS for at least 10 years.

WDNR will monitor growth in the area through the annual submittal of RPC's air emission inventory. The plant wide emissions cap established in the consent order limits future SO_2 emissions at RPC. Further, WDNR staff believe the area will remain in attainment of the SO_2 NAAQS as long as the company does not expand and emit SO_2 above the consent order limits.

c. *Monitoring Network.* The WDNR has committed to operating an SO_2 monitor in the Rhinelander area until EPA and the WDNR both agree that the monitor is no longer necessary.

d. *Contingency Plan.* Section 175A of the Act requires that the maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Upon verification of two exceedances (a violation) of either the 24-hour or 3-hour SO_2 NAAQS, WDNR will investigate the causes of the violation. If the analysis of the violation identifies RPC as responsible for the violation, WDNR will work with the company to ensure that the violation will not occur again. WDNR will involve EPA, Region 5, in the discussions with the company. Once WDNR identifies the problem and sets a strategy to fix the problem, it will either (1) take an enforcement action against the company, (2) revise Consent Order AM–94–38 for greater stringency, or (3) write rules to control the emissions of SO_2 at the company. WDNR has committed to the following schedule: (1) To identify the responsible source within 30 days after a monitored violation; (2) to take action against the responsible source within 90 days of the violation; and, if EPA determines it necessary, (3) to submit a SIP revision to EPA with 360 days after the violation.

II. Final Action

We have evaluated the state's submittal and have determined that it meets the applicable requirements of the Act, EPA regulations, and EPA policy. Therefore, we are approving the State of Wisconsin's request to redesignate a portion of the City of Rhinelander (Oneida County) from a primary SO_2 nonattainment area to attainment of the SO_2 NAAQS. We are also approving the maintenance plan for this area into the Wisconsin SO_2 SIP.

EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan should relevant adverse comments be filed.

This action will be effective January 16, 2001 without further notice unless relevant adverse comments are received by December 15, 2000. If EPA receives such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will then address all public comments received in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive such comments, this action will be effective January 16, 2001.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. We will consider each request for revision to the SIP separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

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

explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976).

F. Unfunded Mandates

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

EPA has determined that the approval 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 pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 16, 2001 unless EPA receives adverse written comments by December 15, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal

agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See § 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovermental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 27, 2000.

Gary Guleziah,

Acting Regional Administrator, Region 5.

Title 40, Chapter I of the Code of Federal Regulations, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

2. Section 52.2575 is amended by adding paragraph (b)(3) to read as follows:

§ 52.2575 Control strategy: Sulfur dioxide.

* * * * *

(b) * * *

(3) An SO_2 maintenance plan was submitted by the State of Wisconsin on November 5, 1999, for the City of Rhinelander, Oneida County.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.350 is amended by revising the entry for Oneida County in the table entitled "Wisconsin-SO_2" to read as follows:

§ 81.350 Wisconsin.

WISCONSIN—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* *	*	*	*	*
Oneida County				X
* *	*	*	*	*

* * * * *

[FR Doc. 00–29221 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MO 117–1117a; FRL–6900–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Landfill Emissions From Municipal Solid Waste Landfills; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the state of Missouri's section 111(d) plan for controlling emissions from existing municipal solid waste (MSW) landfills. The plan adopts the revisions to the Federal Emission Guidelines published June 16, 1998, and February 24, 1999. Approval of the revised plan will ensure that the state plan contains the most current Federal requirements.

DATES: This rule is effective on January 16, 2001 without further notice, unless EPA receives adverse comment by December 15, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments must be submitted to Wayne Kaiser, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we, us, or our" is used, we mean EPA.

Background

Standards and guidelines for new and existing MSW landfills were promulgated under the authority of sections 111 and 129 of the CAA. These standards are 40 CFR part 60, subpart WWW, new source performance standards (NSPS) for new MSW landfills, and subpart Cc, emission guidelines (EG) for existing MSW landfills. The final NSPS and EG were published in the **Federal Register** on March 12, 1996.

EPA subsequently revised these landfill rules twice, on June 16, 1998, and February 24, 1999. These actions amend, correct errors, and clarify regulatory text of the March 12, 1996 rule.

We first approved Missouri's 111(d) plan for MSW landfills on April 24 1998 (63 FR 20320.) The state's plan consists primarily of two state rules which adopt the Federal landfill requirements

promulgated on March 12, 1996. One state rule is applicable to the St. Louis area, 10 CSR 10–5.490, and the other is applicable to the remainder of the state, 10 CSR 10–6.310.

The Missouri Department of Natural Resources (MDNR) recently revised these two rules to incorporate the EPA revisions. The state rules became effective on July 30, 2000. The state has incorporated these revised rules into its revised 111(d) plan and submitted the plan and rules to us for approval pursuant to 111(d).

We have evaluated the state plan revision against criteria in the EG and against the plan approval criteria at 40 CFR 60.23 through 60.26, subpart B, "Adoption and Submittal of State Plans for Designated Facilities."

The state plan meets all of the applicable requirements of 40 CFR part 60, subpart B and subpart Cc.

Final Action

We are approving a revision to the Missouri 111(d) plan for MSW landfills which incorporates the most recent EPA requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a state plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan, to use VCS in place of a state plan that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: October 25, 2000.

Dennis Grams,

Regional Administrator, Region 7.

Chapter I, title 40 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.

Subpart AA—Missouri

2. Section 62.6357 is amended by adding paragraph (d) to read as follows:

§ 62.6357 Identification of plan.

* * * * *

(d) Amended plan for the control of air emissions from Municipal Solid Waste Landfills submitted by the Missouri Department of Natural Resources on September 8, 2000. The effective date of the amended plan is January 16, 2001.

[FR Doc. 00–29058 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FL–86–200028(a); FRL–6902–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Florida

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the section 111(d) Plan submitted by the Florida

Department of Environmental Protection (DEP) for the State of Florida on September 16, 1999, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units.

DATES: This direct final rule is effective on January 16, 2001, without further notice, unless EPA receives adverse comment by December 15, 2000. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Joey LeVasseur, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; and at the Florida Department of Environmental Protection, Air Resources Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at (404) 562–9035 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is Being Taken by EPA Today?

We are approving the Florida State Plan, as submitted on September 16, 1999, for the control of air emissions from HMIWIs, except for those HMIWIs located in Indian Country. When EPA developed our New Source Performance Standard (NSPS) for HMIWIs, we also developed EG to control air emissions from older HMIWIs. (See 62 FR 48348–48391, September 15, 1997, 40 CFR part 60, subpart Ce [Emission Guidelines and Compliance Times for HMIWIs] and subpart Ec [Standards of Performance for HMIWIs for Which Construction is Commenced After June 20, 1996]). The Florida DEP developed a State Plan, as required by sections 111(d) and 129 of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective January 16, 2001, unless by December 15, 2000, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective January 16, 2001.

II. The HMIWI State Plan Requirement

What Is a HMIWI State Plan?

A HMIWI State Plan is a plan to control air pollutant emissions from existing incinerators which burn hospital waste or medical/infectious waste. The plan also includes source and emission inventories of these incinerators in the State.

Why Are We Requiring Florida To Submit a HMIWI State Plan?

States are required under sections 111(d) and 129 of the Act to submit State Plans to control emissions from existing HMIWIs in the State. The State Plan requirement was triggered when EPA published the EG for HMIWIs under 40 CFR part 60, subpart Ce (see 62 FR 48348, September 15, 1997).

Under section 129, EPA is required to promulgate EG for several types of existing solid waste incinerators. These EG establish the Maximum Achievable Control Technology (MACT) standards that States must adopt to comply with the Act. The HMIWI EG also establishes requirements for monitoring, operator training, permits, and a waste management plan that must be included in State Plans.

The intent of the State Plan requirement is to reduce several types of air pollutants associated with waste incineration.

Why Do We Need To Regulate Air Emissions From HMIWIs?

The State Plan establishes control requirements which reduce the following emissions from HMIWIs: particulate matter; sulfur dioxide; hydrogen chloride; nitrogen oxides; carbon monoxide; lead; cadmium; mercury; and dioxin/furans. These pollutants can cause adverse effects to the public health and the environment. Dioxin, lead, and mercury bioaccumulate through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Exposure to dioxin and furans can cause skin disorders, cancer, and reproductive effects such as endometriosis. Dioxin and furans can also affect the immune system. Acid gases affect the respiratory tract, as well as contribute to the acid rain that damages lakes and harms forests and buildings. Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Nitrogen oxide emissions contribute to the formation of ground level ozone, which is associated with a number of adverse health and environmental effects.

What Criteria Must a HMIWI State Plan Meet To Be Approved?

The criteria for approving a HMIWI State Plan include requirements from sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B. Under the requirements of sections 111(d) and 129 of the Act, a State Plan must be at least as protective as the EG regarding applicability, emission limits, compliance schedules, performance testing, monitoring and inspections, operator training and certification, waste management plans, and recordkeeping and reporting. Under section 129(e), State Plans must ensure that affected HMIWI facilities submit Title V permit applications to the State by September 15, 2000. Under the requirements of 40 CFR part 60, subpart B, the criteria for an approvable section 111(d) plan include demonstration of legal authority, enforceable mechanisms, public participation documentation, source and emission inventories, and a State progress report commitment.

III. What Does the Florida State Plan Contain?

The Florida DEP adopted the Federal NSPS and EG by reference into the Florida Administrative Code, Rules 62–

204.800(7)(b) and 62–204.800(8)(d). The State rules were effective on September 1, 1999. The Florida State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;

2. State rule, Rule 62–204.800(8)(d), as the enforceable mechanism;

3. An inventory of approximately 32 known designated facilities, along with estimates of their potential air emissions;

4. Emission limits that are as protective as the EG;

5. A compliance date of one year from the effective date of this State Plan approval;

6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

7. Records from the public hearing on the State Plan; and,

8. Provisions for progress reports to EPA.

IV. Is My HMIWI Subject to These Regulations?

The EG for existing HMIWIs affect any HMIWI built on or before June 20, 1996. If your facility meets this criterion, you are subject to these regulations.

V. What Steps Do I Need To Take?

You must meet the requirements listed in the Florida Administrative Code, Rule 62–204.800(8)(d), summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity.

2. Each size category of HMIWI has certain emission limits established which your incinerator must meet. See Table 1 of 40 CFR part 60, subpart Ce, to determine the specific emission limits which apply to you. The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events. (40 CFR 60.33e, as listed at 62 FR 48382, September 15, 1997).

3. There are provisions to address small rural incinerators (40 CFR 60.33e(b), 60.36e, 60.37e(c)(d), and 60.38e(b), as listed at 62 FR 48380, September 15, 1997).

4. You must meet a 10% opacity limit on your discharge, averaged over a six-minute block. (40 CFR 60.33e(c), as listed at 62 FR 48380, September 15, 1997).

5. You must have a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR part 60.53c(c). (40 CFR 60.34e, as listed at 62 FR 48380).

6. Your operator must be certified, as discussed in 5 above, no later than one year after EPA approval of this Florida State Plan. (40 CFR 60.39e(e), as listed at 62 FR 48382).

7. You must develop and submit to Florida DEP a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993, and must be submitted to Florida DEP no later than 60 days following the initial performance test for the affected unit. (40 CFR 60.35e, as listed at 62 FR 48380).

8. You must conduct an initial performance test to determine your incinerators compliance with these emission limits. This performance test must be completed as required under 40 CFR 60.8.

9. You must install and maintain devices to monitor the parameters listed under Table 3 to Subpart Ec (40 CFR 60.37e(c), as listed at 62 FR 48381).

10. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years. (40 CFR 60.38e, as listed at 62 FR 48381).

11. You must submit an annual report to Florida DEM containing records of annual equipment inspections, any required maintenance, and unscheduled repairs. This annual report must be signed by the facilities manager. (40 CFR 60.38e, as listed at 62 FR 48381).

VI. Why Is the Florida HMIWI State Plan Approvable?

EPA compared the Florida rules (Florida Administrative Code, Rule 62–204.800(8)(d) against our HMIWI EG. EPA finds the Florida rules to be at least as protective as the EG. The Florida State Plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR 60, 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.* The Florida State Plan satisfies the requirements for an approvable section 111(d) plan under subparts B and Ce of 40 CFR part 60. For these reasons, we are approving the Florida HMIWI State Plan.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR

8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 25, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 62 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. 7401–7642.

Subpart K—Florida

2. Section 62.2350 is amended by adding paragraphs (b)(7) and (c)(5) to read as follows:

§ 62.2350 Identification of plan.

* * * * *

(b) * * *

(7) State of Florida Department of Environmental Protection Section 111(d) State Plan for Hospital/Medical/Infectious Waste Incinerators, submitted on September 16, 1999, by the Florida Department of Environmental Protection.

(c) * * *

(5) Existing hospital/medical/infectious waste incinerators.

3. Subpart K is amended by adding a new § 62.2370 and a new undesignated center heading to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.2370 Identification of sources.

The plan applies to existing hospital/medical/infectious waste incinerators for which construction, reconstruction, or modification was commenced before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

[FR Doc. 00–29217 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301060; FRL–6747–3]

RIN 2070–AB78

Copper Sulfate Pentahydrate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of copper sulfate pentahydrate when applied as a fungicide to raw agricultural commodities after harvest. Magna Bon Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of copper sulfate pentahydrate. In this final rule, the Agency is also reordering the structure of 40 CFR 180.1001(b)(1) and 180.1021 to group most of the copper exemptions together. The reordering does not change the regulatory status of these chemicals.

DATES: This regulation is effective November 15, 2000. Objections and requests for hearings, identified by docket control number OPP–301060 must be received by EPA on or before January 16, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301060 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; and e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
.....	112	Animal production
.....	311	Food manufacturing
.....	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301060. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 14, 1999 (64 FR 37972) (FRL –6085–5), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 8F4982) by Magna Bon Corporation, 3213 Ocean Drive, Vero Beach, Florida 32963. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing. Various copper containing substances have been exempted from tolerance requirements for numerous uses. 40 CFR 180.1001 (b) (1) exempts the listed copper compounds when applied to growing crops. However, these substances are not exempted from the requirement of a tolerance when applied to a crop at the time of or after harvest. Other exempted uses of copper include harvested fish and shellfish, meat, milk, poultry, eggs, and irrigated crops as specified in 40 CFR 180.1021. The petition requested that copper sulfate pentahydrate be exempted from the requirement of a tolerance when applied to raw agricultural commodities at 0.050 ppm. The Agency does not generally grant an exemption from the requirement of tolerance with a numerical limitation.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by copper sulfate pentahydrate are discussed in this unit.

There is adequate information available to characterize the toxicity of the copper ion. Copper is ubiquitous in nature and is a necessary nutritional element for both animals (including humans), and plants. Copper is found naturally in the food we eat, in the water we drink, in the air we breathe and in our bodies themselves. Some of the environmental copper is due to direct modification of the environment by man such as mining and smelting of the natural ore. It is one of 26 elements found essential to life. The copper ion is present in the adult human body at levels of 80–150 mg.

Oral ingestion of excessive amounts of the copper ion from pesticidal uses is unlikely. Copper compounds are irritating to the gastric mucosa. Ingestion of large amounts of copper results in prompt emesis. This protective reflex reduces the amount of copper ion available for absorption into the human body. Additionally, at high levels humans are also sensitive to the taste of copper. Because of this organoleptic property, oral ingestion would also serve to limit high doses.

Only a small percentage of ingested copper is absorbed, and most of the absorbed copper is excreted. The copper ion occurs naturally in many foods and the metabolism of copper is well understood. The Agency published a registration standard for copper sulfate in 1985. As indicated in the registration standard, there are several factors unique to copper which indicate that specific studies to fulfill the usual data requirements are not necessary to regulate copper sulfate as a pesticide. One of the foremost of these is the fact that copper is a required nutritional element for both plants and animals. It appears that more evidence is available to define the adverse effects of a deficiency in the diet than to show the toxic effects of an excess intake; in fact, no account has been found in the literature reviewed which describes a toxic effect to normal humans from ingestion of common foodstuffs containing copper. Because copper toxicity to man through the diet has not been shown in normal persons, little is known about the minimum levels of dietary copper necessary to cause evidence of adverse effects. This situation is likely due, to an effective homeostatic mechanism that is involved in the dietary intake of copper and that protects man from excess body copper. This complex mechanism integrates absorption, retention, and excretion to stabilize the copper body burden. Given that copper is ubiquitous and is routinely consumed as part of the daily diet, it is unlikely that with current exposure patterns there would be any long term adverse effects.

Sulfate has little toxic effect and is routinely used in medicine as a cathartic when combined with magnesium or sodium, the only adverse manifestation from this use being dehydration if water intake is concurrently limited.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other nonoccupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide chemicals, the Agency considers the toxicity of the chemical in conjunction with possible exposure to residues of the chemical through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure, an exemption from the requirement of a tolerance may be established.

A. Dietary Exposure

Copper is ubiquitous in nature and is a necessary nutritional element for both animals (including humans) and plants. It is one of 26 elements found essential to life. The human body must have copper to stay healthy. In fact, for a variety of biochemical processes in the body to operate normally, copper must be part of our diet. Copper is needed for certain critical enzymes to function in the body. Too little copper in the body can actually lead to disease.

1. *Food.* The main source of copper for infants, children, and adults, regardless of age, is the diet. Copper is typically present in mineral rich foods like vegetables (potato, legumes (beans and peas), nuts (peanuts and pecans), grains (wheat and rye), fruits (peach and raisins), and chocolate in levels ranging from 0.3 to 3.9 ppm. A single day's diet may contain 10 mg or more of copper. The daily recommended allowance of copper for adults nutritional needs is 2 mg. It is not likely that the approval of this petition would significantly increase exposure over that of the existing levels of copper.

2. *Drinking water exposure.* Copper is a natural element found in the earth's crust. As a result, most of the world's surface water and ground water that is used for drinking purposes contains copper. The actual amount varies from region to region, depending on how much is present in the earth, but in almost all cases the amount of copper in water is extremely low. Naturally occurring copper in drinking water is safe for human consumption, even in rare instances where it is at levels high enough to impart a metallic taste to the water. The Agency has set a maximum contaminant level for copper at 1.3 ppm because the Agency believes that this level of protection would not cause any potential health problems, i.e. stomach and intestinal distress, liver and kidney damage, and anemia. It is not likely that the approval of this petition would significantly increase exposure over that of the existing levels of copper.

B. Other Non–Occupational Exposure

Copper compounds have many uses on crops (food as well as non food) and ornamentals as a fungicide.

1. *Dermal exposure.* Given the prevalence of copper in the environment, no significant increase above current levels would be expected from the dermal non–occupational use of copper sulfate pentahydrate.

2. *Inhalation exposure.* Air concentrations of copper are relatively low. A study based on several thousand samples assembled by EPA's Environmental Monitoring Systems Laboratory showed copper levels ranging from 0.003 to 7.32 micrograms per cubic meter. Other studies indicate that air levels of copper are much lower. The Agency does not expect the air concentration of copper to be significantly affected by the use of copper sulfate pentahydrate.

V. Cumulative Effects

The Agency believes that copper has no significant toxicity to humans and that no cumulative adverse effects are expected from long–term exposure to copper salts including copper sulfate pentahydrate. EPA does not have, at this time, available data to determine whether copper compounds have a common mechanism of toxicity with other substances or how to include this inert ingredient in a cumulative risk assessment. For the purposes of this tolerance action, EPA has not assumed that copper compounds have a common mechanism of toxicity with other substances.

VI. Determination of Safety for U.S. Population, Infants and Children

Copper sulfate pentahydrate is considered as Generally Recognized as Safe (GRAS) by the Food and Drug Administration. EPA has exempted various copper compounds from the requirement of a tolerance when used as aquatic herbicides (40 CFR 180.1021). Copper compounds are also exempt from the requirements of a tolerance when applied to growing crops when used as a plant fungicide in accordance with good agricultural practices (40 CFR 180.1001 (b)(1)).

1. *U.S. population.* Copper is a component of the human diet and an essential element. Use of copper sulfate pentahydrate is not expected to increase the amount of copper in the diet as a result of its use on growing crops and post harvest use.

2. *Infants and children.* Copper is also a component of the diet of infants and children and also an essential element of their diet. Because of copper's low toxicity, EPA has not used a safety factor approach to analyze the safety of copper sulfate pentahydrate used in growing crops as well as post harvest. For similar reasons, an additional ten–fold margin of safety is not necessary for the protection of infants and children.

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm to the general population, including infants and children, from aggregate exposure to copper sulfate pentahydrate residues.

VII. Other Considerations

A. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. Existing Tolerance Exemptions

Copper sulfate pentahydrate has been exempted from the requirement of a tolerance under 40 CFR 180.1001(b)(1) when applied to growing crops.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for copper sulfate pentahydrate nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

VIII. Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from

aggregate exposure to residues of copper sulfate pentahydrate. Accordingly, EPA finds that exempting post harvest uses of copper sulfate pentahydrate from the requirement of a tolerance will be safe. Although the petitioner requested an exemption with a maximum residue limit, the Agency does not generally grant an exemption from the requirement of a tolerance with a numerical limitation. Given the lack of toxicity of this compound, EPA is following its general practice of not establishing a numerical limitation with this exemption.

In examining the existing tolerance exemptions for copper compounds, it was observed that the exemptions from the requirement of a tolerance are in two places in the Code of Federal Regulations, 40 CFR 180.1001 (b)(1) and 40 CFR 180.1021. For ease of use, all of these exemptions from the requirement of a tolerance are being placed in 180.1021. While reordering of the structure of the CFR is occurring, there have not been any changes with respect to the exemptions from the requirement of a tolerance of these copper compounds. However, copper sulfate pentahydrate is now exempt from the requirement of a tolerance when applied as a fungicide to growing crops or to raw agricultural commodities after harvest.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301060 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 16, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by email at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301060, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork

Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104 –113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure " meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

XI. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:October 31, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.1001 [Amended]

2. Section 180.1001 is amended by removing and reserving the text of paragraph (b)(1).

3. Section 180.1021 is revised to read as follows:

§ 180.1021 Copper; exemption from the requirement of a tolerance.

(a) Copper is exempted from the requirement of a tolerance in meat, milk, poultry, eggs, fish, shellfish, and irrigated crops when it results from the use of:

(1) Copper sulfate as an algicide or herbicide in irrigation conveyance systems and lakes, ponds, reservoirs, or bodies of water in which fish or shellfish are cultivated.

(2) Basic copper carbonate (malachite) as an algicide or herbicide in impounded and stagnant bodies of water

(3) Copper triethanolamine and copper monoethanolamine as an algicide or herbicide in fish hatcheries, lakes, ponds, and reservoirs

(4) Cuprous oxide bearing antifouling coatings for control of algae or other coatings for control of algae or other organisms on submerged concrete or other (irrigation) structures.

(b) The following copper compounds are exempt from the requirement of a tolerance when applied (primarily) as a fungicide to growing crops using good agricultural practices: Bordeaux mixture, basic copper carbonate (malachite) (CAS Reg. No. 1184–64–1), copper ethylenediamine complex, copper hydroxide (CAS Reg. No. 20427–59–2), copper lime mixtures, copper linoleate (CAS Reg. No. 7721–15–5), copper octanoate (CAS Reg. No. 20543–04–8), copper oleate (CAS Reg. No. 10402–16–1), copper oxychloride (CAS Reg. No. 1332–40–7), copper sulfate basic (CAS Reg. No. 1344–73–6), cupric oxide (CAS Reg. No. 1317–38–0), and cuprous oxide (CAS Reg. No. 1317–19–1).

(c) Copper sulfate pentahydrate (CAS Reg. No. 7758–99–8) is exempt from the requirement of a tolerance when applied as a fungicide to growing crops or to raw agricultural commodities after harvest.

[FR Doc. 00–28715 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301077; FRL–6753–3]

RIN 2070–AB78

Pyriproxyfen; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for residues of the insecticide Pyriproxyfen and its metabolites in or on stone fruits (Crop Group 12) at 0.1 part per million (ppm) for approximately an additional 2–year period. This tolerance will expire and is revoked on December 31, 2002. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on stone fruits. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by

EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective November 15, 2000. Objections and requests for hearings, identified by docket control number OPP–301077, must be received by EPA on or before January 16, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301077 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9356; and e-mail address: beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301077. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of March 3, 1999 (64 FR 10227) (FRL–6062–4), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of Pyriproxyfen and its metabolites in or on stone fruits at 0.1 ppm, with an expiration date of 8/31/00. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of Pyriproxyfen on stone fruits for this year's growing season due to the situation remaining an emergency. In California, San Jose Scale populations have developed resistance to the traditionally used pesticides, and no alternative modes of action have become available. This pest is expected to lead to significant yield losses, and losses of entire orchards, without adequate control. Pyriproxyfen has a different mode of action, which has proven effective at controlling San Jose Scale. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of Pyriproxyfen on stone fruits for control of San Jose Scale in California.

EPA assessed the potential risks presented by residues of Pyriproxyfen in or on stone fruits. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of 3/03/99 (64 FR 10227) (FRL–6062– 4). Based on that data and information considered, the Agency reaffirms that re-establishing the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is re-established for approximately an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on stone fruits after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this

regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301077 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 16, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the HearingClerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301077, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined

that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 27, 2000.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.510 Pyriproxyfen; tolerances for residues.

2. In § 180.510, amend the table in paragraph (b) by revising the Expiration/revocation date "8/31/00" to read "12/31/02" for the commodity "Stone Fruits (Crop Group 12)."

[FR Doc. 00–28811 Filed 11–14–00; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6900–5]

Massachusetts: Interim Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Commonwealth of Massachusetts has applied to EPA for authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for interim authorization, and is authorizing the State's changes through this immediate final action. The interim authorization is for Massachusetts to assume the responsibility under the Toxicity Characteristics Rule ("TC Rule") for regulating Cathode Ray Tubes ("CRTs"). Massachusetts already has been granted final authorization to regulate all other hazardous wastes under the TC Rule. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to grant interim authorization to Massachusetts for changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and the separate document in the proposed rules section of this **Federal Register** will serve as the proposal to authorize the changes.

DATES: This interim authorization will become effective on January 16, 2001 and remain in effect until January 1, 2003 unless EPA receives adverse written comment by December 15, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take immediate effect.

ADDRESSES: Send any written comments to Robin Biscaia, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; telephone: (617) 918–1642. Copies of the Commonwealth of Massachusetts' revision application and the materials which EPA used in evaluating the revision (the "Administrative Record") are available for inspection and copying during normal business hours at the following locations: Massachusetts Department of Environmental Protection Library, One Winter Street—2nd Floor, Boston, MA 02108, business hours: 9 a.m. to 5 p.m., telephone: (617) 292–5802; or EPA New England Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours: 9 a.m. to 4 p.m., telephone: (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Program Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone: (617) 918–1642.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have been authorized to administer the Federal hazardous waste program under RCRA section 3006(b), 42 U.S.C. 6926(b), have a continuing obligation to update their programs to meet revised Federal requirements. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279. For example, States must revise their programs to regulate the additional wastes determined to be hazardous as a result of using the Toxicity Characteristics Leaching Procedure ("TCLP") test adopted by the EPA on March 29, 1990, in the TC Rule. 55 FR 11798. The EPA may grant final

authorization to a State revision if it is equivalent to, consistent with, and no less stringent than Federal RCRA requirements.

In the alternative, as provided by RCRA section 3006(g), 42 U.S.C. 6926(g), for updated Federal requirements promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA), such as the TC Rule, the EPA still may grant interim (*i.e.*, temporary) authorization to a State revision so long as it is *substantially* equivalent to Federal RCRA requirements. This interim authorization may run until no later than January 1, 2003. 40 CFR 271.24.

B. What Decisions Have We Made in This Rule?

1. Background

The TC Rule grants authority over wastes which first became classified as hazardous as a result of using the "TCLP" test, such as many CRTs. *See* 55 FR 11798, 11847–11849 (March 29, 1990). CRTs are the glass picture tubes found inside television and computer monitors. Because of their high lead content, CRTs generally fail the TCLP test. Thus, under the EPA's regulations, CRTs generally become hazardous wastes when they are discarded (*e.g.*, when sent for disposal or reclamation rather than being reused).

In order to encourage recycling, the EPA allows States to reduce RCRA regulatory requirements for certain widely-generated hazardous wastes under the Universal Waste Rule. 60 FR 25492 (May 11, 1995). In August 1998, however, the Massachusetts Department of Environmental Protection ("DEP") instead amended its regulations to completely exempt intact CRTs from all hazardous waste requirements. At the time, the DEP had pending before the EPA an application for final authorization of the TC Rule. Because the DEP's exemption of intact CRTs resulted in a State program that was not equivalent to or as stringent as Federal RCRA requirements, the EPA proposed to limit its approval of the Massachusetts TC Rule to all wastes other than CRTs. 64 FR 9110 (February 24, 1999). EPA granted final authorization to Massachusetts to administer the TC Rule for all wastes other than CRTs on October 12, 1999. 64 FR 55153.

2. Recent State Action

On August 4, 2000, Massachusetts adopted regulations which revised its regulatory program as it relates to CRTs. The State replaced its exemption of intact CRTs with a three-part approach: (1) Intact CRTs being disposed will be subject to full hazardous waste requirements (along with crushed or ground up CRTs); (2) intact CRTs that may still be reused (without reclamation) generally will be exempt from hazardous waste requirements; and, finally, (3) intact CRTs which will not be reused, but which instead will be crushed and recycled (*i.e.*, as spent materials being reclaimed), will be subject to reduced requirements which substantially track the EPA's universal waste requirements.

Documentation relating to the State's new approach may be found in EPA's Administrative Record. The documents include Massachusetts' revised Hazardous Waste Regulations and Solid Waste Regulations, as adopted on August 4, 2000, a Q & A Guidance document (which will serve as the Program Description as required by 40 CFR 271.24 and 271.21 for revisions to State programs), and an Attorney General's Statement.

3. The Decision

As further explained in a legal memorandum contained in the Administrative Record, dated January 21, 2000 entitled "Massachusetts" Regulation of CRTs," the EPA believes that the State program is "substantially equivalent" to Federal RCRA requirements. Therefore, we are granting Massachusetts interim authorization to regulate CRTs under the TC Rule as described in the authorization application. Pursuant to 40 CFR 271.24, this interim authorization will expire on January 1, 2003, at which time the authority to regulate the CRTs will revert to the EPA unless final authorization for this waste has been granted or unless EPA's regulations are amended to extend the January 1, 2003 deadline for interim authorization (in which case today's interim authorization may be extended).

Massachusetts has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Massachusetts, including issuing permits, until the State is granted authorization to do so.

The State's new three-part approach regarding CRTs is substantially equivalent to Federal requirements. With respect to intact CRTs being disposed, as well as crushed and ground-up CRTs, the State is now tracking the full Federal hazardous waste requirements. With respect to intact CRTs that may still be reused, the State has formulated an exemption which makes sense for this unusual waste stream. As explained in the EPA's January 21 legal memorandum, the State's exemption is at least substantially equivalent to Federal exemptions for products and materials used or reused as effective substitutes for products.

With respect to intact CRTs heading to reclamation, the State's program differs from the Universal Waste Rule in that these CRTs will be regulated as non-hazardous solid wastes under State law rather than as universal wastes. In addition, the State's regulations will not be as detailed or comprehensive as the universal waste requirements. While the State's differing approach would be problematic if the State was now seeking final authorization, the EPA believes that the State program nevertheless is "substantially equivalent" to Federal hazardous waste requirements. The State regulations track key provisions of the universal waste regulations. In addition, the DEP has submitted these regulations to be authorized as part of the Federally enforceable hazardous waste program. Thus, at the Federal level, these regulations will be fully enforceable as part of the hazardous waste program. These regulations also will be fully enforceable under State law, utilizing enforcement authority covering the State's solid waste programs.

The DEP's classification of intact CRTs heading for reclamation as solid waste will not change their status when sent to foreign countries since the DEP's proposed solid waste regulations specify that hazardous waste requirements must then be followed. *See* 310 CMR 16.05(3)(f)(3). The DEP's classification will not bind other States, since when there is interstate transportation, the requirements of States to and through which the wastes are shipped will apply. *See* Program Description, item 14; *See also* 64 FR 36466, 36482–36483 (July 6, 1999).

CRTs are different from most hazardous wastes. For example, a large percentage of them come from households. Effective management of CRTs involves encouraging charitable organizations, households and small businesses to participate in the collection, reuse and recycling effort.

The DEP has put together a program to encourage CRT recycling, which includes banning the disposal of even household CRTs in Massachusetts solid waste facilities. All of this counsels in favor of flexibly applying RCRA by approving the State's program on an interim basis. Interim approval will enable the State to start-up its program without needing to address the additional requirements applicable to final authorization. However, acceptance of the DEP's unusual approach for CRTs, on an interim basis, should not be regarded as a precedent for other types of situations or wastes.

It also should be emphasized that the DEP's proposed reduced regulations will apply only to *intact* CRTs. While the DEP plans to allow incidental numbers of unintentionally broken CRTs to be handled under the reduced regulations, intentionally broken CRTs or multiple CRTs broken due to poor housekeeping will be subject to full hazardous waste requirements. Also, full hazardous waste requirements will apply to disposal of CRTs, whether intact or broken, thus prohibiting such things as abandoning CRTs in warehouses or "midnight dumping."

4. Prior Comments Received Regarding EPA's Proposed Rule To Authorize Massachusetts for the UWR and TC Rule Except for CRTs

The EPA has received various comments to its proposed rule of February 24, 1999 (64 FR 9110) regarding whether or not Massachusetts should have been granted final authorization to regulate CRTs notwithstanding the DEP's prior exemption of intact CRTs from all hazardous waste requirements. The EPA does not plan to respond to these comments because the EPA and DEP have instead agreed upon the new approach described above. The issue now before the EPA is whether to grant an interim authorization for the regulation of CRTs in light of the State's new approach.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that for CRTs regulated under the TC Rule, a facility in Massachusetts subject to RCRA will have to comply with the newly authorized State requirements instead of the Federal requirements in order to comply with RCRA. The Commonwealth of Massachusetts has enforcement responsibilities under its State hazardous and solid waste programs for violations of such programs, but EPA also retains its full authority under RCRA sections 3007, 3008, 3013, and 7003.

This action does not impose additional requirements on the regulated community because the state regulations for which interim authorization to Massachusetts is being granted by today's action are already in effect under state law, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

F. What Has Massachusetts Previously Been Authorized for?

Massachusetts initially received Final Authorization on January 24, 1985, effective February 7, 1985 (50 FR 3344) to implement its base hazardous waste management program. We granted authorization for changes to their program on September 30, 1998, effective November 30, 1998 (63 FR 52180) and October 12, 1999, effective that date (64 FR 55153).

G. What Changes Are We Authorizing in Today's Action

On October 11, 2000 Massachusetts submitted a complete program revision application seeking authorization of their changes in accordance with 40 CFR 271.24. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Massachusetts' hazardous waste program revision satisfies all of the requirements necessary to qualify for interim authorization.

The specific RCRA program revisions for which the EPA grants interim authorization to Massachusetts are listed in the table below. The Federal requirements in the table are identified by their checklist numbers and rule descriptions. The following abbreviations are used in defining substantially equivalent state authority: MGL = Massachusetts General Laws; CMR = Code of Massachusetts Regulations.

Description of Federal requirement and checklist reference No.	Analogous state authority[1]
Consolidated Checklist for the Toxicity Characteristic Revisions as of June 30, 1994.	
(74) Toxicity Characteristic Revisions: 55 FR 11798, 3/29/90 as amended on 6/29/90, 55 FR 26986; (80) Hydrocarbon Recovery Operations: 55 FR 40834, 10/5/90 as amended on 2/1/91, 56 FR 3978 as amended on 4/2/91, 56 FR 13406, optional rule (MA is not seeking authorization for this provision): (84) Chlorofluoro Refrigerants: 56 FR 5910, 2/13/91, optional rule, (MA is not seeking authorization for this provision); (108) Toxicity Characteristics Revision; Technical Correction: 57 FR 30657, 7/10/92; (117B) Toxicity Characteristic Revision: 57 FR 23062, 6/1/92, (correction not applicable; MA is not seeking authorization for this provision); (119) Toxicity Characteristic Revision, TCLP: 57 FR 55114, 11/24/92, optional rule (MA is not seeking authorization for this provision)..	MGL c 21C §§ 4 and 6, enacted 11/9/79; 310 CMR 30.099(25) adopted 11/9/90, 30.104(13) adopted 10/17/97, 30.105 adopted 11/17/95, 30.125B adopted 11/9/90, 30.130 adopted 11/9/90 and 30.155B adopted 11/9/90 and amended 10/17/97. 310 CFR 30.010 (definitions of "CRT" and "Non-commodity CRT") and 310 CMR 30.104(21), as amended through 8/4/000. 310 CMR 16.02, 16.05(2)(e), 16.05(3)(f), 16.05(5)(f) and 16.05(11), as amended through 8/4/00. 310 CMR 19.017(3)(a), (c) and Table 310 CMR 19.017(3) (as to non-household CRTs), and 19.043(5)(k), as amended through 8/4/00. 310 CMR 11.03, as amended through 8/4/00. MGL c. 21A, § 13 and MGL c. 111, § 150A, as amended through 8/4/00. (The Massachusetts regulatory citations above are approved as they relate to CRTs.)

[1] The Commonwealth of Massachusetts' provisions are from the Code of Massachusetts Regulations, 310 CMR 11.00, 16.00 and 310 CMR 19.00, Solid Waste Regulations as adopted through August 4, 2000 and 310 CMR 30.000, Hazardous Waste Regulations as adopted through August 4, 2000.

H. Where Are the Revised State Rules Different From the Federal Rules?

The differences between the State and Federal regulations with respect to CRTs are discussed in section B above. Notwithstanding these differences, the EPA believes that the State regulations are substantially equivalent to the Federal regulations and, thus, the State qualifies to receive interim authorization. During the interim authorization period, for CRTs regulated under the TC Rule, these state regulations will operate in lieu of the Federal hazardous waste regulations.

The State hazardous and solid waste regulations listed in the chart above in section E will be enforceable under both Federal and state law. The one exception is that the State's ban on the disposal of even household CRTs at Massachusetts solid waste facilities goes beyond the scope of the Federal hazardous waste program and will be enforceable only under State law.

I. Who Handles Permits After This Authorization Takes Effect?

Massachusetts will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Massachusetts is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Massachusetts?

Massachusetts is not authorized to carry out its hazardous waste program in Indian country within the State. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. What Is Codification and Is EPA Codifying Massachusetts' Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We are today authorizing, but not codifying the enumerated revisions to the Massachusetts program. We reserve the amendment of 40 CFR part 272, subpart W for the codification of Massachusetts' program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, this action is not subject to review by OMB. This action authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for

affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action, nevertheless, will be effective 60 (sixty) days after publication pursuant to the procedures governing immediate final rules.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 2, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

[FR Doc. 00–29059 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–B–7328]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arizona:					
Maricopa	City of Avondale	March 24, 2000, March 31, 2000, *The Arizona Republic.*	The Honorable Thomas F. Morales, Jr., Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	February 23, 2000	040038
	City of Avondale	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable Ron Drake, Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	April 20, 2000	040038
	Town of Buckeye.	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable Dusty Hull, Mayor, Town of Buckeye, 100 North Apache Road, Suite A, Buckeye, Arizona 85326.	April 20, 2000	040039
	City of Goodyear.	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable William O. Arnold, Mayor, City of Goodyear, 119 North Litchfield Road, Goodyear, Arizona 85338.	April 20, 2000	040046
	City of Mesa	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable Wayne Brown, Mayor, City of Mesa, P.O. Box 1466, Mesa, Arizona 85211.	April 20, 2000	040048
	City of Phoenix	March 24, 2000, March 31, 2000, *The Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington, 11th Floor, Phoenix, Arizona 85003.	February 23, 2000	040051
	City of Phoenix	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington, 11th Floor, Phoenix, Arizona 85003.	April 20, 2000	040051
	City of Tempe	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable Neil G. Giuliano, Mayor, City of Tempe, Tempe City Hall, P.O. Box 5002, Tempe, Arizona 85281.	April 20, 2000	040054
	City of Tolleson	March 24, 2000, March 31, 2000, *The Arizona Republic.*	The Honorable Adolfo Gamez, Mayor, City of Tolleson, 9555 West Van Buren, Tolleson, Arizona 85353.	February 23, 2000	040055
	Unincorporated Areas.	March 24, 2000, March 31, 2000, *The Arizona Republic.*	The Honorable Andrew Kunasek, Chairperson, Maricopa County, Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	February 23, 2000	040037
	Unincorporated Areas.	May 17, 2000, May 24, 2000, *The Arizona Republic.*	The Honorable Andrew Kunasek, Chairperson, Maricopa County, Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	April 20, 2000	040037
	Unincorporated Areas.	May 17, 2000, May 24, 2000, *Holbrook Tribune News.*	The Honorable Tommy Thompson, Chairperson, Navajo County, Board of Supervisors, P.O. Box 668, Holbrook, Arizona 86025.	April 20, 2000	040066
California:					
Los Angeles	City of Carson	March 16, 2000, March 23, 2000, *Daily Breeze.*	The Honorable Peter Fajardo, Mayor, City of Carson, 701 East Carson Street, Carson, California 90749.	February 25, 2000	060107
	City of Compton	March 15, 2000, March 22, 2000, *Compton Bulletin.*	The Honorable Omar Bradley, Mayor, City of Compton, 205 South Willowbrook Avenue, Compton, California 90220.	February 25, 2000	060111

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
	City of Gardena	March 16, 2000, March 23, 2000, *Gardena Valley News.*	The Honorable Donald L. Dear, Mayor, City of Gardena, P.O. Box 47003, Gardena, California 90247–6803.	February 25, 2000	060119
	City of Lakewood.	March 16, 2000, March 23, 2000, *Press-Telegram.*	The Honorable Joseph Esquivel, Mayor, City of Lakewood, 5050 Clark Avenue, Lakewood, California 90712.	February 25, 2000	060130
	City of Long Beach.	March 16, 2000, March 23, 2000, *Press-Telegram.*	The Honorable Beverly O'Neill, Mayor, City of Long Beach, 333 West Ocean Boulevard, Long Beach, California 90802.	February 25, 2000	060136
	City of Los Angeles.	March 16, 2000, March 23, 2000, *Los Angeles Times.*	The Honorable Richard Riordan, Mayor, City of Los Angeles, 200 North Main Street, Los Angeles, California 90012.	February 25, 2000	060137
	City of Santa Clarita.	June 5, 2000, June 12, 2000, *The Signal.*	The Honorable Jo Anne Darcy, Mayor, City of Santa Clarita, 23920 Valencia Boulevard, Suite 300, Santa Clarita, California 91355.	May 15, 2000	060729
Riverside	City of Hemet ...	March 24, 2000, March 31, 2000, *The Hemet News.*	The Honorable Lori VanArsdale, Mayor, City of Hemet, 450 East Latham Avenue, Hemet, California 92543.	February 18, 2000	060253
	Unincorporated Areas.	March 24, 2000, March 31, 2000, *The Hemet News.*	The Honorable Tom Mullen, Chairperson, Riverside County Board of Supervisors, 4080 Lemon Street, 14th Floor, Riverside, California 92501.	February 18, 2000	060245
Sacramento	City of Folsom ..	June 28, 2000, July 5, 2000, *The Folsom Telegraph.*	The Honorable Stephen Miklos, Mayor, City of Folsom, 50 Natoma Street, Folsom, California 95630.	June 8, 2000	060263
San Diego ..	City of Chula Vista.	March 18, 2000, March 25, 2000, *Star News.*	The Honorable Shirley Horton, Mayor, City of Chula Vista, City Hall, 276 Fourth Avenue, Chula Vista, California 91910.	February 15, 2000	065021
	City of Escondido.	March 10, 2000, March 17, 2000, *North County Times.*	The Honorable Lori Pfeiler, Mayor, City of Escondido, 201 North Broadway, Escondido, California 92025.	January 31, 2000	060290
	City of Lemon Grove.	May 3, 2000, May 10, 2000, *Lemon Grove Review.*	The Honorable Mary Sessom, Mayor, City of Lemon Grove, 3232 Main Street, Lemon Grove, California 91945.	March 27, 2000	060723
	City of San Diego.	March 10, 2000, March 17, 2000, *San Diego Daily Transcript.*	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	January 31, 2000	060295
	Unincorporated Areas.	May 9, 2000, May 16, 2000, *San Diego Union Tribune.*	The Honorable Dianne Jacob, Chairperson, San Diego County, Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	April 3, 2000	060284
San Joaquin	City of Stockton	May 266, 2000, June 2, 2000, *The Record.*	The Honorable Gary Podesto, Mayor, City of Stockton, 425 North El Dorado Street, Stockton, California 95202.	May 10, 2000	060302
Colorado:					
Adams	City of Federal Heights.	June 5, 2000, June 12, 2000, *Denver Rocky Mountain News.*	The Honorable Phil Stewart, Mayor, City of Federal Heights, 2380 West 90th Avenue, Federal Heights, Colorado 80221.	September 11, 2000 ..	080240
	City of Westminster.	March 10, 2000, March 17, 2000, *Denver Post.*	The Honorable Nancy M. Heil, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80030.	February 1, 2000	080008

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arapahoe ...	City of Englewood.	March 24, 2000, March 31, 2000, *The Englewood Herald.*	The Honorable Tom Burns, Mayor, City of Englewood, 3400 South Elati Street, Englewood, Colorado 80110.	June 29, 2000	085074
	City of Greenwood Village.	March 23, 2000, March 30, 2000, *The Villager.*	The Honorable David Phifer, Mayor, City of Greenwood Village, 6060 South Quebec Street, Greenwood Village, Colorado 80111.	June 29, 2000	080195
	Unincorporated Areas.	March 23, 2000, March 30, 2000, *The Villager.*	The Honorable Steve Ward, Chairperson, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166.	June 29, 2000	080011
Douglas	City of Littleton	March 23, 2000, March 30, 2000, *The Littleton Independent.*	The Honorable Susan Thornton, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, Colorado 80165.	June 29, 2000	080017
	Unincorporated Areas.	March 22, 2000, March 29, 2000, *Douglas County News Press.*	The Honorable James Sullivan, Chairperson, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.	June 29, 2000	080049
Jefferson	Unincorporated Areas.	March 1, 2000, March 8, 2000, *Columbine Community Courier.*	The Honorable Richard Sheehan, Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, Colorado 80419.	January 31, 2000	080087
Iowa:					
Black Hawk	City of Waterloo	March 29, 2000, April 5, 2000, *Waterloo Courier.*	The Honorable John R. Rooff, Mayor, City of Waterloo, City Hall, 715 Mulberry Street, Waterloo, Iowa 50703.	February 22, 2000	190025
Kansas:					
Johnson	City of DeSoto ..	May 4, 2000, May 11, 2000, *DeSoto Explorer.*	The Honorable Steven Pruden, Mayor, City of DeSoto, P.O. Box C, DeSoto, Kansas 66018.	August 10, 2000	200161
	Unincorporated Areas.	May 5, 2000, May 12, 2000, *The Johnson County Sun.*	The Honorable Michael B. Press, Interim County Administrator, Johnson County, 111 South Cherry, Suite 3300, Olathe, Kansas 66061–3441.	August 10, 2000	200159
Sedgwick ...	City of Wichita ..	April 6, 2000, April 13, 2000, *Wichita Eagle.*	The Honorable Bob Knight, Mayor, City of Wichita, City Hall, First Floor, 455 North Main Street, Wichita, Kansas 67202.	July 12, 2000	200328
	Unincorporated Areas.	April 18, 2000, April 25, 2000, *Wichita Eagle.*	The Honorable William Hancock, Chairperson, Sedgwick County Board of Commissioners, 1144 South Seneca, Wichita, Kansas 67213.	July 24, 2000	200321
Louisiana:					
Lafayette Parish.	Unincorporated Areas.	April 21, 2000, April 28, 2000, *The Advertiser.*	The Honorable Walter S. Comeaux, Lafayette Parish President, P.O. Box 4017–C, Lafayette, Louisiana 70501–0417.	March 9, 2000	220101
Nevada:					
Clark	City of Henderson.	April 19, 2000, April 26, 2000, *Las Vegas Review-Journal.*	The Honorable James Gibson, Mayor, City of Henderson, 240 South Water Street, Henderson, Nevada 89015.	March 21, 2000	320015
	Unincorporated Areas.	April 29, 2000, April 26, 2000, *Las Vegas Review-Journal.*	The Honorable Bruce Woodbury, Chairperson, Clark County Board of Commissioners, 500 Grand Central Parkway, Las Vegas, Nevada 89155.	March 21, 2000	320003

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Washoe	City of Sparks ...	March 21, 2000, March 28, 2000, *Reno Gazette-Journal.*	The Honorable Tony Armstrong, Mayor, City of Sparks, P.O. Box 857, Sparks, Nevada 89432–0857.	February 10, 2000	320021
New Mexico:					
Bernalillo	City of Albuquerque.	May 5, 2000, May 12, 2000, *Albuquerque Journal.*	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	March 21, 2000	350002
Texas:					
Bexar	Unincorporated Areas.	March 21, 2000, March 28, 2000, *San Antonio Express-News.*	The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, Suite 100, San Antonio, Texas 78205-3036.	February 11, 2000	480035
Burleson	City of Somerville.	March 2, 2000, March 9, 2000, *Burleson County Citizen-Tribune.*	The Honorable Don Strickland, Mayor, City of Somerville, P.O. Box 159, Somerville, Texas 77879–0159.	February 2, 2000	480091
Collin	City of Frisco	June 16, 2000, June 23, 2000, *Frisco Enterprise.*	The Honorable Kathy Seei, Mayor, City of Frisco, P.O. Box 1100, Frisco, Texas 75034.	May 24, 2000	480134
Dallas	City of Irving	March 9, 2000, March 16, 2000, *The Irving News.*	The Honorable Joe H. Putnam, Mayor, City of Irving, P.O. Box 152288, Irving, Texas 75015–2288.	February 2, 2000	480180
	City of Dallas	April 21, 2000, April 28, 2000, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201.	March 22, 2000	480171
	City of Dallas	May 16, 2000, May 23, 2000, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla Street, Dallas, Texas 75201.	August 21, 2000	480171
	City of Garland	May 25, 2000, June 1, 2000, *The Garland News.*	The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	April 21, 2000	485471
Denton	City of Lewisville	May 26, 2000, June 2, 2000, *Lewisville News.*	The Honorable Clarence R. Myers, Mayor, City of Lewisville, 1197 West Main Street, Lewisville, Texas 75029–9002.	May 2, 2000	480195
	Unincorporated Areas.	May 10, 2000, May 17, 2000 *Lewisville News.*	The Honorable Kirk Wilson, Judge, Denton County, Courthouse-on-the-Square, 110 West Hickory Street, Second Floor, Denton, Texas 76201.	March 31, 2000	480774
	Unincorporated Areas.	March 14, 2000, March 21, 2000, *Denton Record Chronicle.*	The Honorable Kirk Wilson, Judge, Denton County, Courthouse-on-the-Square, 110 West Hickory Street, Second Floor, Denton, Texas 76201.	February 2, 2000	480774
Fort Bend ...	West Keegans Bayou Improvement District.	March 21, 2000, March 28, 2000, *Houston Chronicle.*	Ms. Sandra Weider, President, West Keegans Bayou Improvement District, 15014 Tranmore Drive, Houston, Texas 77083.	February 10, 2000	481602
Harris	City of Houston	March 3, 2000, March 10, 2000, *Houston Chronicle.*	The Honorable Lee Brown, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251–1562.	January 31, 2000	480296
Johnson	City of Burleson	May 31, 2000, June 7, 2000. *Burleson Star.*	The Honorable Rich Roper, Mayor, City of Burleson, City Hall, 141 West Renfro, Burleson, Texas 76028.	September 5, 2000 ...	485459
	Unincorporated Areas.	May 31, 2000, June 7, 2000, *Cleburne Times Review.*	The Honorable Roger Harmon, Johnson County Judge, Johnson County Courthouse, 2 North Main Street, Cleburne, Texas 76031.	September 5, 2000 ...	480879

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Tarrant	City of Saginaw	April 27, 2000, May 4, 2000, *The Times Record.*	The Honorable Monte Nichols, Mayor, City of Saginaw, P.O. Box 79070, Saginaw, Texas 76179.	March 24, 2000	480610
Travis	Unincorporated Areas.	May 2, 2000, May 9, 2000, *Austin American Statesman.*	The Honorable Samuel T. Biscoe, Travis County Judge, P.O. Box 1748, Austin, Texas 78767–1748.	August 7, 2000	481026
Wichita	City of Wichita Falls.	March 17, 2000, March 24, 2000, *Wichita Falls Times Record News.*	The Honorable Kay Yeager, Mayor, City of Wichita Falls, 1300 Seventh Street, Wichita Falls, Texas 76301.	February 11, 2000	480662
Williamson	City of Round Rock.	March 23, 2000, March 30, 2000, *Round Rock Leader.*	The Honorable Charles Culpepper, Mayor, City of Round Rock, City Hall, 221 East Main Street, Round Rock, Texas 78664.	February 8, 2000	481048
Utah:					
Utah	City of Provo	March 17, 2000, March 24, 2000, *The Daily Herald.*	The Honorable Lewis Billings, Mayor, City of Provo, 351 West Center, Provo, Utah 84604.	June 22, 2000	490159
Washington:					
Chelan	Unincorporated Areas.	March 24, 2000, March 31, 2000, *Wenatchee World.*	The Honorable John Hunter, Chairperson, Chelan County Board of Commissioners, 350 Orando Avenue, Wenatchee, Washington 98801.	February 11, 2000	530015
Douglas	City of East Wenatchee.	May 11, 2000, May 18, 2000, *Wenatchee World.*	The Honorable Steve Lacy, Mayor, City of East Wenatchee, 215 Ninth Street Northeast, East Wenatchee, Washington 98802.	April 14, 2000	530038

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 5, 2000.

Margaret E. Lawless,

Deputy Associate Director for Mitigation.

[FR Doc. 00–29128 Filed 11–14–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 97–82; FCC 00–274]

Competitive Bidding Procedures; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** of Tuesday, August 29, 2000, (65 FR 52323). The regulations related to the competitive bidding rules for all, auctionable services in section 1.2110 of the Commission's rules.

DATES: Effective November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Leora Hochstein, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 29, 2000 (65 FR 52323), the Commission published a summary of its Order on Reconsideration of the Third Report and Order, Fifth Report and Order *(Order on Reconsideration, Fifth Report and Order)* in WT Docket No. 97–82. That document clarified and amended the Commission's competitive bidding rules in an ongoing effort to establish a uniform and streamlined set of general competitive bidding rules for all auctionable services and to reduce the burden on both the Commission and the public of conducting service-specific auction rule makings.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements.

Accordingly, 47 CFR part 1 is corrected by making the following correcting amendments:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. In § 1.2110 revise paragraph (c) to read as follows:

§ 1.2110 Designated entities.

(c) Definitions.—(1) *Small businesses.* The Commission will establish the definition of a small business on a service-specific basis, taking into consideration the characteristics and capital requirements of the particular service.

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

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

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

(C) The entity plays an integral role in management decisions.

(ii) *Calculation of certain interests.*

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

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

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

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

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

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

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

(H) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling interest in such applicant or licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

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

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

(*3*) The prices charged for such services.

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

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

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

(*3*) The prices charged for such services.

(3) *Businesses owned by members of minority groups and/or women.* Unless otherwise provided in rules governing specific services, a business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens control the applicant, have at least greater than 50 percent equity ownership and, in the case of a corporate applicant, have a greater than 50 percent voting interest. For applicants that are partnerships, every general partner must be either a minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at least 50 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis. The term minority includes individuals of Black or African American, Hispanic or Latino, American Indian or Alaskan Native, Asian, and Native Hawaiian or Pacific Islander extraction.

(4) *Rural telephone companies.* A rural telephone company is any local exchange carrier operating entity to the extent that such entity—

(i) Provides common carrier service to any local exchange carrier study area that does not include either:

(A) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census, or

(B) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(ii) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(iii) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(iv) Has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

(5) *Affiliate.* (i) An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant if such individual or entity—

(A) Directly or indirectly controls or has the power to control the applicant, or

(B) Is directly or indirectly controlled by the applicant, or

(C) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(D) Has an "identity of interest" with the applicant.

(ii) Nature of control in determining affiliation.

(A) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power to control.

(B) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(C) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example. In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(iii) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or has the power to control a concern, persons with an identity of interest will be treated as though they were one person.

Example. Two shareholders in Corporation Y each have attributable interests in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity in interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

(A) *Spousal affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States. In calculating their net worth, investors who are legally separated must include their share of interests in property held jointly with a spouse.

(B) *Kinship affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half brother or sister. This presumption may be rebutted by showing that the family members are estranged, the family ties are remote, or the family members are not closely involved with each other in business matters.

Example. A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in a PCS application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation Y is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(iv) *Affiliation through stock ownership.* (A) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(B) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(C) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(v) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1. If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in a PCS application, the situation is treated as though company B had exercised its rights and had come owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2. If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in a PCS application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its option to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3. If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(vi) *Affiliation under voting trusts.* (A) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(B) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(C) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(vii) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(viii) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(ix) *Affiliation through contractual relationships.* Affiliation generally

arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(x) *Affiliation under joint venture arrangements.* (A) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(B) The parties to a joint venture are considered to be affiliated with each other. Nothing in this subsection shall be construed to define a small business consortium, for purposes of determining status as a designated entity, as a joint venture under attribution standards provided in this section.

(xi) *Exclusion from affiliation coverage.* For purposes of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of this section, except that gross revenues derived from gaming activities conducted by affiliate entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–29094 Filed 11–14–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[PP Docket No. 93–253; FCC 00–299]

Broadband Personal Communications Services (PCS) Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies various petitioners' requests to alter the Commission's C and F block competitive bidding rules. It does not change the rules except to reinstate provisions that had been inadvertently eliminated from the rules in a previous order. The Commission's determination with respect to these requests promotes the goals of the Communications Act.

DATES: Effective November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin, Attorney, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of an *Order on Reconsideration* in the Amendment of the Commission's Rules Regarding Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap. The complete text of the *Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov/wtb/auctions.*

I. Introduction

1. In this *Order on Reconsideration,* we first address three petitions for reconsideration of the Commission's Fifth Memorandum Opinion and Order in PP Docket No. 93–253 ("*Competitive Bidding Fifth Memorandum Opinion and Order*") in which the Commission resolved petitions for reconsideration or clarification of its rules governing competitive bidding for "entrepreneurs' block" (C and F block) Personal Communications Services licenses in the 2 GHz band ("broadband PCS"), *See* 59 FR 63210 (December 7, 1994). We next address nine petitions for reconsideration of the Commission's Report and Order in WT Docket No. 96–59 and GN Docket No. 90–314 ("*DEF Report and Order*") in which the Commission modified its competitive bidding and ownership rules for broadband PCS. *See* 61 FR 33859 (July 1, 1996). Finally, we reinstate provisions which, in the *Competitive Bidding Sixth Report and Order,* were inadvertently eliminated from one of the Commisson's competitive bidding rules. *See* 60 FR 37786 (July 21, 1995).

II. Background

2. Consistent with Congress' mandate to promote the participation of small businesses, rural telephone companies, and businesses owned by members of minority groups and women (collectively, "designated entities") in the provision of spectrum-based services, the Commission originally limited eligibility for C and F block PCS licenses to "entrepreneurs" and adopted special provisions for those blocks to assist small and women- and minority-owned businesses. The Commission considers entrepreneurs, with regard to the C and F blocks, to be those entities that can meet the auction and licensing eligibility requirements of § 24.709 of the Commission's rules. The principal requirement is set forth in § 24.709(a)(1), as follows:

> No application is acceptable for filing and no license shall be granted for frequency block C or frequency block F, unless the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, have gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million at the time the applicant's short-form application (Form 175) is filed.

Under § 24.709, C and F block licensees are required to maintain their eligibility until at least five years from the date of the initial license grant. Licensees, however, are permitted to grow beyond the gross revenue and total assets caps through equity investment by non-attributable investors, debt financing, revenue from operations, business development, or expanded service.

3. The Commission has held four entrepreneurs' block PCS auctions to date, Auction No. 5, the first auction of C block spectrum, ended on May 6, 1996 and was followed quickly by Auction No. 10, another C block auction, which concluded on July 16, 1996. Auction No. 11, the first F block auction, ended on January 14, 1997, and also included D and E block spectrum. The fourth auction, Auction No. 22, made available additional C and F block, as well as E block, spectrum and concluded on April 15, 1999.

III. Reconsideration of the Competitive Bidding Fifth Memorandum Opinion and Order

A. Background

4. In the *Competitive Bidding Fifth Memorandum Opinion and Order,* the Commission, responding to petitions for reconsideration or clarification of the *Competitive Bidding Fifth Report and Order,* 59 FR 37566 (July 22, 1994), and the *Competitive Bidding Order on Reconsideration,* 59 FR 43062 (August 22, 1994), clarified and modified its rules in order to allow better participation in broadband PCS by entrepreneurs and designated entities.

B. Control Group Equity Exceptions

5. *Background.* To be eligible to participate in entrepreneurs' (C or F) block auctions, an applicant (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) must have had gross revenues of less than $125 million in each of the last two years and must have total assets of less than $500 million. We recently adopted as our general attribution rule a "controlling interest" standard and decided that this standard would govern attribution for purposes of determining entrepreneur and small business eligibility for future auctions of C and F block licenses. However, in each of the past four C and F block auctions, we applied an attribution rule that provided for two "control group" equity exceptions—the "25 percent equity exception" and the "49.9 percent equity exception"—under which auction applicants could exclude from their gross revenue and asset totals the gross revenues and total assets of passive investors. Both exceptions required the applicant to form a "control group" within which "qualifying investors" owned at least 50.1 percent of the applicant's voting interests. Under the 25 percent equity exception, the applicant's control group was required to own at least 25 percent of the applicant's total equity; and, within the control group, qualifying investors were required to hold at least 15 percent of the applicant's total equity. Under the 49.9 percent equity exception, the applicant's control group was required to own at least 50.1 percent of the applicant's total equity; and, within the control group, qualifying investors were required to hold at least 30 percent of the applicant's total equity. If these and certain other requirements were met, the gross revenues and total assets of non-controlling investors were not attributed to the applicant.

6. For publicly-traded corporations with widely dispersed voting stock ownership, the Commission in the *Competitive Bidding Fifth Memorandum Opinion and Order* created an additional exception. Under the "publicly-traded corporations exception," applicable to the four C and F block auctions conducted to date, no person could own more than 15 percent of the applicant's equity or be able to control the election of more than 15 percent of the applicant's board of directors. Moreover, no person, other than the applicant's management or members of its board of directors, in their capacities as such, could have *de facto* control of the applicant. If these and certain other requirements were met, the gross revenues and total assets of persons holding an interest in the applicant were not attributed to the applicant.

7. *Discussion.* One commenter objects that under the control group exceptions, small, widely held, publicly-traded companies "cannot serve at the 'control group' level of the PCS applicant and are thereby effectively precluded from raising equity capital through the pursuit of joint ventures with non-controlling strategic investors." The commenter petitions the Commission either to allow publicly-traded companies to serve as control groups or to "extend the public company exemption to the control group level." While there was nothing in the control group rules explicitly preventing a publicly-traded company from using one of the control group equity exceptions or even from serving as the control group of an applicant, as a practical matter, these options were unlikely to be available to corporations that were publicly-traded. Nevertheless, we believe that the Commission provided such corporations with ample opportunity to obtain financing and to form strategic relationships with other entities. Such corporations were able, under the publicly-traded corporations exception, to sell classes of stock to strategic investors in amounts up to 15 percent of the corporation's equity. They were also permitted to obtain unlimited amounts of debt financing from, or enter into management agreements with, other entities, provided that such arrangements did not constitute a transfer of *de jure* or *de facto* control of the applicant or licensee. Given our recent determination that the controlling interest standard would apply to all future C and F block auctions, we dismiss as moot the commenter's request as to such auctions. Moreover, we believe that to relax the entrepreneurs' block exceptions in the manner the commenter's requests for existing C and F block licensees would seriously undermine the effectiveness of the financial caps and, for this reason, deny the commenter's petition with regard to such licensees.

IV. Reconsideration of the DEF Report and Order

A. Background

8. In the *DEF Report and Order,* the Commission, responding to the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Peña* (*"Adarand"*), modified its F block rules to make them race- and gender-neutral, as it previously had done for the C block.

B. Auction Timing

9. Two commenters ask that the Commission delay the start date of Auction No. 11. As stated, Auction No. 11, which began on August 26, 1996, concluded on January 14, 1997. Accordingly, the petitions of these commenters' are dismissed as moot.

C. Changes Resulting From Adarand

10. *Background.* In the *DEF Report and Order,* the Commission examined the F block auction rules in light of the Supreme Court's decision in *Adarand* that all racial classifications must be analyzed by a reviewing court under strict scrutiny. The Commission decided that it did not have sufficient evidence to support its F block race- and gender-based provisions and concluded that the F block rules should be race and gender neutral. Accordingly, the Commission modified the F block rules regarding control group equity structures, affiliation, installment payment plans, and bidding credits. The changes to the F block rules followed analogous modifications to the C block rules by the Commission in the *Competitive Bidding Sixth Report and Order,* which was upheld by the D.C. Circuit Court of Appeals in *Omnipoint* v. *FCC.* Two days after release of the *DEF Report and Order,* the Supreme Court clarified that under "intermediate scrutiny," the standard of review for gender classifications, the government must demonstrate an "exceedingly persuasive justification" in order to defend gender-based government action, emphasizing that such action is constitutional only if it serves an important governmental objective and is substantially related to the achievement of that objective.

11. In the *Second Further Notice,* 63 FR 770 (January 7, 1998), we sought comment on whether there is a compelling governmental interest that

would justify the use of preferences for minority-owned businesses or an exceedingly persuasive justification to support gender-based preferences for women-owned businesses. In addition, we asked commenters to provide evidence in support of their positions and to indicate what measures, if any, could be narrowly tailored to withstand judicial review. We sought comment on what specifically tailored tools, such as bidding credits, might be appropriate or whether preferences should be given to minority-owned or women-owned businesses that also qualify as small businesses. In our recent *Part 1 Fifth Report and Order,* 65 FR 52323 (August 29, 2000), we noted that we did not receive any comments on these issues and concluded that because the record was sparse we did not believe that it was appropriate to adopt special provisions for minority- and women-owned businesses at that time.

12. *Discussion.* One commenter asks the Commission to reconsider its decision to eliminate race and gender preferences. It argues that the Commission is subject to fewer time pressures for the F block auction than it was for the initial C block auction and that the Commission has had the time to make, and should make, the factual showing necessary to justify reimplementing its race and gender F block provisions. This commenter's request is moot with regard to the two F block auctions already completed.

13. With regard to future F block auctions, we do not have a sufficient record to justify the reimplementation of race- and gender-based auction rules. As stated, we received no comments on these issues in response to the *Second Further Notice.* We note that our Office of Communications Business Opportunities has initiated several studies to examine ownership of telecommunications facilities by minority- and women-owned entities. Further, we have recently commenced several new studies to explore additional entry barriers and to seek further evidence of racial and gender discrimination against potential licensees. In addition, we will continue to track the rate of participation in our auctions by minority- and women-owned firms and evaluate this information with other data gathered to determine whether provisions to promote participation by minorities and women can satisfy judicial scrutiny. If a sufficient record can be adduced, we will consider race- and gender-based provisions for future auctions. We, therefore, deny the commenter's petition. We discuss other petitions addressing specific rule changes resulting directly or indirectly from the *Adarand* decision.

i. Control Group Equity Exception and Affiliation Exception

14. *Background. Control Group Equity Exception.* As explained earlier, the Commission's rules applicable to the four past C and F block auctions provided for two control group equity exceptions to the entrepreneurs' block financial caps. Under these exceptions, the gross revenues and total assets of certain persons or entities holding interests in an applicant were not considered for purposes of determining eligibility to participate in a C or F block auction. As originally adopted, the 49.9 percent equity exception was available only to women- and minority-owned businesses. In the *DEF Report and Order,* the Commission made the 49.9 percent equity exception available to all small businesses and entrepreneurs.

15. *Affiliation Exception.* In the *Competitive Bidding Sixth Report and Order,* the Commission modified an exception to the C and F block affiliation rules under which the gross revenues and assets of affiliates controlled by minority investors that were members of a C or F block applicant's control group were not attributed to the applicant. The exception as modified allowed every small business C block applicant to exclude the gross revenues and assets of any affiliates that did not exceed the entrepreneurs' block caps, provided that the gross revenues and total assets of all such affiliates of the small business applicant, when aggregated, did not exceed those caps. The modified exception was limited to C block applicants; language making the exception applicable to F block applicants was inadvertently eliminated. Subsequently, in the *DEF Report and Order,* instead of extending the exception to F block applicants, the Commission removed the exception entirely, expressing skepticism that the exception was still needed and acknowledging the argument that the exception might allow too many larger entities to qualify as small businesses. The Commission stated that it would consider waiver requests to allow participation in the first F block auction by parties that had participated in the first C block auction and had relied on the affiliation exception in structuring themselves.

16. *Discussion.* One commenter contends that elimination of the affiliation exception for the F block is unfair to F block bidders that participated in the original C block auction, because such bidders designed business plans that anticipated bidding in both blocks under the same bidding credit structure. We find this petition unpersuasive. As stated, the Commission offered Auction No. 11 applicants that had participated in the first C block auction the opportunity to request a waiver in order to be able to participate in Auction No. 11; however, the Commission received no such requests. Another commenter argues that the Commission should adopt the affiliation exception for the F block and eliminate the 49.9 percent equity exception or, alternatively, eliminate or retain both the affiliation and the 49.9 percent equity exceptions. As we noted, the Commission eliminated the affiliation exception for the C block as well as the F block; and we continue to believe that the exception may lead to abuses. Accordingly, we deny the requests of the two commenters' with regard to existing licensees. With regard to past auctions, we dismiss as moot the two commenters' petitions. Additionally, in light of our recent determination that the controlling interest standard will apply to all future C and F block auctions, we dismiss as moot the two commenters' petitions with regard to future auctions.

ii. C Block Licenses as Assets

17. *Background.* In the *DEF Report and Order,* the Commission decided not to treat C block licenses as assets for purposes of determining an applicant's eligibility for the then-upcoming F block auction, fearing that including such licenses might preclude C block winners from F block eligibility. The Commission stated that, because of the Commission's previous indications that the C and F blocks are linked, it would be unfair to disqualify C block winners from participation in the F block auction on the basis of their success in acquiring capital for the C block auction. Specifically, the Commission had earlier noted that the two blocks are contiguous and lend themselves to aggregation and that together they are subject to a cap on the number of licenses that may be won at auction. The Commission expressed concern that treating C block licenses as assets for purposes of eligibility for the initial F block auction could frustrate business plans and auction strategies made in reliance on the Commission's earlier statements. The Commission also noted that it was uncertain whether C block licenses that had already been won would be issued before the F block auction. Finally, the Commission decided that licenses other than C block licenses would be included in the total

asset calculations of applicants for the F block auction.

18. *Discussion.* Commenter asserts that it is inconsistent for the Commission not to require the inclusion of C block licenses in applicants' total asset valuations when the Commission requires A and B block broadband PCS licenses to be included in such valuations. Commenter argues further that Commission's decision will diminish opportunities for small businesses in the F block auction. The commenter also suggests that the issuance of C block licenses after Auction No. 11 to winners of F block licenses in Auction No. 11 could interfere with the ability of such license holders to maintain their eligibility as entrepreneurs. One commenter counters that another commenter has misconstrued the Commission's rules for maintaining entrepreneur eligibility and that, under the rules, entrepreneur eligibility is not lost simply because a license acquires additional licenses.

19. Because Auction No. 11 has already occurred, the commenter's petition is now moot as to that auction. We believe, however, that the Commission's decision was correct. In reaching this decision, the Commission determined that to prevent F block auction participation by C block winners on the basis of their earlier ability to raise capital within the limitations of our rules would be unfair. To further the Congressional objective that PCS licenses be disseminated among a wide variety of applicants, we encourage the success of C and F block licensees and recognize that such success is generally accompanied by asset growth. For this reason, we will not require applicants for participation in future auctions to treat either C or F block licenses as assets for purposes of determining applicants' C or F block entrepreneur eligibility. We will, however, continue to require that all other Commission licenses be included in the total asset calculations on the short-form applications for C and F block auctions. We also clarify that the acquisition by C or F block licenses of other Commission licenses, entrepreneurs' block or otherwise, will not of itself prevent licensees' continued eligibility to hold entrepreneurs' block licenses.

iii. Bidding Credits

20. *Background.* Under the originally adopted F block bidding credit rule, a small business was granted a 10 percent bidding credit; a business owned by members of minority groups or women was granted a 15 percent bidding credit; and a small business owned by members of minority groups or women was allowed to aggregate these bidding credits for a 25 percent bidding credit. In the *DEF Report and Order*, the Commission eliminated the race- and gender-based aspects of its bidding credit provisions and, instead, adopted a two-tiered approach. Under the modified rule, small businesses receive a 15 percent bidding credit and very small businesses receive a 25 percent bidding credit. In the *C Block Fourth Report and Order*, 63 FR 50791 (September 23, 1998), the Commission changed the C block bidding credit rule to adopt, for Auction No. 22 and subsequent C block auctions, the same two tiers that it had the F block.

21. *Discussion.* Commenter objects to the fact that the Commission did not adopt the same bidding credit for the F block that it had for the initial C block auction, a 25 percent bidding credit for all small businesses. Commenter argues that minority-owned bidders had an "understanding that, at a minimum, the Commission would preserve for them the rules as they existed in the C block auction." The Commission considered and rejected similar arguments in the *DEF Report and Order.* The Commission disagreed that entities interested in bidding in Auction No. 11 had the same expectations as C block applicants in structuring their businesses or formulating strategies in reliance on the tiered bidding credits originally adopted. The Commission explained, moreover, that the timing of the F block modification allowed the Commission to take a different approach than it had for the C block. The Commission also indicated that a two-tiered approach would ensure that the smallest businesses receive the greatest benefit. Commenter has not provided any new rationale to justify our deviating from this reasoning here, and its petition is therefore denied. We note, as mentioned, that under current rules, bidding credits are the same for C and F block licenses.

iv. Installment Financing

22. *Background.* The originally adopted F block rules provided for five different installment payment plans. One of these plans was available only to entities owned by members of minority groups or women, while another plan was restricted to small businesses owned by members of minority groups or women. To satisfy the requirements of *Adarand*, the Commission, in the *DEF Report and Order*, eliminated these two plans. Of the three remaining plans, one was available only to small businesses. With the elimination of the two plans restricted to minority groups or women, the small business plan became the likely choice for minority- and women-owned small businesses. The Commission modified this plan in the *DEF Report and Order.* As modified, the plan offers small businesses or small business consortia a two-year interest-only period with an interest rate equal to the ten-year U.S. Treasury rate and principal amortized over the remaining eight years of the license term. This plan has the same interest rate as, but a shorter interest-only period than, the two eliminated plans and also the plan available to small businesses in the first two C block auctions. The Commission concluded that the availability of the small business plan would provide minority- and women-owned businesses an opportunity to participate in the provision of spectrum-based services. The Commission explained that the build-out requirement for F block licenses is less stringent than it is for C block licenses and that a two-year interest only period would provide F block licensees a substantial period in which to construct their systems, while also encouraging them to provide service to the public quickly. It explained further that restricting the interest-only period to two years would deter speculation and insincere bidding. Finally, the Commission discussed how the revised small business installment payment plan was still extremely attractive in comparison to other financing options likely to be available to small businesses.

23. In the *Part 1 Third Report and Order*, 63 FR 2315 (January 15, 1998), we suspended the installment payment program. Accordingly, we decided in the *C Block Fourth Report and Order* not to offer installment payments for Auction No. 22. Most recently, in the *Part 1 Fifth Report and Order*, we decided to adhere to our previous decision to suspend the installment payment program.

24. *Discussion.* We received petitions from several commenters opposing the alterations in the *DEF Report and Order* to the F block installment financing plans and, in particular, objecting to the reduction of the interest-only payment period under the small business plan. Given our current suspension of installment payment financing, these petitions are, as a practical matter, moot with regard to future F block auctions. Furthermore, we believe that, even with the two-year interest-only period, the plan available to small business winners in Auction No. 11 provided them with sufficient assistance to build out their systems and provide timely service. For this reason, we decline to alter the terms of existing, F block installment loans.

D. Upfront Payment and Down Payment

25. *Background.* Under the originally adopted rules, participants in an F block auction were required to submit an upfront payment of $0.015 per MHz per pop (or bidding unit) for the maximum number of licenses on which they intended to bid in any one round. Winning bidders were required to supplement their upfront payment with a down payment sufficient to bring their total deposits up to 10 percent of their winning bid(s). Based upon its experience in the first C block auction, the Commission changed the rules in the *DEF Report and Order* to require an upfront payment of $0.06 per MHz per pop and a down payment that, including the upfront payment amount, would total 20 percent of a participant's winning bid(s).

26. In the *Part 1 Third Report and Order*, we affirmed the Commission's decision in the *Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994), that the upfront payment amount and terms should be determined on an auction-by-auction basis. We also concluded that a standard down payment of 20 percent is appropriate for all auctionable services; however, we reserved the right, in the event of unusual circumstances affecting a particular service, to adopt a different down payment amount by rule in that service. Accordingly, in the *C Block Fourth Report and Order*, we modified our part 24 rules for the C and F blocks to reflect that upront payments would be established on an auction-by-auction basis and that winning C and F block bidders would be subject to the 20 percent down payment requirement of part 1 of the Commission's rules.

27. *Discussion.* These commenters all protest the changes in the *DEF Report and Order* to the F block upfront and/or down payment rules. With regard to past auctions, these petitions are moot. With regard to future auctions, we continue to adhere to the wisdom of tailoring the specific amount and terms of the upfront payment to each specific auction. We also maintain our conviction, expressed in the *Part 1 Third Report and Order*, that a 20 percent down payment is an appropriate amount to provide the Commission with sufficient assurance that a winning bidder will be able to pay the full amount of its winning bid and that it possesses the financial strength to attract the capital necessary to deploy and operate its system. In addition, we continue to believe that a 20 percent down payment facilitates our discovery early in the licensing process that an applicant might be unable to finance its winning bid.

E. Administrative Procedure

i. Contract With America Advancement Act

28. *Background.* Shortly before release of the *DEF Report and Order*, Congress enacted the Contract with America Advancement Act of 1996 (CWAAA), which, *inter alia*, requires generally that a "major rule" cannot take effect until 60 days after the later of the rule's publication in the Federal Register or submission by the Federal agency of a required report to Congress. Under CWAAA, a major rule is one—

> that the Administrator of the Office of Information and Regulatory Affairs [OIRA] of the Office of Management and Budget finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, [or] innovation * * *.

The Commission determined, and OIRA concurred, that the rule changes made in the *DEF Report and Order* were not major. Accordingly, the Commission made the rules effective 30 days after their July 1, 1996 Federal Register publication.

29. *Discussion.* Commenter contends that the Commission violated CWAAA by failing to determine that the rule changes resulting from the *DEF Report and Order* were major and delaying their effectiveness for at least 60 days after their Federal Register publication. By terms of the statutory language, OIRA's finding that the rule changes were not major is dispositive. Commenter's argument is therefore rejected.

ii. Regulatory Flexibility Act

30. Commenter also claims that the Commission failed to describe significant alternatives to the rules designed to minimize any significant economic impact on small entities as required by the Regulatory Flexibility Act (RFA). We disagree. The portion of the *DEF Report and Order*—the Final Regulatory Flexibility Analysis (FRFA)—addressing this RFA requirement refers to the substantive part of the Order, which discusses in great depth the impact of the rules on small businesses, alternatives considered, and why each alternative was rejected or adopted. Consolidation of the discussion of the impact on small businesses from the item into the FRFA would have been repetitive in this instance, where analyses of alternatives related to small businesses infuse the decision. Indeed, the commenter identifies no specific instances where the Commission omitted consideration of such alternatives. Accordingly, the commenter's petitions are denied.

V. Ordering Clauses

31. Authority for issuance of the *Order on Reconsideration* is contained in sections 4(i), 5(b), 5(c)(1), 309(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 155(b), 156(c)(1), 303(r), and 309(j). Accordingly, it is ordered that part 24 of the Commission's rules is amended as specified and becomes effective November 15, 2000.

List of Subjects in 47 CFR Part 24

Personal communications services.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 24 as follows:

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

2. Section 24.709 is amended by revising paragraphs (b)(5)(i)(D) and (b)(5)(ii) to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(D) Following termination of the three-year period specified in paragraph (b)(5)(i) of this section, qualifying investors must continue to own at least 10 percent of the applicant's (or licensee's) total equity unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(5)(i)(A) of this section. The restrictions specified in paragraph (b)(5)(i)(C)(1) through (b)(5)(i)(C)(4) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose control group's sole member is a preexisting entity, the 25 percent minimum equity requirements set forth in paragraph (b)(5)(i) of this section shall apply, except that only 10

percent of the applicant's (or licensee's) total equity must be held in qualifying investors, and that the remaining 15 percent of the applicant's (or licensee's) total equity may be held by qualifying investors, or noncontrolling existing investors in such control group member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 15 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(5)(i) of this section.

* * * * *

[FR Doc. 00–29323 Filed 11–14–00; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 927 and 970

RIN: 1991–AB55

Acquisition Regulations: Revision of Patent Regulations Relating to DOE Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Interim final rule and opportunity for public comment.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to improve the patent coverage relating to management and operating contracts. The clauses contained herein generally reflect the clauses used in such DOE contracts over the last five years. The changes made pursuant to this rule adapt patent related clauses to subcontracting under management and operating contracts, will result in clauses stated in "plain language," and will provide a complete set of patent clauses for all varieties of management and operating contract.

DATES: This rule is effective December 15, 2000. Comments on the interim final rule should be submitted by January 16, 2001.

ADDRESSES: Comments (3 copies) should be addressed to: Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Robert M. Webb at (202) 586–8264.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Energy (DOE or Department) last revised its patent regulations covering management and operating contracts on March 2, 1995 at 60 FR 11824. That rule created two patent rights clauses, one for nonprofit contractors and a second for profit-making contractors. The former adapted the Bayh-Dole clause, granting title to inventions first conceived or reduced to practice under the contract to the contractor, for use in management and operating (M&O) contracts. The second clause retained title to those inventions in the United States. In the interim it has become apparent that the clauses could be designed to more effectively deal with the realities of performance under DOE management and operating contracts. There is a need to modify the specified clauses to reflect additional statutory requirements and the special treatment of exceptional circumstances in defense related activities. This interim final rule fulfills those needs.

This rulemaking establishes three clauses, one for nonprofit contractors, one for profit-making contractors where their contracts do not provide for technology transfer responsibilities, and a third for large profit-making contractors where their contracts do provide for technology transfer activities. The terms of the third clause reflect DOE's probable issuance of an advance waiver under which large profit-making management and operating contractors with a technology transfer mission will receive title to inventions. The individual class waiver that is likely to be granted may cause the actual terms of the patent clause used to vary from the model published here.

This interim final rule also adapts customary ancillary patent clauses to the special circumstances of DOE's management and operating contracts. The clause normally used to authorize and give consent to a contractor to use or manufacture an invention has been modified to allow a contractor to request and DOE to authorize copying copyrighted work. It also reflects that if a subcontractor is employed under a management and operating contract to perform research and development, the clause flowed down should use paragraph (a) as in the Federal Acquisition Regulation (FAR) Alternate 1, as opposed to the basic clause as is called for under paragraph (b) of the FAR clause.

The interim final rule limits the notice and assistance clause to subcontracts valued at $25,000 or more. The FAR clause limit for flowdown is the simplified acquisition threshold of $100,000.

The interim final rule establishes a flowdown for patent indemnity. In the area of royalties, the interim final rule provides for the contractor to provide to DOE information bearing on any royalty proposed to be paid after contract award. The relevant FAR provision does not foresee long term contracting with the variety of royalty activities that the Department is currently experiencing under its management and operating contracts.

This interim final rule also makes small changes to clauses for notice of right to request patent waiver and rights to proposal data, resulting from their being drafted in "plain language." Additionally, a change has been made to DEAR Part 927 to assure that the facilities license contained in the three M&O patent clauses is used in appropriate contracts not subject to Part 970.

II. Explanation of Changes in the Patent Rights Clauses

A. Plain Language

All clauses in this interim final rule, except the nonprofit clause at 970.5204–101, were rewritten from former clauses to incorporate suggested language and sentence structure for clarifying and simplifying contract provisions. For example, the clause language is written in the present tense and exceptions are generally stated at the beginning of regulatory provisions. Italicized headings were added to all subparagraphs. At such time as the FAR is revised to reflect "plain language," particularly with regard to the Bayh-Dole clause at FAR 52.227–11 (the core of the clause at 970.5204–101), which is overseen by the Department of Commerce, these regulations will be reviewed and revised as appropriate.

B. Organization of Clause Provisions

Modest changes were made to the organization of each of the patent rights clauses, so that like topics and provisions appear in a similar order in all of the clauses, as shown by the index. Also, if the same provision appeared in more than one clause, an

effort was made to maintain similar paragraph lettering and text.

C. Allocation of Principal Rights: Exceptional Circumstance Subject Inventions, Inventions Related to National Security, and Treaties and International Agreements

The Allocation of Principal Rights paragraph (b) in each of the patent rights clauses is drafted according to the statutory disposition of rights in inventions depending on contractor type. In addition, paragraph (b) of clauses at 970.5204–101 and –103 include new subparagraphs addressing exceptional circumstance subject inventions and the disposition of rights controlled by treaties and international agreements (see 970.5204–101–(b)(3)&(4); –103–(b)(5)&(6)). Alternate 1 also provides for the allocation of rights in subject inventions related to weapons and national security, respectively, to be inserted under paragraph (b). These new provisions are located under allocation of principal rights because they affect the contractor's ability to take title.

D. Allocation of Principal Rights: Requests for Greater Rights by the Contractor and Contractor Employee-inventors, and the Assignment of Government Rights of Government Employee-inventors

The Allocation of Principal Rights paragraph (b) in each of the patent rights clauses includes provisions for the contractor and contractor employee-inventor to request greater rights in inventions, and for the Government to assign to the contractor the rights acquired from a Government employee-inventor (see 970.5204–101(b)(4)(5)&(6); –102(b)(2); –103(b)(7)(8)&(9)).

E. Subject Invention Disclosures

All of the patent rights clauses include a modified list of information required in a subject invention disclosure. The list provides DOE with sufficient information to oversee invention reporting.

F. Efficient Administration of Subject Inventions

Provisions appear in one or more of the patent rights clauses and address procedures for ensuring that all subject inventions are promptly reported by inventors to the contractor and by the contractor to DOE.

G. DOE Decisions Concerning Federally Funded Inventions

The clauses at 970.5204–101 and –103 that provide the contractor with the right to retain title to subject inventions, either by statute or under an advance class waiver, include a new provision which confirms that it is at DOE's sole discretion to accept or refuse the return of rights to a subject invention that had been previously elected by the contractor (see 970.5204–101(d)(4); –103(d)(1)).

The patent rights clause at 970.5204–102 does not contemplate the contractor's retention of rights in inventions, and, therefore, if such a restriction on the return of title should apply to a large business contractor whose contract has no technology transfer mission, it must be included in the terms and conditions of the instrument granting rights in the invention, *e.g.*, identified waiver. In addition, DOE's discretion to grant or refuse requests by the contractor for greater rights or for a contractor license is more clearly stated in all of the patent rights clauses, such that there is no confusion that a contractor does not automatically receive such rights simply by requesting them, but rather DOE may grant or refuse to grant such rights, ensuring Government missions and objectives are considered (see patent rights clauses 970.5204–101(b)(5)(6)&(7) and (e)(1); 970.5204–102(b)(2) and (d)(1)(i)); and 970.5204–103(b)(7)(8)&(9) and (e)(1)).

H. Withholding of Payment

The provision entitled *Withholding of payment* from former clause 48 CFR 970.5204–72 has been deleted from the for-profit clauses (970.5204–102 and –103). While the provision is applicable to prime contractors generally, such withholding is not a practice employed by the Contracting Officer with respect to M&O contracts.

I. Royalty Sharing and Balance of Royalties Provisions in the For-Profit, Advance Class Waiver Clause

The former nonprofit clause, 48 CFR 970.5204–71, includes royalty sharing and balance of royalties provisions under paragraph (k) entitled *Special provisions for contracts with nonprofit organizations.* Since this subject matter is addressed in the accompanying Technology Transfer Mission clause, these provisions clauses have been deleted from the nonprofit clause (970.5204–101), and omitted from the for-profit, advance class waiver clause (970.5204–103).

J. Rights Governed by Other Agreements

A provision specifying that rights to inventions made under certain third party agreements are governed by DOE approved provisions is omitted from the for-profit, advance waiver clause because it is covered in the Technology Transfer Mission clause, paragraph (n)(4), which must accompany the for-profit, advance waiver clause (970.5204–103) in an M&O contract.

K. Reports

The interim and final reports required by various provisions are collectively organized under a single paragraph, Reports, for each of the patent clauses (see 970.5204–101(m); 970.5204–102(k); 970.5204–103(m)).

L. Classified Inventions

The Classified Inventions provision from 10 CFR 600.27 has been modified and included in all of the clauses (see 970.5204–101(q); –102(m); –103(p)). The provision was included and not presented as an alternate because almost all of the DOE laboratories have the potential for engaging in research involving classified subject matter. The provision may be deleted if this is absolutely not the case, by approval of DOE patent counsel at the time of contracting.

M. Patent Functions

This new provision, already in most management and operating contracts, is included in each all the clauses (see 970.5204–101(r); –102(n); –103(r)). It requires the contractor to assist patent counsel with patent related functions.

N. Educational Awards Subject to 35 U.S.C. 212

This new provision, also already in most management and operating contracts, is included in two of the clauses (see 970.5204–101(s); –103(s)). It protects Government rights in research related to excepted areas of technology from possible allocation to students under 35 U.S.C. 212.

O. Annual Appraisal by Patent Counsel

This new provision, also already in most management and operating contracts, is included in all of the clauses (see 970.5204–101(t); –102(p); –103(t)). It allows, but does not require, DOE patent counsel to conduct annual appraisals to evaluate the contractor's effectiveness in identifying and protecting inventions.

P. Weapons Related Subject Inventions

Alternate 1 entitled *Weapons Related Subject Inventions* is available for the nonprofit clause and the for-profit, advance class waiver clause.

Q. Transfer of a Contractor License

DOE must approve the transfer of a contractor license in a subject invention. The former clause 48 CFR 970.5204–71(e)(1) (last sentence) provided for an

exception: "except when transferred to the successor of that part of the Contractor's business to which the invention pertains."

R. Two Year Election Period for For-Profit Contractors Retaining Title Under an Advance Class Waiver

A two (2) year period for election to retain title has been included in subparagraph (c)(3) of the for-profit, advance class waiver, patent rights clause at 970.5204–103.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this interim final rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

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 Executive Order 12988 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) provides 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 Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in 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 has completed the required review and determined that, to the extent permitted by law, this interim final regulation meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. There is no legal requirement to propose today's rule for public comment, and, therefore, the Regulatory Flexiblility Act does not apply to this rulemaking proceeding.

D. Review Under the Paperwork Reduction Act.

This interim final rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et. seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this interim final rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, subpart D) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Specifically, this interim rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this interim final rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then Executive Order 13132 requires agencies to engage in intergovernmental consultation and take other steps before promulgating such a regulation or rule. This interim final rule merely provides for the Department a single set of clauses to govern patent rights in its contracts for the management and operation of major DOE sites and facilities. The action does not involve any substantial direct effects on States or other considerations stated in Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This interim final rulemaking would only affect private sector entities, and the impact is less than $100 million.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This interim final rule would not affect the family.

I. Congressional Notification

Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Secs. 801, 804), DOE will submit to Congress a report regarding the issuance of today's interim final rule prior to the effective date set forth at the outset of this notice. The report will note the Office of Management and Budget's determination that this rule does not constitute a "major rule" under that Act.

List of Subjects in 48 CFR Parts 927 and 970

Government procurement.

Issued in Washington, D.C. on October 6. 2000.

T.J. Glauthier,

Deputy Secretary, Department of Energy.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 927—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation for Part 927 is revised to read as follows:

Authority: Atomic Energy Act of 1954, as amended (42 U.S.C. 2168, 2182, 2201); Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 (42 U.S.C. 7261a.); Department of Energy Organization Act (42

U.S.C. 7101 *et seq.*); National Nuclear Security Administration Act (50 U.S.C. 4201 *et seq.*)

2. Section 927.303(c) is added to read as follows:

927.303 Contract clauses.

* * * * *

(c) Any contract that has as a purpose the design, construction, operation, or management integration of a collection of contracts for the same purpose, of a Government-owned research, development, demonstration or production facility must accord the Government certain rights with respect to further use of the facility by or on behalf of the Government upon termination of the contract. The patent rights clause in such contracts must include the following facilities license paragraph:

[Insert appropriate paragraph no.] *Facilities License.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, title to, any rights or patents herein licensed.

(End of paragraph)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for Part 970 continues to read as follows:

Authority: Atomic Energy Act of 1954 (42 U.S.C. 2201); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); National Nuclear Security Administration Act (50 U.S.C. 2401 *et seq.*).

4. Sections 970.2701 through 970.2704 are revised and 970.2702–1 through 970.2702–6 are added to read as follows:

970.2701 General.

This subpart applies to negotiation of patent rights, rights in technical data provisions and other related provisions for the Department of Energy contracts for the management and operation of DOE's major sites or facilities, including the conduct of research and development and nuclear weapons production, and contracts which involve major, long-term or continuing activities conducted at a DOE site.

970.2702 Patent related clauses.

970.2702–1 Authorization and consent.

Contracting officers must use the clause at 970.5204–94, Authorization and Consent, instead of the clause at 48 CFR 52.227–2.

970.2702–2 Notice and assistance regarding patent and copyright infringement.

Contracting officers must use the clause at 970.5204–95, Notice and Assistance Regarding Patent and Copyright Infringement, instead of the clause at 48 CFR 52.227–2.

970.2702–3 Patent indemnity.

(a) Contracting officers must use the clause at 970.5204–96, Patent Indemnity-Subcontracts to assure that subcontracts appropriately address patent indemnity.

(b) Normally, the clause at 48 CFR 52.227–3 would not be appropriate for an M&O contract; however, if there is a question, such as when the mission of the contractor involves production, the contracting officer must consult with local patent counsel and use the clause where appropriate.

970.2702–4 Royalties.

Contracting officers must use the solicitation provision at 970.5204–97, Royalty Information, and the clause at 970.5204–98, Refund of Royalties instead of the provision at 48 CFR 52.227–8 and the clause at 48 CFR 52.227–9, respectively.

970.2702–5 Rights to proposal data.

Contracting officers must include the clause at 48 CFR 52.227–23, Rights to Proposal Data, in all solicitations and contracts for the management and operation of DOE sites and facilities.

970.2702–6 Notice of right to request patent waiver.

Contracting officers must include the provision at 970.5204–100 in all solicitations for contracts for the management and operation of DOE sites or facilities.

970.2703 Purposes of patent rights clauses.

(a) DOE sites and facilities are managed and operated on behalf of the Department of Energy by a contractor, pursuant to management and operating contracts that are generally awarded for a five (5) year term, with the possibility for renewal. Special provisions relating to patent rights are appropriately incorporated into an M&O contract because of the unique circumstances and responsibilities of managing and operating a Government-owned facility, as compared to other federally funded research and development contracts.

(b)(1) *Technology transfer mission clause.* In accordance with Public Law 101–189, section 3133(d), DOE may grant technology transfer authority to M&O contractors operating a DOE facility. Generally, M&O contractors have the right to elect to retain title to inventions made under the contract, whether a nonprofit or educational organizations, as a result of 35 U.S.C. 200 *et seq.* (Bayh-Dole Act), or a large business, as a result of a class patent waiver issued pursuant to 10 CFR part 784. Under such contracts, the M&O contractor assumes responsibilities for commercializing retained inventions, in accordance with the Technology Transfer Mission clause provided at 970.5204–40. That clause also governs such activities as the distribution of royalties earned from inventions made under the contract and the transfer of patent rights in inventions made under the contract to successor contractors.

(2) If the M&O contractor is a nonprofit organization or small business firm having technology transfer authority, the following clauses are inserted into the M&O contract: 970.5204–40 and 970.5204–101.

(3) If the M&O contract has technology transfer as mission and is to be performed by a for-profit, large business firm that has been granted an advance class waiver, the following clauses are inserted into the M&O contract: 970.5204–40 and 970.5204–103. The terms of the clause at 970.5204–103 are subject to modification to conform to the terms of the class waiver.

(4) If the M&O contract does not have a technology transfer mission and is to be performed by a for-profit, large business firm and does not have advance class waiver under 10 CFR part 784, the patent rights clause at 970.5204–102 is inserted into the M&O contract, and the Technology Transfer Mission clause is inapplicable.

(5) If the contractor is an educational institution, a non-profit organization or a small business firm and is conducting privately funded technology transfer activities, involving the use of private funds to conduct licensing and marketing activities related to inventions made under the contract in accordance with the Bayh-Dole Act, DOE may modify the patent rights clause (970.5204–101) to address issues such as the disposition of royalties

earned under the privately funded technology transfer program, the transfer of patent rights to a successor contractor, allowable cost restrictions concerning privately funded technology transfer activities, and the Government's freedom from any liability related to licensing under the contractor's privately funded technology transfer program.

(c) Contracting officers must consult with DOE patent counsel assisting the contracting activity or the Assistant General Counsel for Technology Transfer and Intellectual Property for assistance in selecting for use in the solicitation, negotiating, or approving appropriate patent rights clauses for a M&O contract. It may be appropriate to include more than one patent rights clause in a solicitation if the successful contractor could, for instance, be either an educational or a large business. If a large business may be selected for performance of a contract that will include a technology transfer clause, the solicitation must include the clause at 970.5204–103 to reflect the waiver that will likely be granted. If the solicitation includes more than one patent clause, it must include an explanation of the circumstances under which the appropriate clause will be used. The final award must contain only one patent rights clause.

970.2704 Patent rights clause provisions for management and operating contractors.

(a) *Allocation of principal rights: Bayh-Dole provisions.* If the management and operating contractor is an educational institution or nonprofit organization, the patent rights clause provided at 970.5204–101 must be inserted into the M&O contract. Such entities are beneficiaries of Bayh-Dole Act, including the paramount right of the contractor to elect to retain title to inventions conceived or first actually reduced to practice in performance of work under the contract, except in DOE-exempted areas of technology or in operation of DOE facilities primarily dedicated to naval nuclear propulsion or weapons related programs.

(b) *Allocation of principal rights: Government title.* (1) The patent rights clause provided at 970.5204–102 must be incorporated into the M&O contract if the contractor is a for-profit, large business firm and the contract does not have a technology transfer mission or if, without regard to the type of contractor, the contract is for the operation of a DOE facility primarily dedicated to naval nuclear propulsion or weapons related programs. That clause provides for DOE's statutory obligation to take title to inventions conceived or first actually reduced to practice in the course of or under an M&O contract, and does not contemplate an advance class waiver of Government rights in inventions, or participation by the contractor in technology transfer activities.

(2) While only in rare circumstances does a for-profit large business contractor whose contract contains no technology transfer mission receive rights in or title to inventions made under the contract, the contractor does have the right to request a license or foreign patent rights in inventions made under the contract, and may petition for a waiver of Government rights in identified inventions. The patent rights clause 970.5204–102 does not include many of the provisions of patent rights clauses 970.5204–101 and 970.5204–103, related to the filing of patent applications by the contractor, the granting of rights in inventions by the contractor to third parties (preference for United States industry), and conditions allowing the Government to grant licenses to third parties in inventions retained by the contractor (march-in rights). Any instrument granting rights in inventions made under a contract governed by patent rights clause 970.5204–102 must include these additional provisions within its terms and conditions.

(c) *Allocation of principal rights: Contractor right to elect title under an advance class waiver.* If the M&O contractor is a for-profit, large business firm and the Government has granted an advance class waiver of Government rights in inventions made in the course of or under the M&O contract, under the authority of the Atomic Energy Act of 1954 (42 U.S.C. 2182) and the Federal Nonnuclear Energy Act of 1974 (42 U.S.C. 5908(c)), the patent rights clause provided at 970.5204–103 must be inserted into the M&O contract, unless the terms and conditions of such an approved waiver alter or replace the patent rights clause provisions pursuant to 10 CFR part 784.

(d) *Extensions of time—DOE discretion.* The patent rights clauses for M&O contracts require the contractor to take certain actions within prescribed time periods to comply with the contract and preserve its rights in inventions. The M&O contractor may request extensions of time in which to take such actions by submitting written justification to DOE, and DOE may grant the contractor's requests, on a case-by-case basis. If the time period expired due to negligence by the contractor, DOE may grant a request for an extension of time upon a showing by the contractor that corrective procedures are in place to avoid such negligence in the future. If a contractor is requesting an extension of time in which to elect to retain title to an invention, DOE may grant the request if the extension allows the contractor to conduct further experimentation, market research, or other analysis helpful to determine contractor interest in electing title to the invention, among other considerations. Generally, the extensions of time are for periods of between six (6) months to one (1) year.

(e) *Facilities license.* These include the rights to make, use, transfer, or otherwise dispose of all articles, materials, products, or processes embodying inventions or discoveries used or embodied in the facility regardless of whether or not conceived or first actually reduced to practice under or in the course of such a contract. The patent rights clauses, 970.5204–101, 970.5204–102, and 970.5204–103, each contain a provision granting the Government this facilities license.

(f) *Deletion of classified inventions provision.* If DOE determines that the research, development, demonstration or production work to be performed during the course of a management and operating contract most probably will not involve classified subject matter or result in any inventions that require security classification, DOE patent counsel may advise the contracting officer to delete the patent rights clause provision entitled, "Classified Inventions" from the M&O contract.

(g) *Alternate 1—Weapons related research or production.* If DOE grants technology transfer authority to a DOE facility, pursuant to Public Law 101–189 section 3133(d), and the DOE owned facility is involved in weapons related research and development, or production, then Alternate 1 of the patent rights clauses must be inserted into the M&O contract. Alternate 1 defines weapons related subject inventions and restricts the contractor's rights with respect to such inventions.

970.5204–71 and 970.5204–72 [Removed]

5. Sections 970.5204–71 and 970.5204–72 are removed and reserved.

6. Sections 970.5204–94 through 970.5204–98 and 970.5204–100 through 970.5204–103 are added to read as follows:

970.5204–94 Authorization and consent.

Insert the following clause in solicitations and contracts in accordance with 970.2702–1:

Authorization and Consent (Nov. 2000)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.

(c) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227–1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed $25,000).

(d) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities. Omission of an authorization and consent clause from any subcontract, including those valued less than $25,000 does not affect this authorization and consent.

(End of clause)

970.5204–95 Notice and assistance regarding patent and copyright infringement.

Insert the following clause in solicitations and contracts in accordance with 970.2702–2:

Notice and Assistance Regarding Patent and Copyright Infringement (Nov. 2000)

(a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed $25,000.

(End of clause)

970.5204–96 Patent indemnity—subcontracts.

Insert the following clause in solicitations and contracts in accordance with 970.2702–3:

Patent Indemnity—Subcontracts (Nov. 2000)

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227–3.

(End of clause)

970.5204–97 Royalty information.

Insert the following provision in solicitations in accordance with 970.2702–4:

Royalty Information (Nov. 2000)

(a) *Cost or charges for royalties.* If the response to this solicitation contains costs or charges for royalties totaling more than $250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(1) Name and address of licensor;

(2) Date of license agreement;

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;

(5) Percentage or dollar rate of royalty per unit;

(6) Unit price of contract item;

(7) Number of units; and

(8) Total dollar amount of royalties.

(b) *Copies of current licenses.* In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents or other basis upon which the royalty may be payable.

(End of provision)

970.5204–98 Refund of royalties.

Insert the following clause in solicitations and contracts in accordance with 970.2702–4:

Refund of Royalties (Nov 2000)

(a) The contract price includes certain amounts for royalties, payable by the Contractor or subcontractors or both, reported to the Contracting Officer in accordance with the Royalty Information provision of the solicitation.

(b) During performance of this contract, if any additional royalty payments are proposed to be charged to the Government as costs under the contract that were not included in the original contract price, the Contractor agrees to submit for approval of the Contracting Officer prior to the execution of any licensing agreement the following information relating to each separate item of royalty or license fee:

(1) Name and address of licensor;

(2) Date of license agreement;

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;

(5) Percentage or dollar rate of royalty per unit;

(6) Unit price of contract item;

(7) Number of units; and

(8) Total dollar amount of royalties.

(9) In addition, if specifically requested by the Contracting Officer, the contractor shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

(c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or subcontracts, or the copying of such data or data that is copyrighted.

(d) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder.

(e) The Contractor is compensated for any royalties reported under paragraph (b) of this clause only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract.

(f) The Contracting Officer shall reduce the contract price to the extent any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract. The Contractor agrees to repay or credit the Government accordingly, as the Contracting Officer directs. Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to, a patent or the proprietary nature of data pursuant to which DOE makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (f) of this clause, the Contractor shall promptly notify the Contracting Office of that fact and shall promptly reimburse the Government in a corresponding amount.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to

identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds $250.
(End of clause)

970.5204–100 Notice of right to request patent waiver.

Insert the following provision in solicitations in accordance with 970.2704–6:

Notice of Right To Request Patent Waiver (Nov. 2000)

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract, in advance of or within 30 days after the effective date of contracting. If such advance waiver is not requested or the request is denied, the Contractor has a continuing right under the contract to request a waiver of the rights of the Government in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Contractors that are domestic small businesses and domestic nonprofit organizations may not need a waiver and will have included in their contracts a patent clause reflecting their right to elect title to subject inventions pursuant to the Bayh-Dole Act (35 U.S.C. 200 *et seq.*).
(End of provision)

970.5204–101 Patent rights—management and operating contracts, nonprofit organization or small business firm contractor.

As prescribed in 970.2703(c), insert the following clause:

Patent Rights—Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor (Nov. 2000)

(a) Definitions.

(1) *DOE licensing regulations* means the Department of Energy patent licensing regulations at 10 CFR part 781.

(2) *Exceptional circumstance subject invention* means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii) and in accordance with 37 CFR 401.3(e).

(3) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Nonprofit organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(6) *Patent Counsel* means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity.

(7) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(8) *Small business firm* means a small business concern as defined at section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, are used.

(9) *Subject invention* means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) *Allocation of principal rights.* (1) *Retention of title by the Contractor.* Except for exceptional circumstance subject inventions, the contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) *Exceptional circumstance subject inventions.* Except to the extent that rights are retained by the Contractor in a determination of exceptional circumstances or granted to a contractor through a determination of greater rights in accordance with subparagraph (b)(4) of this clause, the Contractor does not have a right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:

(A) Uranium enrichment technology;

(B) Storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) National security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

(ii) Inventions made under any agreement, contract or subcontract related to the following are exceptional circumstance subject inventions:

(A) DOE Steel Initiative and Metals Initiative;

(B) U.S. Advanced Battery Consortium; and

(C) Any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI).

(iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, tasks, or other classifications for the purpose of determining DOE exceptional circumstance subject inventions.

(3) *Treaties and international agreements.* Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at Appendix [*Insert Reference*] to this contract. DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(4) *Contractor request for greater rights in exceptional circumstance subject inventions.* The Contractor may request rights greater than allowed by the exceptional circumstance determination in an exceptional circumstance subject invention by submitting such a request in writing to Patent Counsel at the time the exceptional circumstance subject invention is disclosed to DOE or within eight (8) months after conception or first actual reduction to practice of the exceptional circumstance subject invention, whichever occurs first, unless a longer period is authorized in writing by the Patent Counsel for good cause shown in writing by the Contractor. DOE may, in its discretion, grant or refuse to grant such a request by the Contractor.

(5) *Contractor employee-inventor rights.* If the Contractor does not elect to retain title to a subject invention or does not request greater rights in an exceptional circumstance subject invention, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may, in its discretion, grant or refuse to grant such a request by the Contractor employee-inventor.

(6) *Government assignment of rights in Government employees' subject inventions.* If a Government employee is a joint inventor of a subject invention or of an exceptional circumstance subject invention to which the Contractor has rights, the Government may assign or refuse to assign to the Contractor any rights in the subject invention or exceptional circumstance subject invention acquired by the Government from the Government employee, in accordance with 48 CFR 27.304–1(d). The rights assigned to

the Contractor are subject to any provision of this clause that is applicable to subject inventions in which the Contractor retains title, including reservation by the Government of a nonexclusive, nontransferable, irrevocable, paid-up license, except that the Contractor shall file its initial patent application claiming the subject invention or exceptional circumstance invention within one (1) year after the assignment of such rights. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the Government employee, as DOE deems appropriate.

(c) *Subject invention disclosure, election of title and filing of patent application by contractor.* (1) *Subject invention disclosure.* The contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s) and all sources of funding by B&R code for the invention. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. The disclosure shall include a written statement as to whether the invention falls within an exceptional circumstance field. DOE will make a determination and advise the Contractor within 30 days of receipt of an invention disclosure as to whether the invention is an exceptional circumstance subject invention. In addition, after disclosure to the Patent Counsel, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning any nonelectable subject invention such as an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(2) *Election by the Contractor.* Except as provided in paragraph (b)(2) of this clause, the Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) *Filing of patent applications by the Contractor.* The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, or prior to the end of any 1-year statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) *Contractor's request for an extension of time.* Requests for an extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2) and (3) may, at the discretion of Patent Counsel, be granted.

(5) *Publication approval.* During the course of the work under this contract, the Contractor or its employees may desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interest of DOE or the Contractor, approval for release or publication shall be secured from the Contractor personnel responsible for patent matters prior to any such release or publication. Where DOE's approval of publication is requested, DOE's response to such requests for approval shall normally be provided within 90 days except in circumstances in which a domestic patent application must be filed in order to protect foreign rights. In the case involving foreign patent rights, DOE shall be granted an additional 180 days with which to respond to the request for approval, unless extended by mutual agreement.

(d) *Conditions when the Government may obtain title.* The Contractor will convey to the DOE, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within sixty (60) days after learning of the failure of the Contractor to disclose or to elect within the specified times .

(2) In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c) above; provided, however, that if the Contractor has filed a patent application in a country after the times specified in subparagraph (c) above, but prior to its receipt of the written request of the DOE, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(4) If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention to which the Contractor had initially retained title or rights, or in an exceptional circumstance subject invention to which the Contractor was granted greater rights, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(e) *Minimum rights of the Contractor and Protection of the Contractor's right to file.* (1) *Request for a Contractor license.* The Contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. DOE may grant or refuse to grant such a request by the Contractor. When DOE approves such reservation, the Contractor's license will normally extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) *Revocation or modification of a Contractor license.* The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781. This license will not be revoked in the field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application of the subject invention in that foreign country.

(3) *Notice of revocation of modification of a Contractor license.* Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781 concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor action to protect the Government's interest.*

(1) *Execution of delivery of title or license instruments.* The Contractor agrees to execute or to have executed, and promptly deliver to the Patent Counsel all instruments necessary to accomplish the following actions:

(i) Establish or confirm the rights the Government has throughout the world in

those subject inventions to which the Contractor elects to retain title, and

(ii) Convey title to DOE when requested under subparagraphs (b) or paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) *Notification of discontinuation of patent protection.* The contractor will notify the Patent Counsel of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) *Notification of Government rights.* The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

(5) *Invention identification procedures.* The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a written description of such procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

(6) *Invention filing documentation.* If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:

(i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);

(ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and

(iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(7) *Duplication and disclosure of documents.* The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to the confidentiality provision at 35 U.S.C. 205 and 37 CFR part 40.

(g) *Subcontracts.* (1) *Subcontractor subject inventions.* The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) *Inclusion of patent rights clause—nonprofit organization or small business firm subcontractors.* Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227–11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(2) of this clause. The subcontractor retains all rights provided for the contractor in the patent rights clause at 48 CFR 952.227–11.

(3) *Inclusion of patent rights clause—subcontractors other than non-profit organizations and small business firms.* Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227–13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work. For subcontracts subject to exceptional circumstances, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause.

(4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) *Subcontractor refusal to accept terms of patent clause.* If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) *Notification of award of subcontract.* Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) *Identification of subcontractor subject inventions.* If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit to DOE on request, periodic reports, no more frequently than annually, on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any DOE supplemental regulations to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.*

If the Contractor is a nonprofit organization, it agrees that—

(1) *DOE approval of assignment of rights.* Rights to a subject invention in the United States may not be assigned by the Contractor without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions of this clause as the Contractor.

(2) *Small business firm licensees.* It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(2).

(3) *Contractor licensing of subject inventions.* To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(l) *Communications.* The Contractor shall direct any notification, disclosure or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity.

(m) *Reports.* (1) *Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(n) *Examination of Records Relating to Subject Inventions.* (1) *Contractor compliance.* Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor compliance with any requirement of this clause.

(2) *Unreported inventions.* If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, including exceptional circumstance subject inventions, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) *Power of inspection.* With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(o) *Facilities License.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or product manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(p) *Atomic Energy.* (1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) *Patent agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (p)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(q) *Classified Inventions.* (1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) *Inclusion of clause in subcontracts.* The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(r) *Patent Functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(s) *Educational Awards Subject to 35 U.S.C. 212.* The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) which is subject to treaties or international agreements as set forth in paragraph (b)(3) of this clause or agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(t) *Annual Appraisal by Patent Counsel.* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(End of clause)

Alternate 1: Weapons Related Subject Inventions.

As prescribed at 970.2704–(k), insert the following as subparagraphs (a)(10) and (b)(7), respectively:

(a) *Definitions.*

(10) *Weapons related subject invention* means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy.

(b) *Allocation of Principal Rights.*

(7) *Weapons related subject inventions.* Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have the right to retain title to any weapons related subject inventions.

(End of Alternate)

970.5204–102 Patent rights—management and operating contracts, for-profit contractor, non-technology transfer.

Insert the following clause in solicitations and contracts in accordance with 970.2703(c):

Patent Rights—Management and Operating Contracts, For-Profit Contractor, Non-Technology Transfer (Nov 2000)

(a) *Definitions.* (1) *DOE licensing regulations* means the Department of Energy patent licensing regulations at 10 CFR part 781.

(2) *DOE patent waiver regulations* means the Department of Energy patent waiver regulations at 10 CFR part 784.

(3) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Patent Counsel* means DOE Patent Counsel assisting the contracting activity.

(6) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(7) *Subject Invention* means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) *Allocation of Principal Rights.* (1) *Assignment to the Government.* Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(2) of this clause or by a request for foreign patent rights in accordance with subparagraph (d)(2) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

(2) *Greater rights determinations.* The Contractor, or an Contractor employee-inventor after consultation with the Contractor and with the written authorization of the Contractor in accordance with DOE patent waiver regulations, may request greater rights, including title, in an identified subject invention than the nonexclusive license and the foreign patent rights provided for in paragraph (d) of this clause, in accordance with the DOE patent waiver regulations. Such a request shall be submitted in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE in accordance with subparagraph (c)(2) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor or Contractor employee-inventor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor pursuant to a determination of greater rights are subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency), and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(c) *Subject Invention Disclosures.* (1) *Contractor procedures for reporting subject inventions to Contractor personnel.* Subject inventions shall be reported to Contractor personnel responsible for patent matters within six (6) months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. Accordingly, the Contractor shall establish and maintain effective procedures for ensuring such prompt identification and timely disclosure of subject inventions to Contractor personnel responsible for patent matters, and the procedures shall include the maintenance of laboratory notebooks, or equivalent records, and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and the maintenance of records demonstrating compliance with such procedures. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.

(2) *Subject invention disclosure.* The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after the subject invention is reported to Contractor personnel responsible for patent matters, in accordance with subparagraph (c)(1) of this clause, or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:

(i) The contract number under which the subject invention was made;

(ii) The inventor(s) of the subject invention;

(iii) A description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;

(iv) The date and identification of any publication, on sale or public use of the invention;

(v) The date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;

(vi) A statement indicating whether the subject invention concerns exceptional circumstances pursuant to 35 U.S.C. 202(ii), related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;

(vii) All sources of funding by Budget and Resources (B&R) code; and

(viii) The identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

(3) *Publication after disclosure.* After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor.

(4) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the

filing of patent applications prior to U.S. or foreign statutory bars.

(5) *Contractor procedures for reporting subject inventions to DOE.* The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.

(6) *Duplication and disclosure of documents.* The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR 401.13.

(d) Minimum rights of the Contractor. (1) Contractor License.

(i) *Request for a Contractor license.* Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(2) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

(ii) *Transfer of a Contractor license.* DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine the Contractor's license is non-transferrable, on a case-by-case basis.

(iii) *Revocation or modification of a Contractor license.* DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensee, or its domestic subsidiaries or affiliates achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.

(iv) *Notice of revocation or modification of a Contractor license.* Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations.

(2) *Contractor's right to request foreign patent rights.* If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention in the foreign country, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee. Such a request shall be submitted in writing to the Patent Counsel as part of the disclosure required by subparagraph (c)(2) of this clause, with a copy to the DOE Contracting Officer, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request, and may consider whether granting the Contractor's request best serves the interests of the United States.

(e) *Examination of records relating to inventions.* (1) *Contractor compliance.* Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.

(2) *Unreported inventions.* If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(f) *Subcontracts.* (1) *Subcontractor subject inventions.* The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) *Inclusion of patent rights clause—nonprofit organization or small business firm subcontractors.* Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227–11, suitably modified to identify the parties in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202(a)(ii).

(3) *Inclusion of patent rights clause—subcontractors other than non-profit organizations and small business firms.* Except for the subcontracts described in subparagraph (f)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227–13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work.

(4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(5) *Subcontractor refusal to accept terms of patent rights clause.* If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) *Notification of award of subcontract.* Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) *Identification of subcontractor subject inventions.* If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.

(g) *Atomic Energy.* (1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) *Patent agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (g)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(h) *Publication.* The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent interests of DOE or the Contractor.

(i) *Communications.* The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(j) *Reports.* (1) *Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (c)(1) and (c)(5) of this clause.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(k) *Facilities license.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(l) *Classified inventions.* (1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) *Inclusion of clause in subcontracts.* The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(m) *Patent functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(n) *Annual appraisal by Patent Counsel.* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

970.5204–103 Patent rights—management and operating contracts, for-profit contractor, advance class waiver.

Insert the following clause in solicitations and contracts in accordance with 970.2703(c):

Patent Rights-Management and Operating Contracts, For-Profit Contractor, Advance Class Waiver (Nov. 2000)

(a) *Definitions.* (1) *DOE licensing regulations* means the Department of Energy patent licensing regulations at 10 CFR part 781.

(2) *DOE patent waiver regulations* means the Department of Energy patent waiver regulations at 10 CFR part 784.

(3) *Exceptional Circumstance Subject Invention* means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR 401.3(e).

(4) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(5) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(6) *Patent Counsel* means DOE Patent Counsel assisting the contracting activity.

(7) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(8) *Subject Invention* means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) *Allocation of Principal Rights.* (1) *Assignment to the Government.* Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

(2) *Advance class waiver of Government rights to the Contractor.* DOE may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(3) *Government license.* With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b)(2) or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Government has a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(4) *Foreign patent rights.* If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(5) *Exceptional circumstance subject inventions.* Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(7) of this clause, the Contractor does not have the right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and

interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:

(A) Uranium enrichment technology;

(B) Storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) National security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

(ii) Inventions made under any agreement, contract or subcontract related to the following initiatives or programs are exceptional circumstance subject inventions:

(A) DOE Steel Initiative and Metals Initiative;

(B) U.S. Advanced Battery Consortium; and

(C) Any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI).

(iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE exceptional circumstance subject inventions.

(6) *Treaties and international agreements.* Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at Appendix [*Insert Reference*], to this contract. DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(7) *Contractor request for greater rights.* The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting a such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE pursuant to subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(8) *Contractor employee-inventor rights.* If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may grant or refuse to grant such a request by the Contractor employee-inventor.

(9) *Government assignment of rights in Government employees' subject inventions.* If a DOE employee is a joint inventor of a subject invention to which the Contractor has rights, DOE may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE employee to the Contractor, consistent with 48 CFR 27.304–1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in subparagraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE employee, as DOE deems appropriate.

(c) *Subject invention disclosure, election of title, and filing of patent application by contractor.* (1) *Subject invention disclosure.* The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:

(i) The contract number under which the subject invention was made;

(ii) The inventor(s) of the subject invention;

(iii) A description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;

(iv) The date and identification of any publication, on sale or public use of the invention;

(v) The date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;

(vi) A statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;

(vii) All sources of funding by Budget and Resources (B&R) code; and

(viii) The identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

(2) *Publication after disclosure.* After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(3) *Election by the Contractor under an advance class waiver.* If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with subparagraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE within two (2) years of the date of the disclosure of the subject invention to DOE, in accordance with subparagraph (c)(1) of this clause. The notification shall identify the advance class waiver, state the countries, including the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the 1-year statutory period under 35 U.S.C. 102(b), the period for election may be shortened by DOE to a date that is no more than sixty (60) days prior to the end of the 1-year statutory period.

(4) *Filing of patent applications by the Contractor under an advance class waiver.* If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the subject invention or prior to the end of any 1-year statutory period under 35 U.S.C. 102(b), whichever occurs first. Any patent applications filed by the Contractor in foreign

countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy Order, within six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.

(5) *Submission of patent information and documents.* If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel the following information and documents:

(i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);

(ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and

(iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(6) *Contractor's request for an extension of time.* Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under subparagraphs (c)(1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE.

(7) *Duplication and disclosure of documents.* The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR part 40.

(d) *Conditions when the Government may obtain title notwithstanding an advance class waiver.* (1) *Return of title to a subject invention.* If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention, including an exceptional circumstance subject invention, to which the Contractor retained title or rights under subparagraph (b)(2) or subparagraph (b)(7) of this clause, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(2) *Failure to disclose or elect to retain title.* Title vests in DOE and DOE may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in subparagraphs (c)(1) and (c)(3) of this clause.

(3) *Failure to file domestic or foreign patent applications.* In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; provided, however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE's written request for title, the Contractor continues to retain title in that country.

(4) *Discontinuation of patent protection by the Contractor.* If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE.

(5) *Termination of advance class waiver.* DOE may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.

(e) *Minimum rights of the Contractor.* (1) *Request for a Contractor license.* Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

(2) *Transfer of a Contractor license.* DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine that the Contractor's license is non-transferrable, on a case-by-case basis.

(3) *Revocation or modification of a Contractor license.* DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.

(4) *Notice of revocation or modification of a Contractor license.* Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations.

(f) *Contractor action to protect the Government's interest.* (1) *Execution and delivery of title or license instruments.* The Contractor agrees to execute or have executed, and to deliver promptly to DOE all instruments necessary to accomplish the following actions:

(i) Establish or confirm the Government's rights throughout the world in subject inventions to which the Contractor elects to retain title;

(ii) Convey title in a subject invention to DOE pursuant to subparagraph (b)(5) and paragraph (d) of this clause; or

(iii) Enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.

(2) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) *Contractor procedures for reporting subject inventions to DOE.* The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.

(4) *Notification of discontinuation of patent protection.* With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than thirty (30) days before the expiration of the response period for any action required by the corresponding patent office.

(5) *Notification of Government rights.* With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any

United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(6) *Avoidonce of royolty chorges.* If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.

(7) *DOE opprovol of ossignment of rights.* Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE.

(8) *Small business firm licensees.* The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.

(9) *Contractor licensing of subject inventions.* To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(g) *Subcontrocts.* (1) *Subcontroctor subject inventions.* The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) *Inclusion of patent rights clouse—non-profit organizotion or small business firm subcontroctors.* Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227–11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(5) of this clause.

(3) *Inclusion of potent rights clouse—subcontroctors other than non-profit orgonizotions or smoll business firms.* Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227–13, suitably modified to identify the parties and any applicable exceptional circumstance, in any contract for experimental, developmental, demonstration or research work.

(4) *DOE ond subcontroctor controct.* With respect to subcontracts at any tier, DOE, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) *Subcontractor refusal to occept terms of potent rights clouse.* If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such refusal and including relevant information for expediting disposition of the matter; and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) *Notificotion of oword of subcontract.* Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) *Identificotion of subcontroctor subject inventions.* If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.

(h) *Reporting on utilization of subject inventions.* Upon request by DOE, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its licensees or assignees to obtain utilization of the subject invention. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information reasonably specified by DOE. Upon request by DOE, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE agrees not to disclose such information to persons outside the Government, to the extent permitted by law.

(i) *Preference for United Stotes industry.* Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, DOE may waive the requirement for such an agreement upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *Morch-in rights.* With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE may, in accordance with the procedures in the DOE patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Communications.* The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract .

(l) *Reports.* (1) *Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(m) *Facilities license.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(n) *Atomic energy.* (1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) *Patent agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (o)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(o) *Classified inventions.* (1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) *Inclusion of clause in subcontracts.* The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(p) *Examination of records relating to inventions.* (1) *Contractor compliance.* Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.

(2) *Unreported inventions.* If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) *Power of inspection.* With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(q) *Patent functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(r) *Educational awards subject to 35 U.S.C. 212.* The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) any person who is subject to treaties or international agreements as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(s) *Annual appraisal by Patent Counsel.* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(t) *Publication.* The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent rights of DOE or the Contractor.

(u) *Termination of Contractor's advance class waiver.* If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

(End of Clause)

Alternate 1—Weapons Related Subject Inventions

As prescribed at 970.2704–(k), insert the following as subparagraphs (a)(10) and (b)(8), respectively:

(a) *Definitions.*

(10) Weapons Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs , including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy.

(b) *Allocation of Principal Rights.*

(10) *Weapons related subject inventions.* Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.

(End of Alternate)

[FR Doc. 00–28629 Filed 11–14–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket OST–2000–7640]

RIN 2105–AC89

Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs; Threshold Requirements and Other Technical Revisions

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule revises the Department's regulations for its Disadvantaged Business Enterprise (DBE) program. This document changes threshold requirements for Federal Transit Administration recipients and Federal Aviation Administration recipients to establish DBE programs and submit overall goals. In addition, this document corrects and clarifies misleading language in the DBE final rule. This correction document adds examples of ways to collect information required for bidders lists. This document adds language clarifying that in order to verify whether a DBE firm actually performed the work they were committed, both commitments and attainments must be tracked and reported. Finally, this document corrects potentially misleading language regarding evidence that must be considered when setting overall goals.

EFFECTIVE DATE: This interim final rule is effective November 15, 2000. Comments concerning this document are due no later than January 2, 2001.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket No. OST–2000–7640, Department of Transportation, 400 7th Street, SW, Room PL–401, Washington, DC 20590. We request that, in order to minimize burdens on the docket clerk's staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/* at any time. Commenters who wish to file comments electronically should follow the instructions on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Laura Aguilar, Attorney, Office of General Counsel for Environmental, Civil Rights, and General Law, Department of Transportation, 400 Seventh Street, SW, Room 10102, Washington, DC 20590; Telephone: (202) 366–0365.

SUPPLEMENTARY INFORMATION:

1. Substantive Changes

DBE Programs

In Section 26.21(a)(2) of the rule, the Department states that Federal Transit Administration (FTA) recipients who receive $250,000 in a fiscal year in various forms of FTA assistance must have a DBE program. Similarly, subsection (a)(3) requires Federal Aviation Administration (FAA) recipients who receive grants of $250,000 or more in a fiscal year for airport planning and development to have a DBE program. The Department is changing the threshold to $250,000 in contracting opportunities. The change requires FTA recipients who project awarding more than $250,000 in prime contracts in a Federal fiscal year from FTA assistance to have a DBE program. Similarly, FAA recipients who project awarding more than $250,000 in prime contracts in a fiscal year from grants for airport planning and development are required to submit a plan. Prime contracts include goods as well as contracts for services.

The Department is making these changes to decrease the administrative burden on small airport and transit authorities. Many of these transit authorities and small airports receive more than $250,000 in FTA or FAA funds but only have a small amount of funding for actual contracting opportunities. For example, FAA grants funds for land acquisition projects. While many of these grants exceed $250,000, the value of contracting opportunities covered by the DBE program (*e.g.*, real estate appraisal and survey) is frequently well below $250,000. The major portion of the grant funds is generally for the land purchase itself, which is not a "DOT-assisted contract" under the definition of section 26.5.

Therefore, FTA and FAA recipients who reasonably anticipate awarding $250,000 or less in prime contracts in a fiscal year are not required to submit a DBE plan. This change affects new recipients or recipients who do not have a DBE program. The rule would also reduce burdens on recipients who already have DBE programs. If such a recipient anticipates awarding $250,000 or less in prime contracts it would not have to submit a DBE overall goal for that year.

Goal Setting

Section 26.45 requires recipients to submit new goals on August 1 of each year. Section 26.45 is being revised to exempt FTA or FAA recipients with existing DBE programs from setting updated overall goals when they do not project awarding prime contracts exceeding $250,000 (excluding vehicle transit purchases).

If a recipient is administering a DBE program, but is a FAA or FTA recipient who anticipates awarding $250,000 or less in prime contracts in a Federal fiscal year, the recipient is not required to develop overall goals for that fiscal year. However, the recipient's existing DBE program must remain in effect. For example, the recipient would still perform certification functions such as processing applications and obtaining no-change affidavits. If the recipient expects to award prime contracts exceeding $250,000 in the following fiscal year, it would be required to timely publish the proposed goal and submit the goal to the applicable DOT Operating Administration by August 1. Although not required, a FAA or FTA recipient who anticipates awarding $250,000 or less in prime contracts may submit a goal for that fiscal year. However, if a recipient chooses to submit a goal, it must meet all the requirements set forth in § 26.45. Of course, recipients must still seek to meet the objectives of § 26.1 of this part.

Many recipients may have already submitted their fiscal year 2001 goal to the applicable Operating Administration. If you are a recipient who submitted your goal, but under the revisions to this part are not required to submit a goal, your Operating Administration will contact you to ask whether you wish to have your goal in effect.

2. Technical Changes

Clarification Concerning Bidders Lists

Section 26.11(c) requires recipients to create and maintain a bidders list containing information about DBE and non-DBE contractors and subcontractors who seek work on a recipient's Federally-assisted contracts. The Department has received a number of questions regarding the appropriate method to collect the required information. Recipients have also expressed concern with collecting the annual gross receipts of firms, saying

that firms have sometimes been reluctant to share this information.

In discussing this requirement in the DBE final rule, the Department recognized the difficulty in identifying subcontractors, particularly non-DBEs and all subcontractors that were unsuccessful in their attempts to obtain contracts. Consequently, the Department did not impose any procedural requirements for how the data is collected. The Department still believes that a recipient's data collection process should remain flexible. However, we are amending § 26.11(c) to emphasize the purpose of the bidders list and by providing examples of ways in which recipients may choose to collect the required data.

The Department is amending § 26.11(c)(1) to state that the purpose of maintaining a bidders list is to provide the most accurate data possible about the universe of DBE and non-DBE contractors and subcontractors who seek to perform work under a recipient's Federally-assisted contracts, for use in setting overall goals. We are also adding language stating that a recipient may collect the required data from all bidders, before or after the bid due date. They may also choose to conduct a survey that will result in a statistically sound estimate of the universe of DBE contractors and non-DBE contractors and subcontractors who seek to perform work under the recipient's Federally-assisted contracts. Additionally, we are clarifying that the data need not come from the same source. For example, a recipient may collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information. The Department believes that the approach should remain flexible so that recipients can choose the least burdensome and intrusive method.

With regard to a firm's annual gross receipts, we are amending the language in § 26.11(c) to clarify that recipients are not required to collect the exact dollar figure from the bidders. Recipients may ask a firm to indicate into what gross receipts bracket they fit (*e.g.*, less than $500,000; $500,000–$1 million; $1–2 million; $2–5 million; *etc.*) rather than requesting an exact figure from the firms. We note that this information on the size of a firm, as well as information collected about the firm's age, should be helpful to recipients in formulating narrowly tailored overall goals.

Clarification Concerning Monitoring and Counting DBE Participation

Section 26.37(b) requires recipients to have a mechanism to verify that the work committed to DBEs at contract award is actually performed by the DBEs. The language in the final rule states that recipients must provide for a running tally of actual DBE attainments. The preamble to the rule states, "Under the final rule, recipients would keep a running tally of the extent to which, on each contract, performance had matched promises." Verifying whether a DBE actually performed the work to which they were committed, necessarily requires the recipient to track both commitments and attainments.

We are rewording the language in § 26.37(b) to state that a recipient's DBE program must include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. In addition, we are adding a new paragraph (c) to clarify that a recipient's mechanism for providing a running tally of actual DBE attainments must include a means of comparing the attainments to commitments. We are also clarifying that both awards or commitments and attainments must be contained in a recipient's reports of DBE participation to the Department. In the forthcoming DOT uniform reporting form, we will provide a format for these reports.

Section 26.37(b) requires the mechanism providing for a running tally of actual DBE attainments to include a provision ensuring that the DBE participation is credited toward overall or contract goals only when payments are actually made to DBE firms. Since this requirement is already stated in § 26.55(h), we are removing it from § 26.37(b). Furthermore, we believe the wording of § 26.55(h) is confusing and we are, therefore, revising it. The point of the revised language is to emphasize that actual payment of committed funds to DBEs is a key element in determining whether a prime contractor has met its contract obligations.

Clarification Concerning Goal Setting

In setting overall goals, step 2 requires that recipients examine all evidence available in the jurisdiction to determine what adjustment, if any, is needed to the base figure. Sec. 26.45(d)(1) specifies information that must be considered when adjusting the base figure. Sec. 26.45(d)(2) lists additional information to be considered, but uses the language "you may also consider." The permissive language may be misleading. A narrowly tailored program requires that all relevant information be considered. We are merely clarifying that if the information is available, then it must be considered. Therefore, to avoid misleading language, we are changing the wording in § 26.45(d)(2) to say, "if available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete."

3. Interim Final Rule

This rule is being published as an interim final rule, without prior notice and opportunity to comment. The Department believes there is good cause for finding that providing prior notice and comment in connection with this rulemaking action is impracticable, unnecessary and contrary to the public interest since it concerns actions required to be taken on or around August 1, 2000. See 5 U.S.C. 553(b)(B).

The Department believes it is important to expedite these revisions in order to benefit DOT recipients this year. Under the DBE regulations, recipients who set their goals on a fiscal year basis are required to submit their goals on or around August 1 each year. In order to reduce administrative burdens on FTA and FAA entities receiving $250,000 or less in contracting opportunities, the rule must be effective as soon as possible, since August 1 has passed and recipients are still in the process of formulating goals and programs. Therefore, the Department finds good cause that compliance with notice and comment procedures in adoption of this interim final rule would be impractical, unnecessary and contrary to the public interest. See 5 U.S.C. 553(b)(B). For the same reasons, pursuant to 5 U.S.C. 553(d), it is determined that there is good cause for the interim final rule to become effective immediately upon publication. In addition, this interim final rule relieves a restriction.

All comments received will be filed in the docket. The docket is available for public inspection before and after the comment closing date. All comments received on or before the comment closing date will be considered before taking final action on this rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The provisions of this interim final rule may be changed in light of comments received.

Regulatory Analyses and Notices

These revisions to part 26 are not a significant rule under Executive Order 12866 or the Department's regulatory policies and procedures. While the Regulatory Flexibility Act does not, as such, apply to rules that do not involve a notice of proposed rulemaking, the Department has determined that the revisions will not have significant economic impacts on a substantial number of small entities. In fact, these revisions decrease costs to some small

entities. Further, these revisions do not have Federalism impacts sufficient to warrant the preparation of a Federalism impact statement.

List of Subjects in 49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant—programs—transportation, Mass transportation, and Minority businesses.

Issued this 6th Day of November, 2000, at Washington, DC.

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 49 CFR part 26 as follows:

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for 49 CFR part 26 continues to read as follows:

Authority: 23 U.S.C. 324; 41 U.S.C. 2000d, *et seq.*; 49 U.S.C. 1615, 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105–178, 112 Stat. 107, 113.

2. In § 26.11, revise paragraph (c) to read as follows:

§ 26.11 What records do recipients keep and report?

* * * * *

(c) You must create and maintain a bidders list.

(1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than $500,000; $500,000–$1 million; $1–2 million; $2–5 million; *etc.*) rather than requesting an exact figure from the firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (*e.g.*, collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

3. In § 26.21, revise paragraphs (a)(2) and (a)(3) to read as follows:

§ 26.21 Who must have a DBE program?

(a) * * *

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding $250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding $250,000 in FAA funds in a Federal fiscal year.

* * * * *

4. In § 26.37, revise paragraph (b), and add paragraph (c) to read as follows:

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

* * * * *

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

(c) This mechanism must provide for a running tally of actual DBE attainments (*e.g.*, payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

5. Amend § 26.45 as follows:

a. Revise paragraph (a); and

b. In paragraph (d) (2) at the beginning of the sentence, remove "You may also consider available" and substitute "If available, you must consider" in its place. The revised text reads as follows:

§ 26.45 How do recipients set overall goals?

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) $250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in § 26.1.

* * * * *

6. In § 26.55, revise paragraph (h) to read as follows:

§ 26.55 How is DBE participation counted toward goals?

* * * * *

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

§ 26.89 [Amended]

7. In § 26.89(a)(3), remove "Room 2401" and add "Room 5414" in its place.

[FR Doc. 00–29100 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 991008273–0070–02; I.D. 110900A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit in the fishery for king mackerel in the northern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, November 12, 2000, through June 30, 2001, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone 727–570–5305, fax 727–570–5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish

(king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) 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.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on February 19, 1998 (63 FR 8353), NMFS implemented a commercial quota of 2.34 million lb (1.06 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. On April 27, 2000, NMFS' implemented final rule (65 FR 16336, March 28, 2000) divided the Florida west coast subzone of the eastern zone into northern and southern subzones and established a separate quota for the northern Florida west coast subzone of 175,500 lb (79,606 kg)(50 CFR 622.42(c)(1)(i)(A)(*2*)(*ii*)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B), from the date that 75 percent of the northern Florida west coast subzone's quota has been harvested until a closure of the subzone's fishery has been effected or until the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel from the northern Florida west coast subzone has been reached. Accordingly, a 500-lb (227 kg) trip limit applies to vessels in the commercial fishery for king mackerel in or from the EEZ in the northern Florida west coast subzone effective 12:01 a.m., local time, November 12, 2000, through June 30, 2001.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. (a line directly east from the Miami-Dade County, FL, Boundary). The Florida west coast subzone is further divided into northern and southern subzones. The northern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87°31'06' W. long. (a line directly south from the Alabama/Florida boundary).

Classification

This action responds to the best available information recently obtained from the fishery. The reduced trip limit must be implemented immediately because 75 percent of the quota has been harvested. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds, for good cause, that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 9, 2000.

Bruce C. Morehead

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–29271 Filed 11–9–00; 4:18 pm]

BILLING CODE: 3510–22 –S

Proposed Rules

Federal Register
Vol. 65, No. 221
Wednesday, November 15, 2000

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–60–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Bell Helicopter Textron, Inc. (BHTI) Model 412 helicopters. The AD would require, within 25 hours time-in-service (TIS), reviewing the aircraft maintenance records and determining the number of landings for the high landing gear aft crosstube assembly (crosstube assembly); inspecting the crosstube assembly for damage; and replacing any unairworthy crosstube assembly. Additionally, the AD would require creating a component history card or equivalent record, and establishing a retirement life for each crosstube assembly. This AD would also require vibro-etching a part number (P/N) and serial number (S/N) on certain cross tube assemblies. This proposal is prompted by reported field failures of crosstube assemblies. The actions specified by the proposed AD are intended to detect damage that could lead to a fatigue crack in the crosstube assembly, failure of the crosstube assembly, and subsequent loss of control of the helicopter during landing.

DATES: Comments must be received on or before January 16, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–60–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–60–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–60–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes adopting a new AD for BHTI Model 412 helicopters. This proposal would require the following within 25 hours TIS:

- Reviewing the aircraft maintenance records and determining the number of landings for the crosstube assembly;
- Inspecting the crosstube assembly for damage and replacing any unairworthy crosstube assembly;
- Vibro-etching a P/N on certain crosstube assemblies;
- Vibro-etching a S/N on the crosstube assemblies;
- Creating a component history card or equivalent record for the crosstube assembly; and
- Revising the Airworthiness Limitations section of the maintenance manual by establishing a retirement life of 10,000 landings for crosstube assemblies, P/N 412–050–010–101 and 412–050–011–107 FM, and a retirement life of 20,000 landings for crosstube assemblies, P/N 412–050–045–107.

This proposal is prompted by reports of field failures of crosstube assemblies. Analysis of the failures indicates that a landing life limit must be assigned to the crosstube assembly. The actions specified by the proposed AD are intended to detect damage that could lead to a fatigue crack in the crosstube assembly, failure of the crosstube assembly, and subsequent loss of control of the helicopter during landing.

The FAA has reviewed BHTI Service Bulletin No. 412–99–97, dated January 8, 1999 (ASB), which describes procedures for verifying that the affected crosstube assemblies meet inspection criteria, assigning a retirement life on the affected crosstube assemblies; vibro-etching a P/N on those crosstube assemblies not displaying a visible P/N; vibro-etching a S/N on the affected crosstube assemblies, and providing information for calculating the number of landings.

We have identified an unsafe condition that is likely to exist or develop on other BHTI Model 412 helicopters of the same type design. The proposed AD would require, within 25 hours TIS, for affected crosstube assemblies, reviewing the aircraft maintenance records and determining the number of landings for the crosstube assembly; inspecting the crosstube assembly; replacing any unairworthy crosstube assembly with an airworthy crosstube assembly; vibro-etching the S/N on the crosstube assembly; creating

a component history card or equivalent record; and establishing a retirement life. The AD would also require, on certain crosstube assemblies, vibro-etching a P/N.

The FAA estimates that 138 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,044 for crosstube assembly, P/N 412–050–010–101, and $11,415 for crosstube assembly, P/N 412–050–045–107. BHTI states in the ASB that customers with affected crosstube assemblies are eligible for a special rebate credit ranging from 25 percent of the replacement cost to 100 percent depending on the age of the crosstube assembly. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $875,472 to replace all crosstube assemblies with crosstube assembly, P/N 412–050–010–101, or $1,616,670 to replace all crosstube assemblies with crosstube assembly, P/N 412–050–045–107. The total costs would be $41,400 for labor if all of the crosstube assemblies were replaced with 100 percent parts credit.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BELL HELICOPTER TEXTRON, INC.: Docket No. 2000–SW–60–AD.

Applicability: Model 412 helicopters with high landing gear aft crosstube assembly (crosstube assembly), part number (P/N) 412–050–010–101, 412–050–011–107 FM, or 412–050–045–107, installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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 (e) 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.

Note 2: Bell Helicopter Textron, Inc. Alert Service Bulletin 412–99–97, dated January 8, 1999, pertains to the subject of this AD.

To prevent a fatigue crack in the crosstube assembly, failure of the crosstube assembly, and subsequent loss of control of the helicopter during landing, accomplish the following:

(a) Within 25 hours time-in-service (TIS) and thereafter before installing a replacement crosstube assembly:

(1) Review the aircraft maintenance records and determine the number of landings for the crosstube assembly. Operators who do not have landing records may determine the number of landings by multiplying the hours TIS of the crosstube assembly by a factor of 4. If the number of hours TIS of the crosstube assembly is unknown, within 30 days, remove the crosstube assembly from service and replace it with an airworthy crosstube assembly.

(2) Inspect the crosstube assembly for damage. If damage exceeds the maximum allowable damage limits and repair criteria, as specified in the applicable maintenance manual, before further flight, replace it with an airworthy crosstube assembly.

(3) Vibro-etch the P/N on the crosstube assembly adjacent to the skid tube saddle in accordance with Figure 1 for any crosstube assembly not displaying a visible P/N. Identify the crosstube assembly as P/N 412–050–011–107 FM.

(4) Vibro-etch a serial number (S/N) on the crosstube assembly below the P/N in accordance with Figure 1. The S/N must be unique for each crosstube assembly.

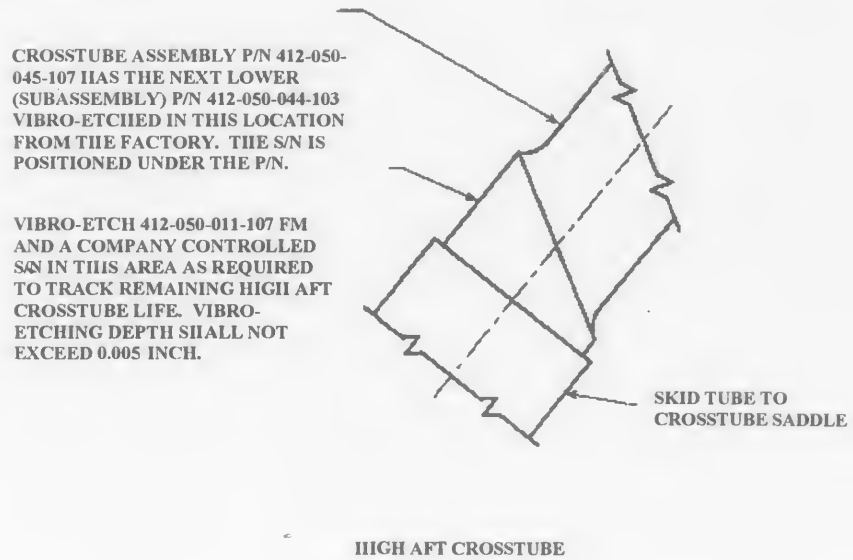

FIGURE 1

(5) Create a component history card or equivalent record for each crosstube assembly and enter the P/N, S/N, and the accumulated number of landings derived in accordance with paragraph (1).

(6) Begin tracking the number of landings for each crosstube assembly on the component history card or equivalent record.

(b) For a crosstube assembly, P/N 412–050–010–101 or 412–050–011–107 FM, on or before accumulating 10,000 landings or within 25 hours TIS after the effective date of this AD, whichever occurs later, replace the crosstube assembly with an airworthy crosstube assembly.

(c) For a crosstube assembly, P/N 412–050–045–107, on or before accumulating 20,000 landings or within 25 hours TIS after the effective date of this AD, whichever occurs later, replace the crosstube assembly with an airworthy crosstube assembly.

(d) This AD revises the Airworthiness Limitations section of the Maintenance Manual by establishing a life limit of 10,000 landings for the crosstube assembly, P/N 412–050–010–101 and 412–050–011–107 FM, and 20,000 landings for the crosstube assembly, P/N 412–050–045–107.

(e) 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, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

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

Issued in Fort Worth, Texas, on November 8, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–29211 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–285–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This proposal would require replacement of nuts on the clevis assemblies that support the auxiliary tracks of the inboard leading edge slats. This action is necessary to prevent loose or missing nuts on the clevis assemblies,

which could cause the inboard leading edge slats to be loose or in an incorrect position and result in partial or total failure or loss of the slats. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–285–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–285–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–285–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–285–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the airplane manufacturer found discrepancies in two production lots of nuts used on the clevis assemblies that support the auxiliary tracks of the inboard leading edge slats on Boeing Model 777 series airplanes. The nuts had inadequate self-locking capability. In service, this condition could result in loose or missing nuts, which could cause the inboard leading edge slats to be loose or in an incorrect position. This condition, if not corrected, could result in partial or total failure or loss of the slats.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 777–57–0038, dated February 24, 2000, which describes procedures for replacement of nuts on the clevis assemblies that support the auxiliary tracks of the inboard leading edge slats with new nuts. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

The compliance time for the proposed actions in paragraph (a) of this AD is 18 months after the effective date of this AD. For these actions, the service bulletin recommends a compliance time of 1,500 days after delivery of the airplane or 18 months after receipt of the service bulletin, whichever occurs later. The FAA finds that, by the time the proposed rule becomes effective, more than 1,500 days after the date of delivery will have passed for all airplanes subject to the proposed rule. Therefore, for simplicity and clarity, this proposed rule only includes the 18-month compliance time.

Cost Impact

There are approximately 121 airplanes of the affected design in the worldwide fleet. The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,080, or $120 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–285–AD.

Applicability: Model 777 series airplanes, line numbers 1 through 155 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously. To prevent loose or missing nuts on the clevis assemblies that support the auxiliary tracks of the inboard leading edge slats, which could cause the slats to be loose or in an incorrect position and result in partial or total failure or loss of the slats, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, replace nuts having part number NAS1805–5L on the clevis assemblies that support the auxiliary tracks (outboard, center, and inboard) of the inboard leading edge slats with new nuts purchased from the airplane manufacturer after October 31, 1999, in accordance with Boeing Special Attention Service Bulletin 777–57–0038, dated February 24, 2000.

Spares

(b) As of the effective date of this AD, no person shall install any nut having part number NAS1805–5L on any airplane unless it was purchased from the airplane manufacturer after October 31, 1999.

Alternative Methods of Compliance

(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, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

(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.

Issued in Renton, Washington, on November 8, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29214 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Service (CHAMPUS): Enuretic Devices, Breast Reconstructive Surgery, PFPWD Valid Authorization Period, Early Intervention Services

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends CHAMPUS to remove the exclusion of enuresis alarms, to correct contradictory language as it relates to breast reconstructive surgery, to change the valid period of an authorization for services and items under the Program for Persons with Disabilities (PFPWD), to establish the CHAMPUS payment relationship for IDEA Part C services and items, and to provide for early intervention services.

DATES: Written comments will be accepted until January 16, 2001.

ADDRESSES: Forward comments to the Office of CHAMPUS Management Activity, 16401 East Centretech Parkway, Aurora, CO. 80011–9043.

FOR FURTHER INFORMATION CONTACT: Margaret Brown and Michael Kottyan, Office of Medical Benefits and Reimbursement Systems, telephone (303) 676–3581 and (303) 676–3520 respectively.

SUPPLEMENTARY INFORMATION: The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplements the availability of health care in military hospitals and clinics. This proposed rule removes the exclusion of enuresis alarms, corrects contradictory language as it relates to breast reconstructive surgery, changes the valid period of an authorization for services and items under the Program for Persons with Disabilities (PFPWD), and establishes the CHAMPUS payment relationship for IDEA Part C services and items, and revises a statement to the paragraph at 32 CFR 199.4(g)(15)(i)(D).

Enuretic Device

The CHAMPUS Management Activity received a request from the medical community that we re-evaluate our policy regarding enuretic devices, which currently are excluded from cost sharing under the CHAMPUS Basic Program. Recent literature review indicates that the medical community considers enuresis alarms the most effective method for treating enuresis. Having found no contradictory evidence, we agree that enuretic devices should be removed from the exclusions in the regulation. The removal of this exclusion will allow physicians to select rational treatment options and insure that CHAMPUS pays only for the most appropriate and highest quality medical care possible.

Enuretic conditioning programs are also specifically excluded from CHAMPUS cost sharing. Enuretic conditioning programs will continue to be excluded. The basis for excluding enuretic conditioning programs is to restrict the payment for professional guidance on the use of these devices to an attending physician.

Breast Reconstructive Surgery

Benefits under the basic program are not available for cosmetic, reconstructive, or plastic surgery. However, the regulation provides exceptions for procedures that are essentially cosmetic when performed in response to a congenital anomaly, post mastectomy breast reconstruction for malignancy, fibrocystic disease, or other covered mastectomies, an accidental injury or disfiguring scars resulting from neoplastic surgery.

The regulation currently contains contradictory provisions relating to post mastectomy breast reconstruction. 32 CFR 199.4(e)(8)(i)(D) specifically authorizes post mastectomy breast reconstruction. However, 32 CFR 199.4(e)(8)(ii)(D) excludes breast augmentation mammoplasty even when performed as a part of post mastectomy breast reconstruction procedure. Because an augmentation mammoplasty is an integral part of most post mastectomy breast reconstruction procedures, it is inconsistent to exclude it as a part of that procedure.

Further, in the context of post mastectomy breast reconstruction, reduction mammoplasty may be performed to achieve symmetry of the collateral breast. This too is an integral part of the post mastectomy breast reconstruction process and should not be excluded from cost sharing by CHAMPUS. We are adding language to clarify the rule that reduction mammoplasty on the collateral breast is an authorized part of the post mastectomy breast reconstruction procedure. Cosmetic, reconstructive or plastic surgery that is performed to reshape normal structures of the body in order to improve the patient's appearance and self-esteem remains an exclusion.

PFPWD Valid Authorization Period

The regulation currently provides that a valid authorization for receipt of services and items under the Program for Persons with Disabilities (PFPWD) shall not exceed six consecutive months. For services that are required for more than six months, and for durable equipment and durable medical equipment that are prorated for more than six months, this requirement places unnecessary hardship on the family of an individual with a disability and additional administrative workload on the managed care support contractors. Changing the valid period of a PFPWD authorization to a maximum of twelve months enhances the PFPWD without compromising its accountability.

Early Intervention Services

Part C of the Individuals with Disabilities Education Act (IDEA) Amendments of 1997, Public Law 105–17, enacted June 4, 1997, provides financial assistance to States to, among other provisions, facilitate the coordination of payment for early intervention services from Federal, State, local, and private sectors (including public and private insurance coverage). Early intervention services are developmental services provided to individuals under age three (3) who have a developmental delay or who would be at risk of experiencing a substantial developmental delay if those services were not provided.

Part C, Section 640, Payer of Last Resort, establishes that funds provided in accordance with the Act may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense. This language establishes CHAMPUS as first payer for medical services and items provided as early intervention services in accordance with Part C and that are otherwise allowable under the CHAMPUS Basic Program or the Program for Persons with Disabilities.

Statement at the Paragraph 32 CFR 199.4(g)(15)(i)(D)

The revised statement clarifies that the consensus among experts must be based on reliable evidence.

Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million, or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues a Regulation which would have a significant impact on a substantial number of small entities.

This is neither a significant regulatory action under Executive Order 12886, nor would it have a significant impact on small entities. The changes set forth in the proposed rule are minor revisions to the existing regulation. In addition, this proposed rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

Paperwork Reduction Act

The changes set forth in this proposed rule are minor revisions to the existing regulation. This rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995. It will be seen as an enhancement of military benefits. It will provide greater parallel between CHAMPUS benefits and the standards of care now offered in the health care community. If however, any program implemented under this rule causes such a burden to be imposed, approval therefore will be sought of the Office of Management and Budget in accordance with the Act, before implementation. All public comments are invited.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

Civilian Health and Medical Program of the Uniformed Service (CHAMPUS)

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2 is proposed to be amended by adding at the end of the definition for *Double coverage plan* a new paragraph (v) to read as follows:

§ 199.2 Definitions.

* * * * *

Double coverage plan. * * *

(v) Part C of the Individuals with Disabilities Education Act for medical services and items provided in accordance with the Individualized Family Service Plan and that are otherwise allowable under the CHAMPUS Basic Program or the Program for Persons with Disabilities.

3. Section 199.4 is proposed to be amended by removing paragraph (e)(8)(ii)(D); amending paragraph (g)(15)(i)(D) by adding "the reliable evidence shows that the" after the word "If"; and by revising paragraphs (e)(8)(iv)(C), (e)(8)(iv)(E), and (g)(58) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(8) * * *

(iv) * * *

(C) *Augmentation mammoplasties.* Augmentation mammoplasties, except for breast reconstruction following a covered mastectomy and those

specifically authorized in paragraph (e)(8)(i) of this section.

* * * * *

(E) *Reduction mammoplasties.* Reduction mammoplasties unless there is medical documentation of intractable pain, not amenable to other forms of treatment) resulting from large, pendulous breasts) or unless performed as an integral part of an authorized breast reconstruction procedure under paragraph (e)(8)(i)(C) of this section, including reduction of the collateral breast for purposes of ensuring breast symmetry.

* * * * *

(g) * * *

(58) *Enuretic.* Enuretic conditioning programs, but enuretic alarms may be cost-shared when determined to be medically necessary in the treatment of enuresis.

* * * * *

4. Section 199.5 is proposed to be amended by revising paragraph (a)(4)(iii) and adding a new paragraph (a)(5)(v) to read as follows:

§ 199.5 Program for Persons with Disabilities (PFPWD).

(a) * * *

(4) * * *

(iii) *Valid period.* An authorization for a PFPWD service or item shall not exceed twelve consecutive months.

(5) * * *

(v) The requirements of paragraph (a)(5) of this section notwithstanding, no Public Facility Use Certification is required for medical services and items that are provided under Part C of the Individuals with Disabilities Education Act in accordance with the Individualized Family Service Plan and that are otherwise allowable under the CHAMPUS Basic Program or the PFPWD.

* * * * *

5. Section 199.8 is proposed to be amended by adding paragraph (d)(5) to read as follows:

§ 199.8 Double coverage.

* * * * *

(d) * * *

(5) The requirements of paragraph (d)(4) of this section notwithstanding, CHAMPUS is a primary payer for medical services and items that are provided under Part C of the Individuals with Disabilities Education Act in accordance with the Individualized Family Service Plan and that are otherwise allowable under the CHAMPUS Basic Program or the Program for Persons with Disabilities.

* * * * *

Dated: November 7, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–29013 Filed 11–14–00; 8:45 am]

BILLING CODE 5001–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WI96–01–7327b; FRL–6901–4]

Approval and Promulgation of State Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: We are approving a request from the Wisconsin Department of Natural Resources (WDNR) submitted to the Environmental Protection Agency (EPA) on November 5, 1999 to redesignate a portion of the City of Rhinelander (Oneida County) Wisconsin from a primary sulfur dioxide (SO_2) nonattainment area to attainment. EPA designated a portion of the City of Rhinelander as a primary SO_2 nonattainment area on October 12, 1984. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rules based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received by December 15, 2000.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulations Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section (AR–18J), Air Programs Branch, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address.

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

Dated: October 27, 2000.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. 00–29222 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FL–86–200028(b); FRL–6902–3]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Section 111(d) Plan for the State of Florida submitted by the Florida Department of Environmental Protection (DEP) on September 16, 1999, for implementing and enforcing the Emissions Guidelines applicable to existing Hospital/Medical/Infectious Waste Incinerators. The Plan was submitted by the Florida DEP to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, EPA is approving the Florida State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule published in this **Federal Register**. If no significant, material, and adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments must be received in writing by December 15, 2000.

ADDRESSES: Written comments should be addressed to Joey Levasseur at the

EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3014. Joey Levasseur, (404) 562–9035.

Florida Department of Environmental Protection, Air Resources Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey Levasseur at (404) 562–9035 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register** and incorporated by reference herein.

Dated: October 25, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–29218 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MO 117–1117; FRL–6900–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Landfill Emissions From Municipal Solid Waste Landfills; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the state of Missouri's section 111(d) plan for controlling emissions from existing municipal solid waste (MSW) landfills. The plan was submitted to fulfill the requirements of sections 111 and 129 of the Clean Air Act. The revised state plan incorporates revisions to the Emissions Guideline for MSW landfills promulgated by EPA in 1998 and 1999.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by December 15, 2000.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register.**

Dated: October 25, 2000

Dennis Grams,

Regional Administrator, Region 7.

[FR Doc. 00–29057 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6900–6]

Massachusetts: Interim Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant interim authorization to The Commonwealth of Massachusetts for certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by December 15, 2000.

ADDRESSES: Send written comments to Robin Biscaia, Hazardous Waste Program Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; Telephone: (617) 918–1642. Copies of the Commonwealth of Massachusetts' revision application and the materials which EPA used in evaluating the revision (the "Administrative Record") are available for inspection and copying during normal business hours at the following locations: Massachusetts Department of Environmental Protection Library, One Winter Street—2nd Floor, Boston, MA 02108, business hours: 9 a.m. to 5 p.m., telephone: (617) 292–5802; or EPA New England Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours: 9 to 4, telephone: (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Program Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone: (617) 918–1642.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: November 2, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

[FR Doc. 00–29060 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7404]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arizona	Yavapai County and Incorporated Areas.	Blue Tank Wash	Just upstream of Yavapai-Maricopa County Boundary.	None	*2,176
			Approximately 200 feet upstream of Yavapai-Maricopa County Boundary.	None	*2,179
		Powerhouse Wash Tributary 1.	Just upstream of Yavapai-Maricopa County Boundary.	None	*2,262
			Approximately 800 feet upstream of Yavapai-Marciopa County Boundary.	None	*2,297
		Powerhouse Wash Tributary 2.	Just upstream of Yavapai-Maricopa County Boundary.	None	*2,280
			Approximately 300 feet upstream of Yavapai-Maricopa County Boundary.	None	*2,286
		Sols Wash	Just downstream of Atchison, Topeka and Santa Fe Railway.	None	*2,364
			Approximately 1,500 feet upstream of Atchison, Topeka and Santa Fe Railway.	None	*2,401
		Wash P	Just upstream of Yavapai-Maricopa County Boundary.	None	*2,131
			Approximately 600 feet upstream of Yavapai-Maricopa County Boundary.	None	*2,147

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Verde River	Just downstream of North 5th Street	*3,297	*3,297
			Approximately 800 feet north of Yavapai Street.	*3,302	*3,303

Maps for Yavapai County are available for inspection at 500 Marina Street, Prescott, Arizona 86301.
Send comments to The Honorable Chip Davis, Chairman, Yavapai County, 1015 Fair Street, Room 310, Prescott, Arizona 86301.

Maps for the Town of Cottonwood are available for inspection at the Public Works Office, 1490 West Mingus Avenue, Cottonwood, Arizona.
Send comments to The Honorable Ruben Jauregi, Mayor, City of Cottonwood, 827 North Main Street, Cottonwood, Arizona 86326.

Arkansas	Mountain Home (City). Barton County	Hicks Creek	Approximately 3,000 feet upstream of Hicks Road.	*682	*682
			Just upstream of Arkansas Highway 201	*835	*833
		Indian Creek	At confluence with Hicks Creek	*752	*753
			At Bradley Street	*819	*819

Maps are available at 720 South Hickory, Mountain Home, Arkansas.
Send comments to the Honorable Joe Dillard, Mayor, City of Mountain Home, 720 South Hickory, Mountain Home, Arkansas 72653.

Arkansas	Texarkana (City) Miller County.	Lost Creek	Approximately 1,400 feet downstream of Oats Street.	None	+313
			Approximately 1,000 feet upstream of Old Post Road.	None	+353
		Love Creek	Approximately 2,700 feet downstream of East Broad Street.	*301	+301
			Just upstream of Missouri Pacific Railroad.	None	+313
			Approximately 600 feet upstream of Meadows Road.	None	+378
		Love Creek Tributary	Approximately 1,200 feet downstream of Magee Drive.	None	+357
			Approximately 250 feet upstream of Meadows Road.	None	+377
		McKinney Bayou Tributary	Approximately 5,000 feet downstream of Sugar Hill Road.	None	+271
			Approximately 2,800 feet upstream of State Highway 245.	None	+312
		McKinney Bayou Tributary 2A.	Approximately 5,500 feet downstream of Sugar Hill Road (State Route 296).	None	+266
			Just upstream of Sugar Hill Road (State Route 296).	None	+306
			Approximately 3,300 feet upstream of Sugar Hill Road (State Route 296).	None	+324
		McKinney Bayou Tributary 2B.	At confluence with McKinney Bayou Tributary 2A.	None	+306
			Approximately 2,000 feet upstream of Confluence with McKinney Bayou Tributary 2A.	None	+318
		McKinney Bayou Tributary 3.	Approximately 3,200 feet downstream of Sugar Hill Road.	None	+271
			Approximately 650 feet upstream of Interstate 30.	None	+315
		McKinney Bayou Tributary 4.	Approximately 650 feet downstream of Sugar Hill Road.	None	+280
			Approximately 5,500 feet upstream of Sugar Hill Road.	None	+315

*Elevation in feet (NGVD of 1929) (To convert to NAVD, subtract 0.04 feet from NGVD elevation)
+Elevation in feet (NAVD of 1988)

Maps are available for inspection at 216 Walnut Street, Texarkana, Arkansas.
Send comments to The Honorable Danny Gray, Mayor, City of Texarkana, P.O. Box 2711, Texarkana, Arkansas 71854.

California	Fresno County (Unincorporated Areas).	San Joaquin River	Just upstream of Southern Pacific Railroad.	*170	*168
			Approximately 1.10 miles upstream of State Highway 41.	*272	*280
			Just downstream of Friant Dam	*314	*329

Maps are available for inspection at the Fresno County Library, 2420 Mariposa Street, Fresno, California 93721.
Send comments to The Honorable Judy Case, Chairperson, Fresno County, 2281 Tulare Street, Room 301, Fresno California

California	Fresno (City) Fresno County.	San Joaquin River	Just upstream of State Highway 99	None	*245

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1.10 miles upstream of State Highway 41.	*272	*280

Maps are available for inspection at 2600 Fresno Street, Fresno, California.
Send comments to The Honorable Jim Patterson, Mayor, City of Fresno, City Hall, 2600 Fresno Street, Fresno, California, 93721.

California	Madera County (Unincorporated Areas).	San Joaquin River	Just upstream of State Highway 99	None	*245
			Just downstream of Friant Dam	*314	*329

Maps are available for inspection at 209 West Yosemite Avenue, Madera, California.
Send comments to The Honorable John Z, Silva, Chairman, Madera County Board of Supervisors, 209 West Yosemite Avenue, Madera, California, 93637.

Colorado	Silver Plume (Town) Clear Creek County.	Clear Creek	Approximately 800 feet downstream of Interstate 70.	*9,000	*9,002
			Approximately 300 feet upstream of Burleigh Street Extended.	*9,143	*9,142

Maps are available for inspection at Town Hall, 487 Main Street, Silver Plume, Colorado.
Send comments to The Honorable Gregory Heine, Mayor, Town of Silver Plume, P.O. Box 457, Silver Plume, Colorado 80476.

Colorado	Silverthorne (Town) Summit County.	Blue River	Approximately 3,400 feet downstream of Hamilton Circle Road.	None	+8,619
			Approximately 1,150 feet upstream of U.S. Route 70.	*8,771	+8,773
		Willow Creek	Approximately 700 feet downstream of Legend Lake Circle.	*8,698	+8,865
			Approximately 550 feet upstream of Ranch Road.	None	+8,869
		Straight Creek	Just downstream of River Road	*8,768	+8,772
			Approximately 750 feet upstream of Route 9.	*8,847	*8,841

*Elevation in feet (NGVD) (To convert to NAVD, add 5.28 feet to NGVD elevation)
+Elevation in feet (NAVD of 1988)

Maps are available for inspection at 601 Center Circle, Silverthorne, Colorado.
Send comments to The Honorable Lou Del Piccolo, Mayor, Town of Silverthorne, P.O. Box 1309, Silverthorne, Colorado 80498.

Colorado	Summit County (Unincorporated Areas).	Willow Creek	At confluence with Blue River	*8,674	*8,674
			Approximately 400 feet upstream of Ranch Road.	None	*8,864
		Blue River	Approximately 3,400 feet downstream of Winegard Road.	*8,565	*8,565
			Approximately 2,400 feet upstream of Interstate 70.	None	*8,777

Maps are available for inspection at 0037 Summit County Road, #1005, Town of Frisco, Colorado.
Send comments to The Honorable Gary Lindstrom, Chairperson, Summit County Board of Supervisors, P.O. Box 68, Breckenridge, Colorado 80498.

Idaho	Ada County and Incorporated Areas.	Boise River	Approximately 5,800 feet downstream of Star Road.	*2,451	+2,458
			Approximately 50 feet upstream of Eagle Road.	*2,555	+2,559
			Approximately 3,150 feet upstream of South Eckert Road.	*2,762	+2,764
		Loggers Creek (Side Channel).	Approximately 925 feet upstream of Broadway Avenue (at downstream confluence with Boise River.	*2,699	+2,703
		Overflow Channel Boise River.	At confluence with Boise River	None	+2,576
			At confluence with South Channel Boise River Eagle Island.	None	+2,585
	Ada County and Incorporated Areas (cont'd).	South Channel Boise River.	Approximately 4,675 feet downstream of Linder Road (at downstream confluence with Boise River).	*2,507	+2,510
			At upstream confluence with Boise River	*2,590	+2,593

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified

*Elevation in feet (NGVD) (to convert to NAVD, add 3.1 feet to NGVD elevation)
+Elevation in feet (NAVD of 1988)

Maps for Ada County are available for inspection at the County Engineer's Office, 650 Main Street, Second Floor, Boise, Idaho.
Send comments to The Honorable Roger Simmons, Chairman, Ada County Board of Commissioners, 650 Main Street, Boise, Idaho 83702.

Maps for the City of Boise are available for inspection at the Community Planning and Development Office, 150 North Capitol Boulevard, Second Floor, Boise, Idaho.
Send comments to The Honorable H. Brent Coles, Mayor, City of Boise, 150 North Capitol Boulevard, Boise, Idaho 83701–0500.

Maps for the City of Eagle are available for inspection at 310 East State Street, Eagle, Idaho.
Send comments to The Honorable Rick Yzaguirre, Mayor, City of Eagle, 310 East State Street, Eagle, Idaho 83616.

Maps for Garden City are available for inspection at City Hall, 201 East 50th Street, Garden City, Idaho.
Send comments to the Honorable Ted Ellis, Mayor, City of Garden City, 201 East 50th Street, Garden City, Idaho 83714.

Idaho	Moscow (City) Latham County.	Paradise Creek	Approximately 1,700 feet downstream of Burlington Northern Railroad.	*2,529	*2,530
			Approximately 350 feet upstream of park footbridge.	*2,613	*2,613
		Paradise Creek (University Overflow).	Approximately 1,200 feet downstream of Rayburn Street.	*2,552	*2,552
			Approximately 1,500 feet upstream of Third Street.	*2,560	*2,561
		Paradise Creek (Mountain View Road Overflow).	Approximately 2,000 feet downstream of Harold Avenue.	None	*2,584
			Just downstream of Mountain View Road	None	*2,594

Maps are available for inspection at 122 East 4th Street, Moscow, Idaho.
Send comments to The Honorable Marshall H. Comstock, Mayor, City of Moscow, 206 East 3rd Street, Moscow, Idaho 83843.

Idaho	Latah County (Unincorporated Areas).	Paradise Creek	Approximately 1,200 feet downstream of Joseph Street.	*2,587	*2,586
			Approximately 1,600 feet downstream of Darby Road.	*2,614	*2,614

Maps are available for inspection at 522 South Adams, Moscow, Idaho.
Send comments to The Honorable Loreca Stauber, Latah County Board of Commissioners, 522 South Adams, Moscow, Idaho 83843.

Iowa	Akron (City) Plymouth County.	Big Sioux River	Approximately 400 feet west of the intersection of South Street and Route 12.	None	*1,136
			Just upstream of Route 48	None	*1,144

Maps are available for inspection at the Akron City Hall, 220 Reed Street, Akron, Iowa 51001.
Send comments to The Honorable Harold Higman, Mayor, City of Akron, P.O. Box 318, 220 Reed Street, Akron, Iowa 51001.

Iowa	Plymouth County (Unincorporated Areas).	Big Sioux River	Just upstream of the Plymouth and Woodbury County boundary.	None	*1,111
			Approximately 1,000 feet downstream of Route 48.	None	*1,142

Maps are available for inspection at the Plymouth County Courthouse, 215—4th Avenue, Southeast, LeMars, Iowa 51031.
Send comments to The Honorable Paul Sitzmann, Mayor, 214—3rd Avenue, Southeast, LeMars, Iowa 51031.

Iowa	Shell Rock (City) Butler County.	Shell Rock River	Approximately 4,900 feet downstream of Cherry Street.	None	*900
			Approximately 5,000 feet upstream of Cherry Street.	None	*909
		Shell Rock River Overflow Channel.	At confluence with Shell Rock River	None	*900
			Immediately downstream of Lake Street	None	*902

Maps are available for inspection at 303 South Cherry Street, Shell Rock, Iowa.
Send comments to The Honorable Richard Greenlee, Mayor, City of Shell Rock, P.O. Box 522, Shell Rock, Iowa 50670.

Iowa	Sioux City (City) Woodbury County.	Big Sioux River	Approximately 3,000 feet downstream of intersection of Riverside Boulevard and Interstate 29.	*1,090	*1,090
			Just upriver of Military Road	*1,103	*1,103
			Just downriver of Interstate 29	*1,094	*1,094
			Just downstream of the Plymouth and Woodbury County boundary.	*1,111	*1,110

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Sioux City City Hall, 520 Pierce Street, Sioux City, Iowa 51107. Send comments to The Honorable Marty Dougherty, Mayor, City of Sioux City, 520 Pierce Street, Sioux City, Iowa 51107.					
Iowa	Westfield (City) Plymouth County.	Big Sioux River	Approximately 300 feet downstream of the confluence of Westfield Creek.	None	*1,123
			Approximately 4,500 feet upstream of the confluence of Westfield Creek.	None	*1,124
Maps are available for inspection at 233 Union Street, Westfield, Iowa 51062. Send comments to The Honorable Paul Bringman, Mayor, City of Westfield, 233 Union Street, Westfield, Iowa 51062.					
Louisiana	Livingston Parish and Incorporated Areas.	Amite River	Approximately 1,200 feet downstream of U.S. Highway 190.	*42	*44
			At the intersection of Cockerham Extended and North Range Avenue.	*46	*50
		Killian Bayou	At confluence with Tickfaw River-Lower Reach.	None	*8
			Approximately 3,300 feet upstream of Louisiana Highway 22.	None	*10
		Tickfaw River Lower Reach.	Approximately 1,400 feet downstream of Cypress Drive Extended.	None	*7
			Approximately 5,400 feet upstream from confluence of Butler Bayou.	None	*9
		Amite River	Approximately 1,300 feet downstream of Goodtime Road Extended.	*8	*8
			Just downstream of Illinois Central Gulf Railroad.	*45	**47
			Approximately 2,000 feet northwest of the intersection of Route 16 and Route 63.	None	*86
		Beaver Creek	At confluence with Amite River	*51	*52
			Just downstream of Fore Road	*72	*72
			Just upstream of Fore Road	*73	None
		West Fork of Beaver Creek.	At confluence with Beaver Creek	None	*62
			Just upstream of Bob West Road	*70	None
		Clinton Allen Lateral	At confluence with Beaver Creek	None	*53
			Just downstream of Louisiana Highway 1024.	None	*66
		West Colyell Creek	Just upstream of Cave Market Road	*68	*68
			Just upstream of Sims Road	None	*86
		Dumplin Creek	Approximately 1,500 feet downstream of Aydell Lane.	*40	*41
			Just upstream of U.S. Highway 190	*44	*43
			Approximately 500 feet downstream of Whit Holden Road.	*49	*49
			Approximately 500 feet downstream of Whit Holden Road.	None	*49
			Approximately 200 feet upstream of Westcoll Road.	None	*51
		East Fork Dumplin Creek	Approximately 1,000 feet downstream of Meadow Crossing Drive.	None	*48
			Approximately 100 feet downstream of Louisiana Highway 1029.	None	*49
		Tickfaw River	Just upstream of Interstate 12	None	*37
			Just upstream of Horseshoe Road West Extended.	None	*76
		Tickfaw River Lower Reach.	Approximately 1,400 feet downstream of Cypress Drive Extended.	None	*7
			Approximately 5,400 feet upstream from confluence of Butler Bayou.	None	*9
		Amite River	Southwest of Legion Road near Colyell Bay.	*12	*13
			At Willis Bayou and Route 16	*16	*16
		Amite River	At Route 16 and Plantation Road	None	*8
			Just south of Route 16/42 at Colyell Bay	None	*13
		East Fork Dumplin Creek	At confluence with Dumplin Creek	*44	*43
			Approximately 1,000 feet downstream of Meadow Crossing Drive.	*49	*48

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. ^Elevation in feet. (NGVD)	
				Existing	Modified
Maps for the City of Denham Springs are available for inspection at 941 Government Street, Denham Springs, Louisiana. Send comments to The Honorable James E. DeLaune, Mayor, City of Denham Springs, P.O. Box 1629, Denham Springs, Louisiana 70727. Maps for the Village of Killian are available for inspection at 20161 Iowa Street, Livingston, Louisiana. Send comments to The Honorable Gillis Windham, Mayor, Village of Killian, P.O. Box 546, Springfield, Louisiana 70462. Maps for Livingston Parish are available for inspection at 20161 Iowa Street, Livingston, Louisiana. Send comments to The Honorable Dewey Ratcliff, President, Livingston Parish, P.O. Box 427, Livingston, Louisiana 70754. Maps for the Village of Port Vincent are available for inspection at 20161 Iowa Street, Livingston, Louisiana. Send comments to The Honorable Peggy Savoy, Mayor, Village of Port Vincent, 18235 Highway 16, Port Vincent, Louisiana 70726. Maps for the Village of French Settlement are available for inspection at 16015 Highway 16, French Settlement, Louisiana. Send comments to The Honorable Douglas W. Watts, Mayor, Village of French Settlement, P.O. Box 3, French Settlement, Louisiana 70733. Maps for the Town of Walker are available for inspection at 10136 Florida Boulevard, Walker, Louisiana. Send comments to The Honorable Mike Grimmer, Mayor, Town of Walker, P.O. Box 217, Walker, Louisiana 70785.					
Missouri	Waynesville (City) Pulaski County.	Roubidoux Creek	Approximately 5,600 feet downstream of Historical Route 66.	*774	*773
			Approximately 2,600 feet upstream of Historical Route 66.	*781	*784
			Just downstream of Interstate Highway 44.	*782	*786
		Mitchell Creek	At confluence with Roubidoux Creek	*779	*782
			At northern side of Interstate Highway 44	None	*850
		Pearson Hollow	At confluence with Mitchell Creek	*828	*827
			Approximately 700 feet upstream of New Road.	*892	*901
Maps are available for inspection at 201 North Street, Waynesville, Missouri. Send comments to The Honorable Lorel Rigsby, Mayor, City of Waynesville, 201 North Street, Waynesville, Missouri 65583.					
Nebraska	Lancaster County and Incorporated Areas.	Middle Creek	Approximately 1,400 feet downstream of Holdrege Street.	*1,204	None
			Approximately 200 feet downstream of Holdrege Street.	*1,205	None
		Salt Creek	Approximately 350 feet upstream of North 112th Street.	None	*1,120
			Approximately 5,800 feet upstream of Rokeby Road.	None	*1,192
			At Satillo Road	None	*1,196
		Stevens Creek	Approximately 1,000 feet downstream of Van Dorn Street.	*1,203	*1,206
Maps for Lancaster County are available for inspection at 555 South 10th Street, Lincoln, Nebraska 68508. Send comments to The Honorable Kathy Campbell, Chairperson, Lancaster County Board of Commissioners, 555 South 10th Street, Lincoln, Nebraska 68508. Maps for the City of Lincoln are available for inspections at 555 South 10th Street, Lincoln, Nebraska 68508. Send comments to The Honorable Don Wesley, Mayor, City of Lincoln, 555 South 10th Street, Lincoln, Nebraska 68508.					
New Mexico	Portales (City) Roosevelt County.	Globe Ditch	Approximately 400 feet downstream of confluence of 17th and 18th Streets shallow flooding.	*3,995	+3,998
			At confluence of 17th and 18th Streets shallow flooding.	*3,995	+3,999
		17th and 18th Streets Shallow Flooding.	Area bounded by South Main Avenue, West 17th Street, South Avenue A, and West 18th Street.	*3,996	+4,000
			Area bounded by South Avenue F, West 17th Street, South Avenue G, and West 18th Street.	*4,000	+4,004
		Flooding throughout University and Downtown Areas.	Area bounded by South Main Avenue, West 10th Street, South Avenue A, and West 11th Street.	#1	+4,002
			Area bounded by South Avenue B, West Commercial Street, South Avenue C, and West First Street.	#1	+4,009
		Ponding Area	Upstream of Burlington Northern Santa Fe Railroad from Boulder Avenue to southwest of University Avenue.	*4,009	+4,011
		Ponding Area	At the intersection of Industrial Drive and West 18th Street.	None	+4,004

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 700 feet west of the intersection of the Burlington Northern Santa Fe Railroad and West 18th Street.	None	+4,004
		Ponding Area	Approximately 4,000 feet northwest of the intersection of Industrial Drive and West 18th Street.	None	+4,010

* Elevation in feet (NGVD) (To convert to NAVD, add 1.74 feet to NGVD elevation)
+ Elevation in feet (NAVD)
# Depth in feet above ground

Maps are available for inspection at City Hall, 100 West First Street, Portales, New Mexico
Send comments to The Honorable Don Davis, Mayor, City of Portales, 101 South Main Street, Portales, New Mexico 88130

Oklahoma	Oklahoma County and Incorporated Areas.	Biddy Creek	Approximately 3,200 feet upstream of confluence with Deer Creek.	None	*1,054
			At Oklahoma-Canadian County Boundary	None	*1,103
		Bloody Rush Creek	Just upstream of Portland Avenue	None	*1,014
			Just upstream of Rockwell Avenue	None	*1,096
		Chisholm Creek	At Oklahoma-Logan County Boundary	*1,013	*1,016
			At West Coffee Creek Road	*1,030	*1,035
			Approximately 150 feet upstream of West Coffee Creek Road.	*1,037	*1,037
			At Hefner Road	*1,168	*1,167
			At Northwest Britton Road	None	*1,192
		Coon Creek	Approximately 50 feet upstream of Northeast 192nd Street.	None	*919
			Approximately 1,500 feet upstream of Triple XXX Road.	None	*922
			Just downstream of Northeast 206th Street.	None	*929
			Just upstream of Northeast 206th Street	None	*932
			At confluence with Coon Creek	None	*965
			Just downstream of Waterloo Road	None	*970
		Coon Creek Tributary	Approximately 70 feet upstream of Choctaw Road.	None	*1,007
		Crutcho Creek	Approximately 2,000 feet upstream of North Midwest Boulevard.	*1,149	*1,149
			Approximately 700 feet downstream of Northeast 36th Street.	*1,155	*1,158
		Crutcho Creek Tributary C	Just downstream of Sooner Road	*1,218	*1,217
			Approximately 450 feet upstream of Epperly Drive.	*1,247	*1,246
		Crutcho Creek Tributary C–1.	Approximately 400 feet upstream of confluence with Crutcho Creek C.	*1,227	*1,226
			Just downstream of Southeast 59th Street.	None	*1,233
		Deep Fork	Just upstream of Northeast 192nd Street	*901	*902
			Approximately 1,800 feet upstream of Northeast 192nd Street.	*902	*903
		Deep Fork Tributary 11	Approximately 1,300 feet downstream of Northeast 50th Street.	None	*1,089
			Just upstream of Northeast 50th Street	None	*1,104
		Deer Creek	At Waterloo Road	*1,006	*1,009
			Approximately 600 feet downstream of Northwest 164th Street.	*1,071	*1,072
		Dorf Creek	Approximately 4,900 feet upstream of Meridian Avenue.	None	*1,040
			Approximately 1,000 feet upstream of Coffee Creek Road.	None	*1,095
		North Canadian River	At intersection of North Sooner Road and Northeast 23rd Street.	None	*1,157
		North Canadian Tributary 1.	Approximately 1,750 feet downstream of Northeast 10th Street.	*1,089	*1,090
			Just downstream of Reno Avenue	None	*1,110
			Approximately 150 feet upstream of Reno Avenue.	None	1,114
			Approximately 200 feet downstream of Triple XXX Road.	None	*1,167

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		North Canadian Tributary 2 of Tributary 1.	Approximately 1,050 feet downstream of Reno Avenue.	None	*1,104
			Just upstream of Reno Road	None	*1,110
		North Canadian Tributary 2 of Tributary 2.	Approximately 250 feet downstream of Southeast 15th Street.	None	*1,132
		North Canadian Tributary 3 of Tributary 1.	At confluence with North Canadian Tributary 1.	None	*1,118
			Approximately 3,700 feet upstream of Peebley Road.	None	*1,141
		Pond Creek (previously known as Chisholm Creek Tributary 3).	Approximately 4,000 feet downstream of Danforth Avenue.	*1,045	None
			Just downstream of Danforth Avenue	*1,067	None
		Soldier Creek Tributary to Deer Creek.	At confluence with Dear Creek	*1,055	*1,056
			At County Line Road	*1,074	*1,074
		Walnut Creek	At confluence with Deer Creek	*1,039	*1,042
			Approximately 150 feet downstream of Northwest 164th Street.	*1,067	*1,068
			Just upstream of Northwest 164th Street	*1,068	*1,072
		Walnut Creek Tributary 1	Approximately 3,400 feet upstream of Confluence with Walnut Creek.	None	*1,049
			At Northwest 164th Street	None	*1,086
			Just upstream of Northwest 164th Street	None	*1,092
		West Captain Creek Tributary.	At Oklahoma-Lincoln County Boundary	None	*950
			Approximately 2,500 feet upstream of Northeast 93rd Street.	None	*1,051
		West Captain Creek Tributary 2.	At confluence with West Captain Creek Tributary.	None	*956
			Approximately 3,000 feet upstream of Northeast 93rd Street.	None	*1,010
		West Captain Creek Tributary 3.	At confluence with West Captain Creek Tributary.	None	*989
			Approximately 2,000 feet upstream of Northeast 93rd Street.	None	*1,021
		Whistler Creek	Approximately 2,900 feet upstream of confluence with Deer Creek.	None	*1,029
			Approximately 2,800 feet downstream of MacArthur Boulevard.	None	*1,069

Maps for Oklahoma County are available for inspection at the Oklahoma County Engineer Office, 320 Robert A. Kerr Avenue, Suite 101, Oklahoma City, Oklahoma.
Send comments to The Honorable Stuart Earnest, Chairman, Oklahoma County Board of Commissioners, 320 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102.

Maps for the City of Edmond are available for inspection at 100 East First Street, Edmond, Oklahoma.
Send comments to the Honorable Robert Rudkin, Mayor, City of Edmond, P.O. Box 2970 Edmond, Oklahoma 73073–2970.

Maps for the City of Harrah area available for inspection at 1900 Church Avenue, Harrah, Oklahoma.
Send comments to the Honorable Glenn West, Mayor, City of Harrah, 1900 Church Avenue, Harrah, Oklahoma 73045–0636.

Maps for the Town of Lake Aluma are available for inspection at 104 Lake Aluma Drive, Lake Aluma, Oklahoma.
Send comments to the Honorable Gary Johnston, Mayor, Town of Lake Aluma, 144 Lake Aluma Drive, Lake Aluma, Oklahoma 73121–3042.

Maps of the Town of Luther are available for inspection at 119 South Main Street, Luther, Oklahoma.
Send comments to the Honorable Don Woods, Mayor, Town of Luther, P.O. Box 56, Luther, Oklahoma 73084.

Maps for the City of Midwest City are available for inspection at 100 North Midwest Boulevard, Midwest City, Oklahoma.
Send comments to the Honorable Eddie Reed, Mayor, City of Midwest City, P.O. Box 10570, Midwest City, Oklahoma 73140.

Maps for the City of Oklahoma City are available for inspection at 420 West Main Street, Oklahoma City, Oklahoma.
Send Comments to the Honorable Kirk Humphreys; Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.

Maps for the City of Spencer are available for inspection at 8200 Northeast 36th Street, Spencer, Oklahoma.
Send comments to the Honorable Marsha Jefferson, Mayor, City of Spencer, P.O. Box 660, Spencer, Oklahoma 73084.

Maps for the City of The Village are available for inspection at 2304 Manchester Drive, The Village, Oklahoma.
Send comments to the Honorable Stanley Alexander, Mayor, City of The Village, 2304 Manchester Drive, The Village, Oklahoma, 73120.

Utah	Murray (City) Salt Lake County.	Big Cottonwood Creek	At confluence with Jordan River	*4,243	*4,243
			Just upstream of 4500 South Street	*4,269	*4,265
			At 900 West Street	*4,291	*4,291
		Little Cottonwood Creek	Approximately 200 feet upstream of confluence with Jordan River.	None	*4,249

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 100 feet downstream of 5900 South Street.	*4,351	*4,347
Maps are available for inspection at the Office of the City Engineer, 4646 South 500 West, Murray, Utah. Send comments to The Honorable Dan Snarr, Mayor, City of Murray, 5025 South State Street, Murray, Utah 84157–0000.					
Utah	South Salt Lake (City).	Mill Creek	At confluence with Jordan River	*4,233	*4,233
			Just downstream of State Street	*4,252	*4,251
			Approximately 300 feet downstream of 3300 South Street.	*4,263	*4,263
Maps are available for inspection at 220 East Morris Avenue, South Salt Lake, Utah 85115. Send comments to The Honorable Randy Fitts, Mayor, City of South Salt Lake, 220 East Morris Avenue, South Salt Lake, Utah 85115.					
Washington	College Place (City) Walla Walla County.	Garrison Creek	Approximately 3,300 feet upstream of Mission Road.	None	*703
			Approximately 6,400 feet upstream of Mission Road.	None	*723
Maps are available for inspection at City Hall, South College Avenue, College Place, Washington. Send comments to The Honorable Thor Bakland, Mayor, City of College Place, 625 South College Avenue, College Place, Washington 99324.					
Washington	Washtucna (Town) Adams County.	Washtucna Coulee	Approximately 2,700 feet downstream of Cooper Street.	None	+1,002
			Just downstream of Canal Street	None	+1,023
			At confluence with Staley Coulee	None	+1,023
			Approximately 800 feet upstream of the confluence with Staley Coulee.	None	+1,025
		Staley Coulee	Just upstream of Canal Street	None	+1,023
			Approximately 800 feet upstream of North Street.	None	+1,023
Maps are available for inspection at the Washtucna Town Hall, 165 Southeast Main Street, Washtucna, Washington. Send comments to The Honorable Neil G. Todd, Mayor, Town of Washtucna, 165 Southeast Main Street, Washtucna, Washington 99371.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 8, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–29127 Filed 11–14–00; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 74 and 92

Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations; and Certain Grants and Agreements With States, Local Governments and Indian Tribal Governments and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of Health and Human Services proposes to revise its grants management regulations in order to bring the entitlement grant programs it administers under the same regulations that already apply to non-entitlement programs for grants and cooperative agreements to State, local, and tribal governments.

DATES: Comments must be submitted by January 16, 2001.

ADDRESSES: Comments must be in writing and should be mailed or faxed to Charles Gale, Director, Office of Grants Management, HHS, Room 517–D, 200 Independence Avenue SW, Washington, D.C. 20201; Fax (202) 690–6902. Written comments may be inspected at the identified address during agency business hours from 9:30 am to 5:30 p.m., Monday through Friday, Federal Holidays excepted.

FOR FURTHER INFORMATION CONTACT: Charles Gale, Director, Office of Grants Management at the above address; (202) 690–6377. For the hearing impaired only: TDD (202) 690–6415. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On March 11, 1988, HHS joined other Federal agencies in publishing a final grants management "common rule" which provides a uniform system for the administration of grants and cooperative agreements, and by subawards thereunder, to State, local, and tribal governments. Prior to that date, administrative requirements for awards and subawards under all HHS programs were codified under 45 CFR Part 74. HHS implemented the Common Rule at 45 CFR Part 92. At the time, entitlement grant programs of the Social Security Act (the Act) administered by HHS and the Department of Agriculture were excepted from the common rule, because it was believed that the States operated entitlement programs differently than non-entitlement programs. Therefore, Subpart E was reserved in the rule to subsequently address provisions specific to entitlement programs. Pending the publication of Subpart E to Part 92, the HHS entitlement programs have remained under Part 74. As cited in 45 CFR 92.4, these programs included:

(1) Aid to Needy Families with Dependent Children (Title IV–A of the

Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G));

(2) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(3) Foster Care and Adoption Assistance (Title IV–E of the Act);

(4) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI–AABD of the Act);

(5) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B); and

(6) Certain grant funds awarded under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980.

Experimental, pilot, or demonstrations involving the above programs also remained under Part 74.

Although it was initially believed that States operated entitlement programs differently than non-entitlement programs, over the years we have found that belief to be untrue. Based upon our experience, we believe that States operate entitlement grant programs like non-entitlement programs. Furthermore, HHS and USDA consulted with State officials and their staffs and found that they applied the same fundamental administrative rules to both entitlement and non-entitlement programs. Since the States are currently applying the substance of the common rule requirements to their entitlement programs, HHS and USDA plan to synchronize the administrative requirements for all entitlement grant programs by bringing them under the common rule. USDA issued a final rule which applies its Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments to its entitlement grant programs. 65 Fed. Reg. 49474 (August 14, 2000). By way of this proposed rule, HHS is likewise proceeding with application of the common rule to its entitlement grant programs.

This proposed rule would expand the scope of 45 CFR Part 92 to include the entitlement grant programs cited above and remove such programs from the scope of Part 74. Therefore, both entitlement and non-entitlement awards to State, local, and tribal governments will be under the same administrative rules. This will enable State, local, and tribal grantees and other affected parties, such as auditors, to use the same administrative rules for the vast majority of their Federal programs. This action will also reduce unnecessary confusion and inefficiency in program administration.

There are technical distinctions between Part 74 and Part 92, *e.g.*, wording and format. Also, while the substance of the cost principles and audit requirements remains the same, there are differences in wording and organization. While the wording and organization are different, we believe there are no significant differences in the meaning of these standard administrative provisions. With respect to program income, for example, while Part 92 provides more specific information and Part 74 is different with respect to research grants, there is no practical difference in the way States will treat program income earned under the entitlement programs. That is, unless instructed otherwise by the HHS awarding agency or superseded by other legislative requirements, States will use the deduction alternative. Similarly, with respect to termination for convenience, while Part 92 covers the subject as a separate section, the requirements in Part 74 provide for essentially the same treatment in such cases. That is, termination for convenience may occur upon mutual consent between the HHS awarding agency and the grantee or upon written notification on the part of the grantee under certain conditions. We invite comment on the effect of these examples and any other differences detected. Additionally, HHS has decided to apply the rule prospectively to grants awarded after the effective date of the rule. We welcome questions regarding the application of the rule to specific types of entitlement grant programs.

In publishing this proposed rule, HHS solicits comments on applying the provisions of Part 92 to HHS entitlement program awards and subawards to State, local, and tribal governmental organizations. This proposed rule will not affect HHS non-entitlement grant programs. As noted above, Part 92 has covered grants and subgrants to State, local, and tribal governments relating to non-entitlement grant programs since its publication. HHS also solicits comments regarding whether certain provisions of the common rule should not be applied to entitlement grant programs but whether, instead, certain provisions of 45 CFR Part 74 should remain applicable.

Regulatory Impact Analysis

Executive Order 12866

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this rule because it is not a significant regulatory action as defined in Executive Order 12866.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary has reviewed this proposed rule before publication and, by approving it, certifies that it will not have a significant impact on a substantial number of small entities. The proposed rule does not affect the amount of funds provided in the covered programs but, instead, modifies and updates the administrative and procedural requirements.

Unfunded Mandates Reform Act

The Department has determined that this proposed rule is not a significant regulatory action within the meaning of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, *et seq.*, because it will not result in State, local, or tribal government expenditures of $100 million or more.

Paperwork Reduction Act of 1995

The reporting and recordkeeping requirements of this rule are the same as those required by OMB Circulars A–102 and A–110 and have already been cleared by OMB. Therefore, HHS believes this rule will not impose additional information collection requirements on grantees and subgrantees.

List of Subjects

45 CFR Part 74

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs, Hospitals, Indians, Intergovernmental relations, Nonprofit organizations, and Reporting and recordkeeping requirements.

45 CFR Part 92

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance number does not apply.)

Dated: November 2, 2000.

Donna E. Shalala,

Secretary.

Accordingly, for the reasons set forth above it is proposed that Title 45 of the Code of Federal Regulations be amended as follows:

PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS

1. The heading of part 74 is revised to read as set forth above.

2. The authority citation for Part 74 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A–110 (58 FR 62992, November 29, 1993), as amended (64 FR 54926, October 8, 1999).

3. In 74.1 remove paragraph (a)(3).

PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL, AND TRIBAL GOVERNMENTS

1. The authority citation for part 92 would continue to read as follows:

Authority: 5 U.S.C. 301.

2. In 92.4 remove paragraphs (a)(3), (7) and (8) and redesignate paragraphs (a)(4) through (10) as (a)(3) through (7) and remove and reserve paragraph (b).

3. Remove Subpart E, Entitlement.

[FR Doc. 00–29111 Filed 11–14–00; 8:45 am]

BILLING CODE 4150–04–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 110300B]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting/public hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 107th meeting November 28 through December 1, 2000, in Honolulu, HI. A public hearing will be held on a framework amendment to add new entry criteria for the Mau Zone limited entry bottomfish fishery in the Northwestern Hawaiian Islands (NWHI).

DATES: The Council's Standing Committees will meet on November 28, 2000, from 7:30 a.m. to 5:30 p.m. The full Council meeting will be held on November 29, 2000, from 9 a.m. to 5 p.m. and November 30 to December 1, 2000, from 8:30 a.m. to 5 p.m. A public hearing will be held on November 29, 2000 at 3 p.m. on a framework amendment to add new entry criteria for the Mau zone limited entry bottomfish fishery in the NWHI. See **SUPPLEMENTARY INFORMATION** for specific dates and times for these meetings and the hearings.

ADDRESSES: The Council meeting, Standing Committee meetings, and public hearing will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI; telephone: 808–955–4811. Copies of the framework document proposing new entry criteria for the Mau Zone are available from and written comments can be sent to the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION:

Dates and Times of Committee Meetings

The following Standing Committees of the Council will meet on November 28, 2000. Enforcement/Vessel Monitoring System from 7:30 a.m. to 9:30 a.m.; International Fisheries/Pelagics from 9:30 a.m. to 11:30 a.m.; Executive/Budget and Program from 11:30 a.m. to 1:30 p.m.; Precious Corals from 1:30 p.m. to 3 p.m.; Crustaceans from 1:30 p.m. to 3 p.m.; Bottomfish from 3 p.m. to 4:30 p.m; Ecosystem and Habitat from 3 p.m. to 4:30 p.m.; and Fishery Rights of Indigenous People from 4:30 p.m. to 5:30 p.m.

Public Hearings

A public hearing on new entry criteria for the Mau Zone bottomfish fishery will be held on Wednesday, November 29, 2000, at 3 p.m.

In addition, the Council will hear recommendations from its advisory panels, plan teams, scientific and statistical committee, and other ad hoc groups. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Agenda

1. Introductions

2. Approval of Agenda

3. Approval of 105th and 106th Meeting Minutes

4. Island Reports

A. American Samoa

B. Guam

C. Hawaii

D. Commonwealth of the Northern Mariana Islands (CNMI)

5. Federal Agency and Organization Reports

A. Department of Commerce

(1) NMFS

(a) Southwest Region, Pacific Island Area Office

(b) Southwest Fisheries Science Center, La Jolla and Honolulu Laboratories

(2) NOAA General Counsel, Southwest Region

B. Department of the Interior

(1) U.S. Fish and Wildlife Service

C. U.S. State Department

6. Enforcement

A. U.S. Coast Guard activities

B. NMFS activities

C. Commonwealth, Territories, and State activities

D. Cooperative agreements for Guam/CNMI

E. Status of violations

7. Vessel Monitoring System (VMS)

A. Hawaii VMS report

B. Report on national VMS efforts

8. Presentation on Transition Zone Chlorophyll Front

9. Precious Corals

A. Status of framework amendment regarding new harvesting requirements

B. Status of framework adjustment regarding Hawaiian Islands exploratory area quota increase

C. New bed definition and associated permitting

D. Precious Coral draft environmental impact statement

10. Bottomfish Fisheries

A. Update on State of Hawaii area closures

B. Mau Zone framework amendment

C. Status of litigation

D. Status of section 7 consultation

E. Draft Bottomfish EIS

F. Observer program

G. Public hearing on new entry criteria for the Mau Zone bottomfish fishery

The Council has developed a framework amendment to the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region. The amendment will establish criteria for new entry into the limited access Mau Zone bottomfish fishery around the NWHI. In developing the framework document, the Council considered a range of alternatives and impacts on NWHI bottomfish fishery. Currently, there are no Federal regulations that specify how new permits are to be issued for the Mau Zone fishery once the number of vessels in the Zone falls below the target

number of 10 permits. The Council is soliciting public comment and input on options for eligibility criteria including but not limited to the following: weighted point system based on past participation in the bottomfish fisheries off the main Hawaiian islands and NWHI, free and limited transferability of permits, and a lottery system.

11. Crustacean Fisheries

A. Status of litigation

B. Status of research and stock assessment activities and plans

C. NWHI management program 5-year review including overcapitalization of the NWHI fishery

D. Draft Crustacean EIS

12. Non-Governmental Organization Round-up Including Ocean Wildlife Campaign "Just Ask" Program.

13. Pelagic Fisheries

A. 2nd quarter 2000 Hawaii and American Samoa longline fishery report

B. Recreational fisheries
(1) Island reports
(a) Hawaii
(b) American Samoa
(c) Guam
(d) CNMI
(2) NMFS plans and programs to manage recreational fishery resources
(3) Marine license and Dingell-Johnson funding
(4) Recreational Fisheries Data Task Force
(5) Marine Recreational Fishing Statistical Survey
(6) Pelagic sportfishing tournament data collection
(7) RecFish 2000

C. National Academy of Sciences report on fishery data

D. American Samoa framework measure
The entry of large boats into the pelagics fishery in the exclusive economic zone (EEZ) around American Samoa could cause local overfishing in a portion of the EEZ, create gear conflictsparticularly in areas of concentrated fishing, and reduce the opportunities for profitable fishing operations. This management measure addresses these concerns by allocating fishing privileges to small-boat fishermen harvesting pelagic management unit species (PMUS) in the EEZ surrounding American Samoa. Specifically, the measure prohibits the taking of PMUS by domestic fishing vessels larger than 50 ft (15.24 m) (length overall) from waters within an area that is approximately 50 nm from the baselines of Tutuila Island, Rose Atoll, and the Manu'a Islands and Swain's Island. An owner of a vessel greater than 50 ft (15.24 m) in length who held a NMFS Longline General Permit on or prior to November 13, 1997, and made a landing of PMUS in American Samoa on or prior to that date is exempt from the prohibition to take PMUS within the closed area.

E. Pelagic research, ECOSIM (ecosystem simulation model), etc.

F. Shark management
(1) Blue shark stock assessment and maximum sustainable yield
(2) Status of Amendment 9 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (shark management)
(3) National plan of action on sharks

G. Turtle management
(1) Status of turtle populations and recovery plan
(2) Status of litigation
(3) Draft Pelagic EIS
(4) Mitigation research
(a) Working group
(b) NMFS research
(5) Observer program

G. Seabirds
(1) Status of mitigation regulatory amendment
(2) Shorttail albatross biological opinion
(3) Seabird national plan of action
(4) Report on New Zealand International Fisher's Forum on seabird bycatch

H. International
(1) Outcome of the 7th Multilateral High-level Conference
(2) South Pacific Community Standing Committee Meeting

I. Pelagic FMP 5-year review

14. Ecosystems and Habitat

A. Draft Coral Reef Ecosystems FMP/ Draft EIS

B. Coordinated NWHI coral reef management

C. Results of reef surveys in Line/ Phoenix Islands and preliminary results of NWHI cruises

D. Center for Marine Protected Areas (MPA) and MPA Advisory Committee

E. Overview of Pacific Scientific Review Group

F. Overview of Monk Seal Recovery Team

G. Carbon-dioxide ocean sequestration experiment

15. Fishery Rights of Indigenous People

A. Status of Marine Conservation Plans

B. Status of Community Development Program/Demonstration Projects, including eligibility criteria

C. Local observer program

D. Hawaiian green sea turtle cultural and religious uses

16. Program Planning

A. Status of draft amendment to include CNMI and Pacific Remote Island Areas in the bottomfish, precious corals and crustaceans FMPs

B. Status of Congressional legislation relating to ocean and fisheries including coral reefs, shark finning and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) reauthorization

C. Report on marine debris conference

D. Palmyra Atoll proposed longline closure

E. Fishing activities and support operations in national wildlife refuges

F. Midway Operations-Midway Phoenix Corporation

G. Report on program planning activities

H. Western Pacific Fisheries Information Network/Fisheries Data Coordinating Committee

I. Status of bioprospecting operations

17. Administrative Matters

A. Administrative reports

B. Advisory Panel appointments

C. Standard Operating Policies and Procedures modifications

D. Upcoming meetings and workshops including the 108th Council meeting

18. Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Authority: 1801*et seq.*

Dated: November 8, 2000.

Bruce C. Morehead,

Acting Director,Office of Sustainable Fisheries,National Marine Fisheries Service.

[FR Doc. 00–29270 Filed 11–14–00; 8:45 am]

BILLING CODE: 3510–22 –S

Notices

Federal Register
Vol. 65, No. 221
Wednesday, November 15, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Gardin-Taco Ecosystem Restoration Projects, Colville National Forest, Pend Oreille and Stevens Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent.

SUMMARY: December 24, 1998 the Forest Service published a Notice of Intent to prepare an environmental impact statement (EIS) for the Gardin–Taco Ecosystem Restoration Projects in the Federal Register (63 FR 71264). The Forest Service is revising the proposed action, the preliminary issues, the dates the EIS is expected to be available for public review and comment, and the release of the final EIS.

The allotment management plan and decision for the Cusick-Gardiner Livestock Allotment has been completed. This range allotment management planning is no longer part of the decision to be made for these projects. The preliminary issues are roads and road management, vegetation management tools, noxious weeds and recreation use. The draft EIS should be available in June 2001, and the final EIS should be available in September 2001.

The Responsible Official is Nora B. Rasure, Forest Supervisor, 765 North Main, Colville, WA 99114, phone: 509 684–7000, fax: 509 684–7280.

DATES: Comments concerning the scope of this revised analysis should be received no later than January 9, 2001.

ADDRESSES: Send written comments to Nora B. Rasure, Forest Supervisor, 765 North Main, Colville, WA 99114, phone: 509 684–7000, fax: 509 684–7280; or Dan Dallas, Newport District Ranger, 315 North Warren, Newport, WA 99156, phone: 509–447–7300, fax: 509 447–7301, TTY: 509 447–7302; email: ddallas@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Amy Dillon, Interdisciplinary Team Leader, 315 North Warren, Newport, WA 99156, phone: 509 446–7560, fax: 509 446–7580; TDY: 509 446–7516, email: adillon@fs.fed.us.

Dated: October 31, 2000.

Nora B. Rasure,

Forest Supervisor.

[FR Doc. 00–29125 Filed 11–14–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension of a currently approved information collection in support of the program for 7 CFR part 4284, subpart G.

DATES: Comments on this notice must be received by January 16, 2001 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250, Telephone: (202) 720–6819.

SUPPLEMENTARY INFORMATION:

Title: Rural Business Opportunity Grants.

OMB Number: 0570–0024.

Expiration Date of Approval: March 31, 2001.

Type of Request: Extension of a currently approved information collection.

Abstract: The objective of the Rural Business Opportunity Grant (RBOG) program is to promote sustainable economic development in rural areas. This purpose is achieved through grants made by the Rural Business-Cooperative Service (RBS) to public and private non-profit organizations and cooperatives to pay costs of economic development planning and technical assistance for rural businesses. The regulations contain various requirements for information from the grant applicants and recipients. The information requested is necessary for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to ensure that funds obtained from the Government are used appropriately. Objectives include gathering information to identify the applicant, describe the applicant's experience and expertise, describe the project and how the applicant will operate it, and other material necessary for prudent Agency decisions and reasonable program monitoring.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5.71 hours per response.

Respondents: Non-profit corporations, public agencies, and cooperatives.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 8.66.

Estimated Number of Responses: 866.

Estimated Total Annual Burden on Respondents: 8,044 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Business-Cooperative Service, including whether the information will have practical utility; (b) the accuracy of the Rural Business-Cooperative Service's estimate of the burden on the public of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, Washington, DC 20250. All

responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 31, 2000.

Judith A. Canales,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 00–29115 Filed 11–14–00; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–803, C–307–804]

Antidumping and Countervailing Duties; Gray Portland Cement and Cement Clinker From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of five-year ("sunset") review, termination of the suspended antidumping duty and countervailing duty investigations on gray portland cement and cement clinker from Venezuela.

SUMMARY: On February 27, 2000, and March 3, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that termination of the suspended antidumping duty and countervailing duty investigations on gray portland cement and cement clinker from Venezuela would be likely to lead to continuation or recurrence of dumping. *See Gray Portland Cement and Cement Clinker From Venezuela; Final Results of Sunset Review of Suspended Antidumping Duty Investigation*, 65 FR 41050 (July 3, 2000), and *Gray Portland Cement and Cement Clinker From Venezuela, Final Results of Expedited Sunset Review of Suspended Countervailing Duty Investigation*, 65 FR 11554 (March 3, 2000).

On November 1, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that termination of the suspended antidumping duty and countervailing duty investigations on gray portland cement and cement clinker from Venezuela would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Gray Portland Cement and Cement Clinker from Japan, Mexico, and Venezuela*, 65 FR 65327 (November 1, 2000). Therefore, pursuant to 19 CFR 351.222(i)(1), the Department is publishing this notice of termination of the suspended antidumping duty and countervailing duty investigations on gray portland cement and cement clinker from Venezuela.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1999, the Department initiated, and the Commission instituted, sunset reviews of the suspended antidumping duty and countervailing duty investigations on gray portland cement and cement clinker from Venezuela. *See* 64 FR 41915, 41958, respectively. As a result of its reviews, the Department found that termination of the suspended antidumping duty and countervailing duty investigations would likely lead to continuation or recurrence of dumping, and notified the Commission of the magnitude of the margins likely to prevail were the suspended investigations revoked.

On November 1, 2000, the Commission determined, pursuant to section 751(c) of the Act, that termination of the suspended antidumping duty and countervailing duty investigations covering cement and cement clinker from Venezuela would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Gray Portland Cement and Cement Clinker from Japan, Mexico, and Venezuela*, 65 FR 65327 (November 1, 2000), and USITC Publication 3361, Investigation Nos. 303–TA–21 (Review) and 731–TA–451, 461, and 519 (Review) (October 2000).

Scope of the Suspended Investigations

The products covered by these investigations are gray portland cement and cement clinker ("portland cement") from Venezuela. Gray portland cement is a hydraulic cement and the primary component of concrete. Cement clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Oil well cement is also included within the scope. Microfine cement was specifically excluded from the scope. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule ("HTS") item number 2523.29, and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under item number 2523.90 as other hydraulic cements. The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive as to the scope of the product coverage.

Determination

As a result of the determination by the Commission that termination of the suspended antidumping duty and countervailing duty investigations would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the termination of the suspended antidumping duty and countervailing duty investigations on gray portland cement and cement clinker from Venezuela.

Effective Date of Termination

The termination of the suspended investigations is effective as to all entries, or withdrawals from warehouse, of the subject merchandise on or after January 1, 2000.

Dated: November 8, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–29253 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of administrative reviews.

SUMMARY: The United States Court of International Trade and the United

States Court of Appeals for the Federal Circuit have affirmed the Department of Commerce's final remand results affecting final assessment rates for the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The period of review is May 1, 1993, through April 30, 1994. As there are now final and conclusive court decisions in these actions, we are amending our final results of reviews and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to these reviews.

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR Part 353 (1995).

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1996, the Department published its final results of administrative reviews of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof, from Thailand, covering the period May 1, 1993, through April 30, 1994 (61 FR 33711), and on December 17, 1996, the Department published its final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof, from France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom, covering the period May 1, 1993, through April 30, 1994 (61 FR 66471) (collectively, *AFBs 5*). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). Subsequently, one domestic producer, the Torrington Company, and a number of other interested parties filed lawsuits with the U.S. Court of International Trade (CIT) challenging the final results. These lawsuits were litigated at the CIT and the United States Court of Appeals for the Federal Circuit (CAFC). In the course of this litigation, the CIT issued a number of orders and opinions, of which the following have resulted in changes to the antidumping margins calculated in AFBs 5:

The Torrington Co. v. *United States*, Slip Op. 97–105 (July 28, 1997), with respect to Thailand;

FAG U.K. Ltd., The Barden Corporation (U.K.) Ltd., FAG Bearings Corporation, RHP Bearings Ltd., NSK Bearings Europe Ltd. and NSK Corporation v. *United States*, Slip Op. 98–133 (September 16, 1998), with respect to the United Kingdom;

SKF USA Inc. v. *United States*, Slip Op. 99–43 (May 13, 1999), with respect to Italy;

SKF USA Inc. v. *United States*, Slip Op. 99–56 (June 29, 1999), with respect to France;

NTN Bearing Corp. of America, et al. v. *United States*, Slip Op. 99–71 (July 29, 1999), with respect to Japan;

SKF USA Inc. v. *United States*, Slip Op. 99–127 (December 2, 1999), with respect to Germany;

SKF USA Inc. v. *United States*, Slip Op. 00–2 (January 5, 2000), with respect to Sweden.

In the context of the above-cited litigation, the CIT ordered the Department to make methodological changes and to recalculate the antidumping margins for certain firms under review. Specifically, the CIT ordered the Department to make the following changes on a company-specific basis:

NMB Thailand—determine a proper methodology for calculating profit for constructed value;

FAG UK—(1) recalculate FAG U.K.'s dumping margin, treating it as a distinct entity from Barden, and (2) correct a clerical error;

Barden—(1) recalculate Barden's dumping margin, treating it as a distinct entity from FAG U.K., (2) recalculate the dumping margin without regard to the results of the test for below-cost sales, and (3) correct a clerical error;

NSK-RHP—(1) exclude transactions not supported by consideration from the U.S. sales database, (2) exclude sample transfers which lacked consideration from the home-market sales database for the purpose of calculating profit for constructed value, (3) recalculate constructed value by applying the arm's-length and profit-variance tests to related-party transactions involving consideration and using sales of such or similar merchandise for any remaining unrelated-party sales, and (4) reduce the cost of manufacture and constructed value by post-sale domestic inland-freight costs;

SKF Italy—exclude sample transactions not supported by consideration from the U.S. sales database;

SKF France—exclude sample transactions not supported by consideration from the U.S. sales database;

NTN Japan—exclude sample transactions not supported by consideration from the U.S. sales database;

Koyo Seiko—determine whether it is possible to isolate and remove the portions of Koyo's home-market warranty expenses which relate to non-scope merchandise from the adjustment to foreign market value or to deny the adjustment if such an apportionment cannot be made;

SKF Germany—(1) exclude sample transactions not supported by consideration from the U.S. sales database, and (2) remove rebates paid on sales of non-scope merchandise from any adjustments made to SKF's foreign market value or, if there is no viable method to do so, deny the adjustment;

FAG Germany—apply the profit-variance test to each customer which failed the arm's-length test before calculating the profit element of constructed value;

SKF Sweden—(1) exclude sample transactions not supported by consideration from the U.S. sales database, (2) convert the difference-in-merchandise variable using the appropriate exchange rate, (3) convert the value for home-market variable cost of manufacturing from Swedish krona to U.S. dollars, (4) convert certain variables to reflect that they were reported in hundreds of Italian lira, and (5) correct the programming language that calculates home-market indirect selling expenses.

The CAFC affirmed the Department's final remand results affecting final assessment rates for all the above cases. As there are now final and conclusive court decisions in these actions, we are amending our final results of review in these matters, and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to these reviews.

Amendment to Final Results

Pursuant to section 516A(e) of the Tariff Act, we are now amending the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom, for the period May 1, 1993, through April 30, 1994. The revised weighted-average margins are as follows:

Company	BBs	CRBs	SPBs
France: SKF	3.73	(1)	[3] 18.80
Germany:			
FAG	12.93	13.57	[3] 2.00
SKF	3.04	9.45	14.36
Italy: SKF	3.21	(2)	
Japan:			
Koyo Seiko	[3] 14.90	[3] 6.53	(1)
NTN	14.33	[3] 11.05	[3] 32.33
Sweden: SKF	1.93	[3] 0.00	
Thailand: NMB/Pelmec	0.23		
United Kingdom:			
Barden	1.06	(1)	
FAG	3.31	(1)	
NSK/RHP	7.14	7.12	

(1) No shipments or sales subject to this review.
(2) Not subject to review.
(3) No change to the margin as a result of litigation.

Accordingly, the Department will determine and the U.S. Customs Service will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by these reviews. Individual differences between United States price and foreign market value may vary from the percentages listed above. For companies covered by these amended results, the Department will issue appraisement instructions to the U.S. Customs Service after publication of these amended final results of reviews.

This notice is published pursuant to section 751(a) of the Tariff Act.

Dated: November 3, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–29257 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 6, 2000, the Department of Commerce (the "Department") published the preliminary results of administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above ("DRAMs") from the Republic of Korea. The merchandise covered by this order are DRAMs from the Republic of Korea. The review covers two manufacturers, Hyundai Electronics Industries Co., Ltd. and Hyundai Electronics America (collectively "Hyundai"), and LG Semicon Co., Ltd. and LG Semicon America (collectively "LG"), and four exporters, G5 Corporation ("G5"), Kim's Marketing, Jewon Trading ("Jewon"), and Wooyang Industry Co., Ltd. ("Wooyang"). The period of review ("POR") is May 1, 1998, through April 30, 1999.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "*Final Results of the Review.*"

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: John Conniff or Alexander Amdur, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone: (202) 482–1009 or 482–5346, respectively.

SUPPLEMENTARY INFORMATION:

The 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, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On June 6, 2000, the Department published the preliminary results of administrative review of the antidumping duty order on DRAMs from Korea. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order in Part,* 65 FR 35886 (June 6, 2000). We invited parties to comment on our preliminary results of review. On September 5, 2000, we received case briefs from Micron Technology, Inc. ("Micron"), the petitioner, Hyundai, and LG. On September 12, 2000, we received rebuttal briefs from Micron, Hyundai, and LG. The petitioner requested a public hearing on June 12, 2000, and a public hearing was held on September 20, 2000. The Department has conducted this administrative review in accordance with section 751 of the Act.

Effective January 1, 2000, the Department revoked the antidumping duty order on dynamic random access memory semiconductors of one megabit and above ("DRAMs") from the

Republic of Korea, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1). *See DRAMs from the Republic of Korea; Final Results of Full Sunset Review and Revocation of Order*, 65 FR 5939 (October 5, 2000). Therefore, we will not issue cash deposit instructions to the U.S. Customs Service ("Customs") based on the results of this review. We are conducting a truncated administrative review for the May 1, 1999, through December 30, 1999 period. Since the revocation is currently in effect, current and future imports of DRAMs from Korea will be entered into the United States without regard to antidumping duties. We have instructed Customs to liquidate all entries as of January 1, 2000 without regard to antidumping duties.

Scope of Review

Imports covered by the review are shipments of DRAMs from Korea. Included in the scope are assembled and unassembled DRAMs. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules ("SIPs"), single in-line memory modules ("SIMMs"), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter ("VGA") boards and cards, are not included in the scope. The scope of this review also includes video random access memory semiconductors ("VRAMS"), as well as any future packaging and assembling of DRAMs; and, removable memory modules placed on motherboards, with or without a central processing unit ("CPU"), unless the importer of motherboards certifies with the Customs Service that neither it nor a party related to it or under contract to it will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMS and modules subject to this review are currently classifiable under subheadings 8471.50.0085, 8471.91.8085, 8542.11.0024, 8542.11.8026, 8542.13.8034, 8471.50.4000, 8473.30.1000, 8542.11.0026, 8542.11.8034, 8471.50.8095, 8473.30.4000, 8542.11.0034, 8542.13.8005, 8471.91.0090, 8473.30.8000, 8542.11.8001, 8542.13.8024, 8471.91.4000, 8542.11.0001, 8542.11.8024 and 8542.13.8026 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this review remains dispositive.

Facts Available ("FA")

In accordance with section 776(a) of the Act, we have determined that the use of adverse FA is warranted for G5, Kim's Marketing, Jewon, and Wooyang for these final results of review.

1. Application of FA

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. In this review, as described in detail below, the above-referenced companies failed to provide the necessary information in the form and manner requested, and, in some instances, the submitted information could not be verified. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is "deficient" under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (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; and (5) the information can be used without undue difficulties.

The Department has concluded that, because G5, Kim's Marketing, Jewon, and Wooyang failed to respond to the Department's questionnaire, a determination based on a total FA is warranted for these companies. *See* the *Preliminary Results* for a detailed discussion of this analysis.

2. Selection of FA

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). In the *Preliminary Results*, the Department determined that by not responding to the Department's questionnaire, each of these four companies did not act to the best of its respective abilities, and therefore an adverse inference is warranted in applying facts available for these companies.

For the final results, no interested party comments were submitted regarding this issue and we continue to find that the failure of G5, Kim's Marketing, Jewon, and Wooyang to respond to the Department's questionnaire in this review demonstrates that these entities failed to cooperate by not acting to the best of their ability. Thus, consistent with the Department's practice in cases where a respondent fails to respond to the Department's questionnaire, in selecting FA for G5, Kim's Marketing, Jewon, and Wooyang in this review, an adverse inference is warranted. Therefore, we are assigning G5, Kim's Marketing, Jewon, and Wooyang an adverse FA rate of 10.44 percent, the rate calculated for Hyundai in a previous review and the

highest margin from any segment of the proceeding related to DRAMS from Korea.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") from Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration, dated November 3, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/summary/list.htm*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the "Decision Memorandum."

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period April 1, 1998 through, May 30, 1999:

Manufacturer/exporter	Margin (percent)
LG	1.18
Hyundai	2.30
G5	10.44
Wooyang	10.44
Jewon	10.44
Kim's Marketing	10.44

Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise.

These final results of review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review. For duty-assessment purposes, we calculated importer-specific assessment rates by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total estimated entered value reported for those sales. Hyundai and LG, in accordance with the Department's questionnaire, estimated the entered value of their respective sales by calculating the average of the entered value of each control number for the POR. For all other respondents, we based assessment rate on the facts available margin percentage.

Notification

This notice serves as a final 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 doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 3, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comments and Responses

1. Currency Conversions
2. Calculation of Foreign Currency Transaction Gains
3. Offset to Foreign Currency Translation Losses
4. Calculation of Foreign Currency Translation Gains
5. Allocation of Foreign Currency Translation Gains and Losses
6. Foreign Exchange Translation Losses in Construction in Progress ("CIP") Account
7. Offset for Long-Term Interest Income
8. Unspecified Foreign Exchange Gains and Losses
9. Research and Development ("R&D")
10. Cross-Fertilization of R&D
11. Use of Cost of Goods Sold ("COGS") to Calculate R&D Ratio
12. Calculation of LG's R&D Ratio
13. Calculation of LG's G&A Ratio
14. Increase in Useful Lives
15. Adjustment to Depreciation
16. Programming Error in LG's Depreciation Adjustment
17. Adjustment for Special Depreciation for LG
18. Level of Trade ("LOT")/Constructed Export Price ("CEP") Offset
19. LG's Interest Expense
20. Calculation of CEP Profit for LG
21. Correction of LG's Concordance Program
22. Overstatement of LG's Duty Assessment Rate

[FR Doc. 00–29256 Filed 11–14–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

(A–484–801)

Electrolytic Manganese Dioxide From Greece: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 15, 2000, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece. The review covers one producer/exporter, Tosoh Hellas, during the period of review April 1, 1998, through March 31, 1999.

We gave interested parties an opportunity to comment on the preliminary results. We have made one change in our calculations. The review indicates the existence of no dumping margins for Tosoh Hellas during this period.

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Richard Rimlinger, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230;

telephone: (202) 482–3477 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

Background

On May 8, 2000, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on electrolytic manganese dioxide (EMD) from Greece. See *Preliminary Results of Antidumping Duty Administrative Review: Electrolytic Manganese Dioxide from Greece,* 65 FR 26570 (May 8, 2000) (Preliminary Results). Kerr-McGee Chemical LLC and Chemetals, Inc. (collectively "the petitioners"), submitted their case briefs on June 7, 2000. Tosoh Hellas (Tosoh), the sole respondent in this review, submitted its case brief on June 7, 2000. Tosoh submitted its rebuttal brief on June 12, 2000. The petitioners did not submit a rebuttal brief. We held a hearing on June 29, 2000. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of EMD from Greece. EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms (powder, chip, or plate) and two grades (alkaline and zinc chloride). EMD in all three forms and both grades is included in the scope of the order. This merchandise is currently classifiable under item number 2820.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number is provided for convenience and customs purposes. It is not determinative of the products subject to the order. The written product description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by the petitioners and Tosoh are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, to Troy H. Cribb, Acting Assistant Secretary, dated November 6, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an appendix. This Decision Memo, which is a public document, is on file in the Central Records Unit, Main Commerce Building, Room B–099, and is accessible on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Sunset Revocation

On April 20, 2000, the International Trade Commission (ITC), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on EMD from Greece would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Therefore, because the order was revoked on May 31, 2000, as a result of the ITC's determination with an effective date of January 1, 2000, no deposit requirements will be effective for shipments entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review.

Changes From the Preliminary Results

We made one change in our calculations for these final results. We used Tosoh's revised U.S. variable cost-of-manufacturing figure in our margin calculation (see Decision Memorandum, Comment 2).

Final Results of Review

We have determined that a weighted-average margin of zero percent exists for Tosoh for the period April 1, 1998, through March 31, 1999. The Department will issue appraisement instructions directly to the Customs Service.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 3, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix

Comments and Responses

1. Facts Available
2. Foreign Like Product
3. Home Market Viability/Particular Market Situation
4. Date of Sale
5. Credit Expense

[FR Doc. 00–29258 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–815; A–201–802]

Continuation of Antidumping Duty Orders: Gray Portland Cement and Cement Clinker from Japan and Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty rrders: Gray portland cement and cement clinker from Japan and Mexico.

SUMMARY: On March 3, 2000, and July 3, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico would be likely to lead to continuation or recurrence of dumping. See Gray Portland Cement and Cement Clinker From Japan; Final Results of Antidumping Duty Expedited Sunset Review, 65 FR 11549 (March 3, 2000), and Gray Portland Cement and Cement Clinker From Mexico; Final Results of Full Sunset Review, 65 FR 41049 (July 3, 2000).

On November 1, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Gray Portland Cement and Cement Clinker

from Japan, Mexico, and Venezuela, 65 FR 65327 (November 1, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing this notice of continuation of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico.

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 41915 and 64 FR 41958) of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico, pursuant to section 751(c) of the Act. As a result of its reviews, the Department found, on March 3, 2000, and July 3, 2000, that revocation of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders revoked. *See* 65 FR 11549 (March 3, 2000 and 65 FR 41049 (July 3, 2000), respectively.

On November 1, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Gray Portland Cement and Cement Clinker From Japan, Mexico, and Venezuela,* 65 FR 65327 (November 1, 2000) and USTIC Publication 3361, Investigation Nos. 303–TA–21 (Review) and 731–TA–451, 461, and 519 (Review)(October 2000).

Scope of the Orders

See Appendix

Determination

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico. The Department will instruct the Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than October 2005.

Dated: November 8, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

Japan

The products covered by this order are gray portland cement and cement clinker ("portland cement") from Japan. Gray portland cement is a hydraulic cement and the primary component of concrete. Cement clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Microfine cement was specifically excluded from the antidumping duty order. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule ("HTS") item number 2523.29, and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under item number 2523.90 as "other hydraulic cements." The Department made two scope rulings regarding the subject merchandise. *See* Scope Rulings, 57 FR 19602 (May 7, 1992), classes G and H of oil well cement are within the scope of the order; and Scope Rulings, 58 FR 27542 (May 10, 1993), nittetsu super fine cements are not within the scope of the order.

The HST item numbers are provided for convenience and customs purposes. The written product description remains dispositive as to the scope of the product coverage.

Mexico

The products covered by this order include gray portland cement and clinker ("portland cement") from Mexico. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule ("HTS") item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements". In its only scope ruling, the Department determined that masonry cement is not within the scope of the order. *See* Scope Ruling 61 FR 18381 (April 25, 1996).

The HTS subheadings are provided for convenience and customs purposes only. The written product description remains dispositive as to the scope of the product coverage.

[FR Doc. 00–29252 Filed 11–14–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Central Institute for the Deaf; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–030. *Applicant:* Central Institute for the Deaf, St. Louis, MO 63110. *Instrument:* Electron Microscope, Model H–7500. *Manufacturer:* Hitachi, Japan. *Intended Use:* See notice at 65 FR 59175, October 4, 2000. *Order Date:* March 3, 2000.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 00–29254 Filed 11–14–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–035. *Applicant:* Washington University School of Medicine, Department of Anesthesiology Research Unit, 660 South Euclid, Campus Box 8054, St. Louis, MO 63110. *Instrument:* Motorized Manipulator. *Manufacturer:* Luigs and Neumann, Germany. *Intended Use:* The instrument will be used to move the microelectrode for patch clamping the synaptic terminal during studies of synaptic connections between neurons to determine the electrical properties of a synapse in the auditory system in the rat. *Application accepted by Commissioner of Customs:* October 20, 2000.

Docket Number: 00–036. *Applicant:* University of Wisconsin-Madison, Electrical and Computer Engineering, 1415 Engineering Drive, Madison, WI 53706. *Instrument:* Telecommunications Instrumentation Modeling System, Model TIMS–301. *Manufacturer:* Emona Instruments Pty Ltd., Australia. *Intended Use:* The instrument will be used in the creation of an undergraduate communication laboratory as companion courses to the undergraduate communications systems sequence, ECE436 and ECE437. Such laboratories are essential to prepare students for the communications industry. Students in these courses will use the system to simulate different modulations and demodulation techniques by constructing modems. The planned experiments will reinforce the theory presented in the classroom and provide students with hands-on-experience. *Application accepted by Commissioner of Customs:* October 20, 2000.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 00–29255 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 95–3A006."

The Water and Wastewater Equipment Manufacturers Association's ("WWEMA") original Certificate was issued on June 21, 1996 (61 FR 36708, July 12, 1996) and previously amended on May 20, 1997 (62 FR 29104, May 29, 1997) and February 23, 1998 (63 FR 10003, February 27, 1998). A summary of the application for an amendment follows.

Summary of the Application:

Applicant: The Water and Wastewater Equipment Manufacturers Association, 101 E. Holly Avenue, Suite 3, Sterling, Virginia 20164.

Contact: Randolph J. Stayin, Counsel, Telephone: (202) 289–1313.

Application No.: 95–3A006.

Date Deemed Submitted: November 2, 2000.

Proposed Amendment: WWEMA seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Aqua-Aerobic Systems, Inc., Rockford, Illinois; Pentair Pump Group, Inc., North Aurora, Illinois; and Sanitaire Corporation, Brown Deer, Wisconsin;

2. Delete the following companies as "Members" of the Certificate: Aero-Mod, Incorporated, Manhattan, Kansas; Elsag Bailey Process Automation N.V. for the activities of its unit Bailey-Fischer & Porter Company, Warminster, Pennsylvania; CBI Walker, Inc., Aurora, Illinois; Dorr-Oliver Incorporated, Milford, Connecticut; Enviroquip, Inc., Austin, Texas; General Signal Corporation for the activities of its unit General Signal Pump Group, North Aurora, Illinois; Great Lakes Environmental, Inc., Addison, Illinois; Hycor Corporation, Lake Bluff, Illinois; I. Kruger, Inc., Cary, North Carolina; Jeffrey Chain Corporation, Morristown, Tennessee; Mass Transfer Systems, Inc., Fall River, Massachusetts; Patterson Pump Co., Taccoa, Georgia; SanTech,

Inc. dba Sanborn Technologies, Medway, Massachusetts; Wallace & Tiernan, Inc., Belleville, New Jersey; Water Equipment Technologies, Inc., West Palm Beach, Florida; Water Pollution Control Corp, Brown Deer, Wisconsin; Waterlink, Inc., Canton, Ohio; and Waterlink Operational Services, Inc. dba Blue Water Services, Manhattan, Kansas;

3. Change the listing of the company name for the current Member A.O. Smith Harvestore Products, Inc. to the new listing A.O. Smith Engineered Storage Products Company; and

4. Remove from the current Certificate, the restriction found under Export Trade Activities and Methods of Operation Paragraph F (1–3) placed on Restricted Members Conservatek Industries, Inc. and Temcor regarding the Restricted Product Aluminum Covers:

1. Participation in any price discussion is limited to instances in which the prices are discussed and determined solely in the following manner: a Neutral Third Party, as hereinafter defined, acting independently, will obtain price information concerning each Restricted Product for which the Restricted Members listed in conjunction therewith intend to participate as part of a joint bid or other sales arrangement, and will incorporate such price information into the bid or other arrangement.

(i) For purposes of this paragraph, "acting independently" means that the Neutral Third Party who obtains the price information from the Restricted Members, and who negotiates offer prices on behalf of the Restricted Members, will not disclose the price information of one Restricted Member to another Restricted Member intending to participate in a joint bid or other sales arrangement as a Supplier of the Restricted Products.

(ii) For purposes of this paragraph, "Neutral Third Party" means an individual, partnership, corporation (profit or non-profit), or any representative thereof which is not engaged in the manufacture, distribution, or sale of any Restricted Product. Any Member may be a Neutral Third Party as long as it meets the requirements set out above.

2. The limitation set forth in paragraph F.1 above also shall apply to instances where more than one Restricted Member intends to participate in the joint bid or other sales arrangement but the participation of one is solely as an Export Intermediary for the Export Trade Activity or Method of Operation.

3. Neither WWEMA nor any Member participating in the Export Trade Activity or Method of Operation shall disclose the price information of one Restricted Member to another Restricted Member with respect to the relevant Restricted Product.

Dated: November 8, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–29092 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 96–049US.

Title: Power Sensor.

Abstract: A method for forming a single cavity in a substrate, which may extend approximately the length of a device located on top of the substrate, and device produced thereby. The device has a length and a width, and may extend approximately the length of the substrate. After locating the device on the surface of the substrate, a first etchant is applied through openings on the surface of the substrate. Subsequently, a second etchant is applied through the same openings on the surface of the substrate. As a result, a single cavity is formed beneath the surface of the device, suspending the device and minimizing electrical coupling. This invention is jointly owned by the Government and another party. The Government's interest is available for licensing.

NIST Docket Number: 99–007PCT.

Title: Polymer Layered Inorganic Nanocomposites.

Abstract: Polymer layered silicate nanocomposites are novel materials that have improved stiffness, barrier properties, and flammability properties. Although melt intercalation has been shown for some systems this approach has limitations and may not produce the same type of nanocomposites as the in situ polymerization approach. Several examples have shown that the driving force of a polymerization reaction is required to obtain complete dispersion of the silicate in the polymer. This in situ polymerization method has been proven for polyamides, polyesters and epoxies; however, new methods of preparation are needed, especially for non-polar polymers. This demonstrates that novel exfoliated polymer layered silicate nanocomposites can be prepared using metal catalysts, which have been intercalated into layered silicates. This process we define as "in situ transition-metal mediated polymerization." This invention is available only for non-exclusive licensing.

Dated: November 8, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–29161 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, December 5, 2000 from 8:15 a.m. to 5:15 p.m. and Wednesday, December 6, 2000 from 8 a.m. to 12:45 p.m. The Visiting Committee on

Advanced Technology is composed of fourteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; a presentation by one of the Visiting Committee members entitled, "The Chemical Industry—Fossil or Phoenix?"; an indepth review of the Physics Laboratory; a cross-cut review of Patent Policy; a cross-cut review of Microelectronics; and a laboratory tour. Discussions scheduled to begin at 4 p.m. and end at 5:15 p.m. on December 5, 2000 and to being at 8 a.m. and to end at 12:45 p.m. on December 6, 2000, on staffing of management positions at NIST, the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership, and feedback sessions will be closed.

DATES: The meeting will convene December 5, 2000 at 8:15 a.m. and will adjourn at 12:45 p.m. on December 6, 2000.

ADDRESSES: The meeting will be held in the Employees' Lounge (seating capacity 80, includes 38 participants), Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Janet R. Russell, Administrative Coordinator, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–2107.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on July 12, 2000, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussions of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 8, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–29162 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103000B]

Marine Mammals; File No. 87-1593

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of supplemental application.

SUMMARY: Notice is hereby given that Dr. Daniel P. Costa, Professor of Biology, Institute of Marine Sciences, University of California, Santa Cruz, CA 95064, has submitted supplemental information to scientific research permit application No. 87-1593.

DATES: Written or telefaxed comments must be received on or before December 15, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213 (562/980-4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Simona Roberts, 301/713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to capture, measure, immobilize, tag, sample and release up to 25 Crabeater seals (*Lobodon carcinophagus*) annually, and up to 10 each: Leopard seals (*Hydrurga leptonyx*), Weddell seals (*Leptonychotes weddellii*) and Ross seals (*Ommatophoca rossii*) in Antarctica. This project will determine the distribution and foraging behavior of adult Crabeater seals, and simultaneously assess the impact that oceanographic features and prey aggregations have on the foraging strategies employed.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 7, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–29269 Filed 11–14–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 16, 2001.

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, Regulatory Information Management Group, Office of the 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. 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 8, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: National Assessment of Adult Literacy.

Frequency: One time.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden: Responses: 956; Burden Hours: 703.

Abstract: The 2002 National Adult Assessment of Literacy (NAAL) will assess the current status of the English language skills of adults in the United States, as well as indicate how literacy proficiencies have changed since the 1992 National Adult Literacy Survey (NALS). The sample consists of adults 16 years of age and older who reside in private households at the time of the assessment.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address *Kathy_Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–29166 Filed 11–14–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 15, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov*.

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, Regulatory Information Management Group, Office of the 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.

Dated: November 8, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: New.

Title: OSFA Customer Satisfaction Survey Master Plan.

Frequency: As needed.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 15,000; Burden Hours: 100,000.

Abstract: The Higher Education Amendments of 1998 established the Office of Student Financial Assistance (SFA) as the Government's first Performance-Based Organization (PBO). That legislation specifies that one purpose of the PBO is to improve program services and processes for students and other participants in the student financial assistance programs. This requirement establishes an ongoing need for SFA to be engaged in an interactive process of collecting information and using it to improve the delivery of student financial aid. As such, SFA is seeking CMB approval of a clearance process for customer satisfaction surveys and focus groups for years 2001–2003.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC

20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–29167 Filed 11–14–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 15, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren__Wittenberg@omb.eop.gov.*

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, Regulatory Information Management Group, Office of the 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.

Dated: November 8, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Study to Assess the Quality of Vocational Education in the United States.

Frequency: One-time.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden: Responses: 3,000; Burden Hours: 1,500.

Abstract: As part of the National Assessment of Vocational Education, the study to assess the quality of vocational education proposes to conduct a nationally representative survey of high school teachers. The 30-minute survey will examine the prevalence of promising instructional practices recommended in the 1998 Perkins Act. It will assess differences in practice between academic and vocational teachers and comprehensive and vocational high schools. Findings from the survey will be incorporated into a report on secondary school vocational education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–29168 Filed 11–14–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3751–000]

ANP Funding I, L.L.C.; Notice of Issuance of Order

November 7, 2000.

ANP Funding I, L.L.C. (ANP) submitted for filing a rate schedule under which ANP will engage in wholesale electric power and energy transactions at market-based rates. ANP also requested waiver of various Commission regulations. In particular, ANP requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by ANP.

On October 31, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ANP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, ANP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ANP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 27, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NW., Washington, DC 20426. The Order may also be viewed on the Internet at *http:/*

/www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–29171 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3583–000]

Arizona Independent Scheduling Administrator Association; Notice of Filings

November 8, 2000.

On October 5, 2000, by delegated authority, a deficiency letter in the instant proceeding determined that Arizona Independent Scheduling Administrator Association's filing in the instant proceeding was deficient, pending submission by Arizona Public Service (APS) and Tucson Electric Power Company (Tucson) of modifications in their own open access transmission tariffs. APS made such a filing, in Docket No. ER01–173–000, on October 20, 2000. Tucson filed modifications to its tariff, as revised, in Docket No. ER01–208–000, on October 25, 2000. As a consequence, the date for the submission of comments, protests, and interventions in Docket No. ER00–3583–000 will be November 15, 2000. The comment dates for Docket Nos. ER01–173–000 and ER01–208–000 remain November 8, 2000 and November 15, 2000, respectively.

Any person desiring to be heard or to protest such filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the above-mentioned dates. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. These filings may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29207 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2814–002]

Commonwealth Edison Company, Notice of Filing

November 7, 2000.

Take notice that on October 25, 2000, Commonwealth Edison Company (ComEd), tendered for filing an executed Dynamic Scheduling Agreement (DSA) with Commonwealth Edison Company in its Wholesale Merchant Function (WEG).

ComEd requests the same effective date of January 1, 2000 for the DSA that ComEd requested and was granted in docket No. ER00–940–000, in which ComEd submitted an unexecuted DSA between ComEd and WEG.

ComEd has served a copy of this filing on WEG and on the parties listed on the official service list in this proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 15, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29174 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3454–000, ER00–3454–001]

Duke Power, a Division of Duke Energy Corporation; Notice of Issuance of Order

November 7, 2000.

Duke Power, a Division of Duke Energy Corporation (Duke Power) submitted for filing a rate schedule under which Duke Power will engage in wholesale electric power and energy transactions at market-based rates. Duke Power also requested waiver of various Commission regulations. In particular, Duke Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Duke Power.

On October 24, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Duke Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may

also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–29173 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3696–000]

Griffith Energy, LLC Notice of Issuance of Order

November 7, 2000.

Griffith Energy, LLC (Griffith Energy) submitted for filing a rate schedule under which Griffith Energy will engage in wholesale electric power and energy transactions at market-based rates. Griffith Energy also requested waiver of various Commission regulations. In particular, Griffith Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Griffith Energy.

On October 25, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Griffith Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Griffith Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Griffith Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 27, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–29175 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3734–000]

KPIC North America Corporation; Notice of Issuance of Order

November 7, 2000.

KPIC North America Corporation (KPIC) submitted for filing a rate schedule under which KPIC will engage in wholesale electric power and energy transactions at market-based rates. KPIC also requested waiver of various Commission regulations. In particular, KPIC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by KPIC.

On October 24, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by KPIC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, KPIC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of KPIC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–29172 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–75–000]

Mississippi River Transmission Corporation; Notice of Tariff Filing

November 8, 2000.

Take notice that on November 1, 2000, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed below to be effective December 1, 2000.

Thirty Seventh Revised Sheet No. 5
Thirty Seventh Revised Sheet No. 6
Thirty Fourth Revised Sheet No. 7

MRT states that the purpose of this filing is to remove the Gas Price Differential Gas Supply Realignment Costs (GSRC) surcharge from MRT's FT, SCT and IT rates.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29199 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010]

New York Power Authority; Notice of Meeting to Discuss Preliminary Terms and Conditions for Relicensing of the St. Lawrence-FDR Power Project

NOVEMBER 8, 2000. The establishment of the Cooperative Consultation Process (CCP) Team and the Scoping Process for relicensing of the St. Lawrence-FDR Power Project was identified in the Notice of Memorandum of Understanding, Formation of Cooperative Consultation Process Team, and Initiation of Scoping Process Associated With Relicensing the St. Lawrence-FDR Power Project issued May 2, 1996, and found in the **Federal Register** dated May 8, 1996, Volume 61, No. 90, on page 20813.

The CCP Team will meet on November 21, 2000, to discuss the preliminary terms and conditions filed with the Federal Energy Regulatory Commission (Commission) per the Notice issued on August 11, 2000, and the Notice extending the comment period to September 29, 2000. The meeting will be conducted at the New York Power Authority's (NYPA) Robert Moses Powerhouse, at 10:00 a.m., located in Massena, New York.

If you would like more information about the CCP Team and the relicensing process, please contact any one of the following individuals:

Mr. Thomas R. Tatham, New York Power Authority, (212) 468–6747, (212) 468–6141 (fax), e-mail: *Tatham.T@NYPA.Gov*

Mr. Bill Little, Esq., New York State Dept. of Environmental Conservation, (518) 457–0986, (518) 457–3978 (fax), e-mail:*WGLittle@GW.DEC.State.NY.US*

Dr. Jennifer Hill, Federal Energy Regulatory Commission, (202) 219–2797, (202) 219–2152 (fax), e-mail:*Jennifer.Hill@FERC.FED.US*

Further information about NYPA and the St. Lawrence-FDR Power Project can be obtained through the Internet at *http://www.ferc.fed.us.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29204 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–22–000; CP01–23–000; CP01–24–000; and CP01–25–000]

North Baja Pipeline LLC; Notice of Applications

November 8, 2000.

Take notice that on November 1, 2000, North Baja Pipeline LLC ("NBP"), 1400 SW Fifth Avenue, Suite 900, Portland, Oregon 97201, filed applications in Docket Nos. CP01–22–000 and CP01–23–000 pursuant to Sections 7(c) and 3 of the Natural Gas Act, respectively. In these applications, NBP seeks a certificate of public convenience and necessity to construct, install, own, operate and maintain a new interstate natural gas pipeline and ancillary facilities as well as authorization and a Presidential Permit to construct, operate and maintain pipeline facilities at the international border. Further, NBP seeks in Docket No. CP01–24–000 a blanket certificate pursuant to Subpart G of Part 284 of the Commission's regulations to provide open-access transportation of natural gas for others. Moreover, in Docket No. CP01–25–000, NBP requests a blanket certificate pursuant to Subpart F of Part 157 of the Commission's regulations to perform certain routine activities and operations.[1] NBP also seeks approval of its initial rates and pro forma tariff provisions included in Docket No. CP01–22–000, *et al.* The applications may be viewed on the Commission's web site at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

[1] NBP submitted Docket Nos. CP01–22–000, CP01–24–000, and CP01–25–000 (Docket No. CP01–22–000, *et al.*) as one filing and separately filed its request for a Presidential Permit in Docket No. CP01–23–000.

NBP submits that it is a limited liability company formed under the laws of the State of Delaware, with its principal place of business in Portland, Oregon. NBP further states that it is owned by PG&E Gas Transmission Holdings Corporation.

NBP states that within three days of issuance of this notice, it will provide notice to directly affected and adjacent landowners notifying them that NBP's request to construct facilities has been filed. NBP states that this notification will include the information required by the Commission regulations.

NBP proposes to construct and operate a pipeline system, which would carry 500,000 Mcf per day of natural gas from an interconnection point with El Paso Natural Gas Company ("El Paso") near Ehrenberg, Arizona. At this proposed interconnect, NBP proposes to construct the Ehrenberg Compressor Station that would consist of three 6,270 horsepower (hp), gas fired centrifugal compressor units (with one additional 6,270 hp spare unit). The proposed system would extend approximately 79.8 miles through southeast California, to a point on the International border between Yuma, Arizona and Mexicali, North Baja California, Mexico. NBP's mainline facilities would consist of approximately 11.5 miles of 36-inch from the Ehrenberg Compressor Station and 68.3 miles of 30-inch pipe to the international border. At the international border, NBP indicates that it would interconnect with a similarly sized pipeline, Gasoducto Bajanorte, to be constructed by Sempra Energy Mexico ("Sempra"). Gasoducto Bajanorte would then transport gas west through Mexicali and on to Tijuana, Mexico, where it would interconnect with an existing pipeline, Transportadora de Gas Natural de Baja California ("TGN"). It is stated that TGN runs from Rosarito, Mexico, to an interconnection with the facilities of San Diego Gas and Electric Company at the San Diego/Tijuana border.

NBP asserts that its filings meet the requirements of the Commission's regulations regarding certificate applications and the standards set forth in the Commission's Statement of Policy issued in Docket No. PL 99–3–000. Specifically, NBP states that, as a new pipeline, its project passes the Commission's "no subsidies" test, and further, its project was developed to eliminate or minimize impacts on the potentially affected interests of existing customers, captive shippers of existing pipelines, and landowners and the environment.

NBP states that it held an open season in which it made capacity on its system

available to interested shippers on a not unduly discriminatory basis. As a result, NBP indicates that it has executed precedent agreements with four shippers for more than 300 MDth of long-term firm transportation service, representing approximately 60 percent of its total proposed capacity. NBP asserts that the executed precedent agreements demonstrate that there is market demand for natural gas transportation service on NBP. NBP further asserts that the market study included in Exhibit I in Docket No. CP00–22–000 *et al.*, demonstrates that projected growth in gas demand in Northern Mexico and Southern California markets supports its project.

NBP proposes to provide open-access firm transportation service under Rate Schedule FTS–1 and interruptible transportation service under Rate Schedule ITS–1, under rates, terms and conditions set forth in its pro forma tariff submitted with Docket No. CP00–22–000, *et al.* NBP proposes to offer both negotiated and recourse rates. NBP's submits that its proposed recourse rates are cost-of-service rates, designed under the straight-fixed variable method. NBP states that during its open season process it offered firm shippers the choice of negotiated or recourse rates and each shipper who executed a precedent agreement elected negotiated rates.

NBP estimates that the total capital cost of constructing the pipeline and appurtenant facilities will be approximately $146 million (inclusive of AFUDC). Of the total estimated capital construction cost, NBP states that $110 million relates to pipeline and ancillary facilities, and $36 million relates to a compressor station. NBP anticipates that the initial capital structure on the in-service date will be 70 percent debt and 30 percent equity, with an 8.5 percent cost of debt. It proposes a 14 percent return on equity. NBP further requests that the Commission grant any waivers of its regulations that the Commission may deem necessary to grant the relief requested in its applications.

NBP proposes an in-service date by September 1, 2002. NBP requests that the Commission issue a Preliminary Determination with respect to nonenvironmental issues by June 15, 2001, and a final certificate by January 9, 2002, so that NBP can meet its proposed in-service date.

Any questions regarding the applications should be directed to John A. Roscher, Director, Rates and Regulatory Affairs, North Baja Pipeline LLC, 1400 SW Fifth Avenue, Suite 900, Portland, Oregon 97201, phone: (503) 833–4254.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 29, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition 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 petition to intervene in accordance with the Commission's Rules. Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3 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 these applications if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave 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 NBP to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29206 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–76–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 8, 2000.

Take notice that no November 1, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective December 1, 2000:

53 Revised Sheet No. 50
53 Revised Sheet No. 51
21 Revised Sheet No. 52
50 Revised Sheet No. 53
17 Revised Sheet No. 59
1 Revised Sheet No. 59A
20 Revised Sheet No. 60
1 Revised Sheet No. 60A

Northern states that this filing is to revise Northern's rates, effective December 1, 2000, to reflect an adjustment for the return and tax components associated with the System Levelized Account (SLA) balance as of March 31, 2000.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29200 Filed 11–14–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–141–001]

Potomac Electric Power Co., et al.; Notice of Filing

November 8, 2000.

Take notice that, on November 3, 2000, Southern Energy Mid-Atlantic, L.L.C. (SE Mid-Atlantic) and Potomac Electric Power Company (Pepco) tendered for filing pursuant to Section 203 of the Federal Power Act a Supplement to the Joint Application filed in the above-captioned docket on September 20, 2000, by Pepco and SE Mid-Atlantic (Supplement). The Supplement, for which confidential treatment is requested, is intended to provide additional information concerning the proposed long-term leverage lease financing arrangements described in the Joint Application.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 16, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29192 Filed 11–14–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–3232–001; ER01–296–000]

Southern Company Services, Inc.; Notice of Filing

November 8, 2000.

Take notice that on October 30, 2000, Southern Company Services, Inc. (SCS) on behalf of Alabama Power, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies), made a compliance filing pursuant to a Letter Order issued September 13, 2000 in Docket No. ER00–3232 by filing rate schedule designations as required by Order No. 614. As part of this filing, SCS also tendered for filing a Notice of Cancellation of the following rate schedules:

1. The Interchange Service Contract dated February 9, 1996 by and between Western Gas Resources Power Marketing, Inc., Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 88).

2. The Interchange Service Contract dated November 3, 1995 by and between Koch Power Services, Inc., Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 82).

3. The Interchange Service Contract dated February 9, 1996 by and between Intercoast Power Marketing Company, Southern companies, and SCS (FERC Rate Schedule––Southern Operating Cos. No. 90).

These service schedules set forth the general terms and conditions governing transactions for the sale capacity and/or energy by Southern Companies. These rate schedules have been canceled because the parties to each referenced contract have agreed that Southern Companies will no longer provide capacity and/or energy pursuant to such contracts.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 20, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–29201 Filed 11–14–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP88–67–074 and RP98–198–002]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 8, 2000.

Take notice that on October 31, 2000, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed on Appendix A to the filing, to become effective December 1, 2000.

Texas Eastern asserts that the purpose of this filing is to comply with the Stipulation and Agreement filed by Texas Eastern on December 17, 1991 in Docket Nos. RP88–67, *et al.* (Phase II/PCBs) and approved by the Commission on March 18, 1992 (Settlement), and with Section 26 of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern states that such tariff sheets reflect a decrease in the PCB-Related Cost component of Texas Eastern's currently effective rates. For example, the decrease in the 100% load factor average cost of long-haul service under Rate Schedule FT–1 from Access Area Zone ELA to Market Zone 3 is $0.0053 per dekatherm.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions. Texas Eastern states that copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88–67, *et al.* Phase II/PCBs).

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29193 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–249–001]

Viking Gas Transmission Company; Notice of Negotiated Rate

November 8, 2000.

Take notice that on October 31, 2000, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 1, 2000:

Third Revised Sheet No. 7
Third Revised Sheet No. 8
Third Revised Sheet No. 9

Viking states that these tariff sheets reflect the implementation of a new negotiated rate contact between Viking and Wisconsin Public Service. Viking requests an effective date of November 1, 2000 and accordingly requests waiver of the Commission's notice requirements.

Viking states that copies of this filing have been served on Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29194 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–14–000, et al.]

Ameren Energy Generating Company, et al.; Electric Rate and Corporate Regulation Filings

November 3, 2000.

Take notice that the following filings have been made with the Commission:

1. Ameren Energy Generating Company

[Docket No. EG01–14–000]

Take notice that on October 31, 2000, Ameren Energy Generating Company (AEG), One Ameren Plaza, 1901 Chouteau Plaza, P.O. Box 66149, St. Louis, Missouri, 63166–6149, filed with the Federal Energy Regulatory Commission an application for determination of continuing exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

AEG states that it owns and operates a 168 MW natural gas fired combustion turbine (CT) generating facility located in Pinckneyville, Illinois, and a 230 MW dual fuel CT (oil and natural gas) generating facility located in Gibson City, Illinois. AEG also owns a 186 MW natural gas fired CT facility located in Joppa, Illinois. AEG states that all of the electric energy from these facilities is and will be sold at wholesale.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Ameren Energy Development Company

[Docket No. EG01–15–000]

Take notice that on October 31, 2000, Ameren Energy Development Company (AED), One Ameren Plaza, 1901 Chouteau Plaza, P.O. Box 66149, St. Louis, Missouri, 63166–6149, filed with the Federal Energy Regulatory Commission an application for determination of continuing exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

AED states that it either directly or indirectly through an affiliate, owns and operates a 168 MW natural gas fired combustion turbine (CT) generating facility located in Pinckneyville, Illinois, and a 230 MW dual fuel CT (oil and natural gas generating facility located in Gibson City, Illinois. AED also leases a 186 MW natural gas fired CT facility located in Joppa, Illinois, and owns the facility indirectly through an affiliate. AED states that all of the electric energy from these facilities is and will be sold at wholesale.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. High Desert Power Project, LLC

[Docket No. EG01–16–000]

Take notice that on October 31, 2000, High Desert Power Project, LLC (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Big Sandy Peaker Plant, LLC

[Docket No. EG01–17–000]

Take notice that on October 31, 2000, Big Sandy Peaker Plant, LLC (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for

determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–29177 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–18–000, et al.]

Handsome Lake Energy, LLC, et al.; Electric Rate and Corporate Regulation Filings

November 7, 2000.

Take notice that the following filings have been made with the Commission:

1. Handsome Lake Energy, LLC

[Docket No. EG01–18–000]

Take notice that on October 31, 2000, Handsome Lake Energy, LLC (the Applicant), with its principal place of business at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Electrica Pullinque S.A.

[Docket No. EG01–19–000]

Take notice that on November 1, 2000, Electrica Pullinque S.A., a corporation (sociedad anónima) organized under the laws of the Republic of Chile (Applicant) with its principal place of business at Las Bellotas No. 199, Oficina No. 104, Providencia, Santiago, Chile, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Cottonwood Energy Company, Limited Partnership

[Docket No. EG01–23–000]

Take notice that On November 3, 2000, Cottonwood Energy Company LP (Cottonwood), a limited partnership with its principal place of business at 909 Fannin, Suite 2222, Houston, Texas 77010, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Cottonwood states that it will be engaged directly and exclusively in the business of owning a 1200 MW natural gas fired, combined cycle electric generating facility and related assets to be located on an approximately 250 acre site located near the town of Hartburg, Texas. Cottonwood will sell its capacity exclusively at wholesale.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Calpine Construction Finance Company, L.P.

[Docket No. EG01–24–000]

Take notice that on November 3, 2000, Calpine Construction Finance Company, L.P. (CCFC) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

CCFC, a Delaware limited partnership, proposes to own and operate several electric generating facilities and sell the output at wholesale to electric utilities, an affiliated power marketer and other purchasers. The initial facilities consist of natural gas-fired, combined cycle generating facilities under development or construction in Westbrook, Maine; Edinburg, Texas; Mojave County, Arizona; Yuba City, California; Ontelaunee, Pennsylvania; Talapoosa County, Alabama; Lowndes County, Mississippi; Auburndale, Florida; and Bastrop County, Texas.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Entergy Services, Inc.

[Docket Nos. EL99–6–002, ER99–231–002, ER99–232–002 and ER99–487–002]

Take notice that on November 2, 2000, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing an amended refund report in accordance with the Commission orders issued in Docket No. ER99–232–000.

Comment date: December 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Citizens Communications Company

[Docket No. ES01–8–000]

Take notice that on October 27, 2000, Citizens Communications Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue the following securities, subject to an overall limitation of $3.65 billion:

(1) $3.65 billion principal amount of short-term unsecured promissory notes outstanding at any one time;

(2) $3.65 billion principal amount of long-term debt securities, with a final maturity of not less than 9 months nor more than 50 years;

(3) issuance of common stock, including shares issued upon conversion of convertible securities, the proceeds of which shall not be more than $1 billion and preferred securities having a liquidation value of not more than $1 billion, subject to an aggregate limitation of $1 billion; and

(4) assumption of $3.65 billion of obligations and liabilities as guarantor of obligations and liabilities of its subsidiaries.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Old Dominion Electric Cooperative

[Docket No. ER01–338–000]

Take notice that on November 1, 2000, Old Dominion Electric Cooperative (Applicant), tendered for filing a Report on Action Taken to Support Reliability and Application Submitting Addendum to Agreement, Amending Filed Rate Schedule that included an Addendum to the Amended and Restated Agreement Between Old Dominion Electric Cooperative and Bear Island Paper Company, LLC. This filing was submitted pursuant to the Commission's Notice of Interim Procedures to Support Industry Reliability Efforts and Request for Comments and relates to special, mutually-beneficial demand-side management arrangements made with a customer.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Wheelabrator Shasta Energy Company, Inc.

[Docket No. ER01–323–000]

Take notice that on November 1, 2000, Wheelabrator Shasta Energy Company, Inc. (Shasta Energy), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a Notification of Change in Status and code of conduct as Supplement No. 1 to FERC Electric Tariff, Original Volume No. 1. This filing reflects the proposed acquisition of the stock of Shasta Energy by BTA Holdings, Inc., which is indirectly 50% owned by each of Duke Energy Corporation and an individual.

Shasta Energy requests that the Commission permit Supplement No. 1 to become effective on the date on which the Commission takes action on Shasta Energy's application for approval of a change in its upstream ownership pursuant to Section 203 of the Federal Power Act, filed simultaneously with this filing.

Copies of the filing were served on Pacific Gas and Electric Company and the California Public Utilities Commission.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. San Diego Gas & Electric Company

[Docket No. ER01–322–000]

Take notice that on November 1, 2000, San Diego Gas & Electric Company (SDG&E), tendered for filing certain revised Transmission Owner (TO) Tariff sheets to supersede First Revised Original Sheet Nos. i, ii, 26, 67, 68, and 71 through 77. SDG&E also tendered a new wholesale RMR rate, Original Sheet No. 78. SDG&E requests an effective date of January 1, 2001. SDG&E states the instant filing is submitted to revise the Reliability Must-Run (RMR) Revenue Requirement and RMR Charges set forth in its TO Tariff, and to implement the settlement in Docket No. ER00–860–000.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator and interested parties.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER01–321–000]

Take notice that on November 1, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) tendered for filing Schedule 12, Retail Transmission Service—Ohio to its Pro Forma Open Access Transmission Tariff (OATT). Changes to Schedules 10 and 11, updated customer lists, and miscellaneous changes to the OATT were also filed.

Allegheny Power has requested an effective date for Schedule 12 and the other changes proposed in the filing of January 1, 2001.

Copies of the filing have been provided to Allegheny Power's jurisdictional customers, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Powerex Corp.

[Docket No. ER01–48–001]

Take notice that on November 1, 2000, Powerex Corp., tendered for filing an amendment to its October 4, 2000, Notice of Succession pursuant to 18 CFR 35.16 and 131.51 of the Commission's Regulations. Powerex Corp., is succeeding to: (i) Rate Schedule FERC No. 1, Market-Based Rate Schedule filed by British Columbia Power Exchange Corporation in Docket No. ER97–4024–000, effective August 1, 1997; and (ii) Rate Schedule No. 2, Mutual Netting/Settlement Agreement with PacifiCorp, filed by PacifiCorp in Docket No. ER99–282–000, effective September 23, 1998.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. WPS Resources Operating Companies

[Docket No. ER01–320–000]

Take notice that on November 1, 2000, WPS Resources Operating Companies (WPS), tendered for filing modifications to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1. The purpose of this filing is to add charges for Schedule 2—Reactive Supply and Voltage Control from Generation Sources Service (Schedule 2 Service) for one of the operating companies of WPS, Wisconsin Public Service Corporation (WPSC).

WPS requests that the Commission accept the revised tariff for filing and make it effective on January 1, 2001.

Copies of the filing were served upon WPS's OATT customers, the American Transmission Company LLC, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Energy Company

[Docket No. ER01–318–000]

Take notice that on November 1, 2000, Consumers Energy Company (Consumers) tendered for filing Attachment J (Procedures for Generator Interconnection) to be added to its Open Access Transmission Tariff (OATT), Consumers FERC Electric Tariff No. 6. Attachment J includes a pro forma Generator Interconnection and Operating Agreement.

Copies of the filing were filed on all customers under Consumers' OATT and upon the Michigan Public Service Commission. Consumers requests a November 1, 2000 effective date.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. The Dayton Power and Light Company

[Docket No. ER01–317–000]

Take notice that on November 1, 2000, The Dayton Power and Light Company (DP&L), tendered for filing amendments to DP&L's Open Access

Transmission Tariff (OATT) to accommodate retail access mandated by Ohio Restructuring Law.

DP&L requests an effective date of January 1, 2001 for the above-described amendments. Copies of this filing were served upon DP&L's jurisdictional customers and the Public Utilities Commission of Ohio.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Southern California Edison Company

[Docket No. ER01–315–000]

Take notice that on November 1, 2000, Southern California Edison Company (SCE), tendered for filing a revision to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Original Volume No. 6. The proposed revision modifies SCE's TO Tariff to establish a rate schedule for the recovery of Reliability Services costs billed directly to SCE as a Participating Transmission Owner (PTO) by the California Independent System Operation (ISO).

Copies of this filing were served upon the Public Utilities Commission of the State of California and mailed to the California ISO, Pacific Gas and Electric Company, San Diego Gas & Electric Company, the California ISO-registered Scheduling Coordinators, and the wholesale customers with loads in SCE's historic control area.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. PJM Interconnection, L.L.C.

[Docket No. ER01–244–000]

Take notice that on October 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the PJM Open Access Transmission Tariff (PJM Tariff) to include in the PJM Tariff the Small Resource Interconnection Procedure Manual which contains expedited procedures pursuant to Section 36.12 of the PJM Tariff for the interconnection of generation resources less than 10 megawatts, and requested cancellation of pages to the PJM Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., setting forth the Customer Load Reduction Pilot Program that terminated pursuant to PJM Interconnection, Inc., 92 FERC ¶ 61,059 (2000) on September 30, 2000.

PJM requests an effective date of December 27, 2000, for the Small Resource Interconnection Procedure Manual amendments to the PJM Tariff. Consistent with PJM Interconnection, L.L.C., 92 FERC ¶ 61,059, PJM requests an effective date of October 1, 2000 for the cancellation of PJM Tariff and Operating Agreement pages setting forth the Customer Load Reduction Pilot Program.

Copies of this filing were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. The Connecticut Light and Power Company

[Docket No. ER01–293–000]

Take notice that on October 31, 2000, The Connecticut Light and Power Company (CL&P), tendered for filing a Notice of Termination of a Bulk Power Supply Service Agreement and supplements thereto with Bozrah Light and Power Company and Connecticut Municipal Electric Energy Cooperative.

CL&P requests an effective date of November 1, 2000.

CL&P states that a copy of this filing was mailed to Bozrah Light and Power Company, Connecticut Municipal Electric Energy Cooperative, and the Connecticut Department of Public Utility Control.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Xcel Energy Operating Companies Northern States Power Company (Minnesota)

[Docket No. ER01–278–000]

Take notice that on October 31, 2000, Northern States Power Company, a wholly-owned utility operating company subsidiary of Xcel Energy Inc., tendered for filing Connection Agreement Number 61 for the Pleasant Valley Generation Plant Point of Connection (Agreement) between NSP and Great River Energy. NSP proposes the Agreement be included in the Xcel Energy Operating Companies new FERC Joint Open Access Transmission Tariff, Original Volume No. 3, as Agreement No. 535–NSP, all pursuant to Order No. 614.

NSP requests the Commission accept the Agreement effective October 1, 2000, or alternatively on November 1, 2000, the date the connection facilities are to be placed in service. NSP requests waiver of the Commission's notice requirements in order if necessary for the Agreement to be accepted for filing on the date requested.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Xcel Energy Operating Companies Northern States Power Company (Minnesota)

[Docket No. ER01–277–000]

Take notice that on October 31, 2000, Northern States Power Company and Northern States Power Company (Wisconsin) (jointly NSP), wholly-owned utility operating company subsidiaries of Xcel Energy Inc., tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and Madison Gas & Electric Company. NSP proposes the Agreement be included in the Xcel Energy Operating Companies new FERC Joint Open Access Transmission Tariff, Original Volume No. 2, as Service Agreement 138-NSP, all pursuant to Order No. 614.

NSP requests that the Commission accept the agreement effective October 1, 2000, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: November 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Central Maine Power Company

[Docket Nos. ER97–1326–003 ER99–238–003 ER99–4534–003 ER00–982–004]

Take notice that on October 30, 2000, Central Maine Power Company (CMP), tendered for filing in compliance with FERC's Order issued on July 28, 2000, in the above-referenced dockets, 92 FERC ¶ 61,272 (2000), and the terms of the Uncontested Settlement Agreement approved by FERC in those dockets, an open access transmission tariff (OATT) revised to conform with the formatting requirements of Order No. 614, and an informational filing comprised of several worksheets describing the rates charged for services under the OATT based on the 1998 and 1999 test years.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–29176 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1981–010–Wisconsin]

Oconto Electric Cooperative; Notice of Availability of Draft Environmental Assessment

November 8, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the existing Stiles Hydroelectric Project, located on the Oconto River, in the township of Stiles, Oconto County, Wisconsin, and has prepared a draft Environmental Assessment (EA) for the project. In the draft EA, the Commission staff has analyzed the potential environmental effects of the project and has concluded that the approval of the project, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the draft EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426. The draft EA may also be viewed on the internet at *http://www.ferc.fed.us/online/rims.htm.* Please call (202) 208–2222 for assistance.

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix "Stiles Hydroelectric Project, FERC Project No. 1981–010" to all comments. For further information, please contact Patti Leppert at (202) 219–2767. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29205 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1984–056 Wisconsin; Project No. 11162–002 Wisconsin]

Wisconsin River Power Company, Wisconsin Power and Light Company; Notice of Availability of Final Environmental Assessment

November 8, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for new major license for the Petenwell and Castle Rock Hydroelectric Project located on the Wisconsin River in Wood, Juneau, and Adams Counties near Necedah, Wisconsin, and the application for original major license for the Prairie du Sac Hydroelectric Project located on the Wisconsin River in Sauk and Columbia Counties near Prairie du Sac, Wisconsin.

On June 23, 1998, the Commission staff issued a Draft Environmental Assessment (DEA) for the proposed licensing actions and requested that comments be filed with the Commission within 45 days. Comments on the DEA were filed and are addressed in the Final Environmental Assessment (FEA) for the proposed licensing actions.

The FEA contains the staff's analysis of the potential environmental impacts of the proposed licenses, and concludes that the approval of the proposed licenses, with appropriate environmental protective measures, would not constitute major federal actions that would significantly affected the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. These filings may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29202 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission and Soliciting Additional Study Requests

November 8, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: New Minor License.

b. *Project No.*: P–2835–005.

c. *Date Filed*: October 27, 2000.

d. *Applicant*: New York State Electric & Gas Corporation.

e. *Name of Project*: Rainbow Falls Hydroelectric Project.

f. *Location*: On the Ausable River, in the townships of Ausable and Chesterfield, Clinton and Essex counties, New York. The project would not use federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Carol Howland, New York State Electric & Gas Corporation, Corporate Drive—Kirkwood Industrial Park, P.O. Box 5224, Binghamton, NY 13902–5224; (607) 762–8881.

i. *FERC Contact*: Jarrad Kosa, (202) 219–2831.

j. *Deadline for filing additional study requests pursuant to 18 CFR 4.32(b)(7) of the Commission's regulations*: December 26, 2000.

All documents (original and eight copies) should be field with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a

particular resource agency, they must also serve a copy of the document on that resource agency.

k. The application is not ready for environmental analysis at this time.

l. *The Rainbow Falls Hydroelectric Project consists of:* (1) An existing 345-foot-long and 16-foot-high dam; (2) an existing 17-acre reservoir having a storage capacity of 180-acre-feet at an elevation of 307.0 feet above mean sea level; (3) a powerhouse containing two generating units for a total installed capacity of 2,640 kilowatts; and (4) existing transmission and appurtenant facilities. The project is estimated to generate an average of 14 million kilowatt hours annually. The dam and project facilities are owned by the applicant.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2–A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the *New York State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 00–29195 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 8, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11858–000.

c. *Date filed:* September 15, 2000.

d. *Applicant:* Elsinore Valley Municipal Water District.

e. *Name of Project:* Lake Elsinore Project.

f. *Location:* On Lake Elsinore, Lion Springs, and San Juan Creek, in Riverside County, California. The project would utilize federal lands within Cleveland National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Rob Bakondy, Lake Elsinore Advanced Pumped Storage, L.L.C., Enron North America Corp., 101 California Street, Suite 1950, San Francisco, CA 94111, (415) 782–7806.

i. *FERC Contact:* Robert Bell, (202) 219–2806

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed pumped storage project would have two upper reservoirs (one in Morrell Canyon the other in Decker Canyon) and would use the natural Lake Elsinore as the lower reservoir. The project would consist of: (1) A proposed 550-foot-long, 220-foot-high concrete-face rockfill Morrell Canyon Dam; (2) a proposed 575-foot-long, 100-foot-high impervious core rock fill downstream Morrell Canyon Dam; (3) a proposed impoundment having a surface area of 142 acres, with a storage capacity of 7,400 acre-feet, and normal maximum water surface elevation of 2,860 feet msl; (3) a proposed 1,800-foot-long, 220-foot high impervious core rock filled Decker Canyon Dam; (4) a proposed impoundment having a surface area of 95 acres, with a storage capacity of 5,000 acre-feet, and normal maximum water surface elevation of 2,740 feet msl; (5) the existing Lake Elsinore impoundment having a water surface elevation of 3,412 acres, with a storage capacity of 68,006 acre-feet, and a normal maximum water surface elevation of 1,249 feel msl; (6) two proposed excavated canals designed to pass flows in both the generating and pumping directions; (7) a proposed powerhouse containing three pumping/generating units with a total installed capacity of 330 MW; (8) a proposed 5.9-miles-long, 115 kV transmission line; and (9) appurtenant facilities.

The project would have an annual generation of 1.848 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29197 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to intervene and Protests and Comments

November 8, 2000.

Take notice that the following hydroelectric application has been filed with the commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11859–000.

c. *Date Filed:* September 19, 2000.

d. *Applicant:* Arizona Independent Power, Inc.

e. *Name of Project:* Azipco Pumped Storage Project.

f. *Location:* Beardsley Canal, in Maricopa County, Arizona. The proposed project would utilize Bureau of Land Management lands in the White Tank Mountain Regional Park.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Frank L. Mazzone, President, Arizona Independent Power, Inc., 746 Fifth Street East, Sonoma, CA 95476, (707) 996–2573.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Bell, telephone 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's rules of practice and procedure require all interveners filing documents with the commission to serve a copy of that document on each person whose name appears on the official service list for the project. further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency

k. *Description of Project:* The proposed project would consist of: (1) a proposed 350-foot high, 1700-foot-long earth and rockfill upper dam; (2) a proposed reservoir having a surface area of 180 acres and a storage capacity of 13,000 acre-feet with a normal water surface elevation of 3,000 feet msl; (3) a proposed 200 foot-high, 2600 foot-long earth and rockfill lower dam; (4) a proposed reservoir having a surface area of 150 acres and a storage capacity of 14,000 acre-feet with a normal water surface elevation of 1,800 feet msl; (5) two proposed 25 foot-diameter, 11,200 foot-long penstocks; (6) a proposed powerhouse containing five generating units having a total installed capacity of 1,250 MW; (7) a proposed 40-mile-long, 500 kV transmission linc; and (8) appurtenant facilities.

The project would have an annual generation of 1,682 GWh and would be sold to a local utility.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit.—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no

later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "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. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29198 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amended Land Use and Shoreline Management Plan and Soliciting Comments, Motions To Intervene, and Protests

November 8, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amended Land Use and Shoreline Management Plan.

b. *Project No.:* 1894–193.

c. *Date Filed:* August 30, 1999.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Parr Hydroelectric Project.

f. *Location:* The project is located on the Broad River in Fairfield and Newberry Counties, South Carolina. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Thomas G. Eppink, Senior Attorney, South Carolina Electric & Gas Company, Legal Department—130, Columbia, South Carolina 29218.

i. *FERC Contact:* Steve Naugle, *steven.naugle@ferc.fed.us,* 202–219–2805.

j. *Deadline for filing comments and or motions:* December 15, 2000.

All documents (original and eight copies) should be filed with Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.* Please reference the following number, P–1894–193, on any comments or motions filed.

k. *Description of the Application:* The application is an amended version of the applicant's originally proposed Land Use and Shoreline Management Plan, filed September 4, 1991. The amended plan reflects the results of the applicant's efforts to reach settlement among various stakeholders, including resource agencies and adjoining property owners, on certain unresolved issues regarding permissible and prohibited activities along the shorelines of the project's reservoirs.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling 202–208–1371. The application may be viewed on-line at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC 20426. A copy of the motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29203 Filed 11–14–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6902–1]

National Drinking Water Advisory Council Research Working Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Drinking Water Research Working Group of the National Drinking Water Advisory Council (NDWAC) established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on November 28–29, 2000. On November 28 the meeting will be held from 8:30 am–5 pm ET (approximately), at RESOLVE, 1255 23rd Street, NW., Suite 275, Washington, DC 20037. On November 29 the meeting will be held, from 8:30 an–3:30 pm ET (approximately), at the Environmental Protection Agency's Washington Information Center (WIC), 401 M Street, SW., Conference Room #3 North Washington, DC 20460. The meeting will be open to the public to observe and statements will be taken from the public as time allows. Seating is limited.

This is the first meeting of the Drinking Water Research Working Group. The Environmental Protection Agency (EPA) anticipates 3–4 meetings of this working group over the course of the next year. The purpose of this working group will be to provide advice to NDWAC as it develops recommendations for EPA on a Comprehensive Drinking Water Research Strategy (as required under the Safe Drinking Water Act) that will consider a broad range of research needs to support the Agency's drinking water regulatory activities. The research strategy will include an assessment of research needs for microbes and disinfection by-products (M/DBPs), arsenic, contaminants on the Contaminant Candidate List (CCL), and other critical research issues. This first meeting will focus on the proposed approach for developing the Comprehensive Drinking Water Research Strategy. Specifically, the working group will discuss the outline of the strategy, the scientific framework upon which it is organized, and the list of topics to be included.

For more information please contact Paula Mason, Designated Federal Officer, U.S. EPA (4607), Office of Ground Water and Drinking Water, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The telephone number is 202–260–1893, fax 202–401–6135, and e-mail *mason.paula@epa.gov.*

Dated: November 7, 2000.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 00–29227 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6901–8]

Notice of Availability of Annex to the Report of the Grand Canyon Visibility Transport Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The purpose of this notice is to inform the public that the Western Regional Air Partnership (WRAP) has submitted an Annex to the 1996 report of the Grand Canyon Visibility Transport Commission (GCVTC) to EPA on September 29, 2000. This submittal was required under 40 CFR 51.309 of the regional haze rule in order for nine Western States to have the option of submitting State plans implementing the GCVTC recommendations by December 31, 2003. The Annex contains a number of recommendations addressing sulfur dioxide emissions (a key precursor to the formation of fine particles and regional haze) in the region, including a set of emissions milestones for the 2003–2018 period across the 9-State region. In the coming months, we will review the Annex to determine whether it meets the requirements of the regional haze rule and applicable requirements under the Clean Air Act (CAA). At the end of this review, we will propose changes to the regional haze rule to incorporate recommendations from the Annex if we find, after a formal 60-day public notice and comment period, that the Annex meets the requirements of the regional haze rule and the CAA.

Regarding today's notice of availability, we are not having a formal comment period on the Annex at this time. However, should members of the general public wish to provide any informal comments to us on the documents making up the Annex, we will consider these comments during the upcoming review of the Annex. We request that these informal comments be submitted to docket number A–2000–51 within 30 days of the date of publication of this notice.

ADDRESSES: *Comments.* We are not actively soliciting comments at this time, given that we will hold a formal comment period on any future regulatory proposal related to the Annex. We will, however, consider any written comments that you may wish to provide as we review the Annex. We request that any such written comments be submitted within 30 days of the date of publication of this notice.

Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–2000–51, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. We request that you also send a separate copy to the contact persons listed below (see **FOR FURTHER INFORMATION CONTACT**).

Comments may also be submitted to the EPA docket by electronic mail at *A-and-R-Docket@epamail.epa.gov,* or by fax at (202) 260–4400. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on computer disk in WordPerfect 5.1 (or higher) format, or in ASCII file format.

All comments and data provided in electronic form or by fax must be identified by the docket number A–2000–51. Electronic comments on this notice also may be filed online at many Federal Depository Libraries.

Docket. Docket No. A–2000–51 contains information related to this notice of availability, including the Annex documents received by EPA from the WRAP. Information at the Air and

Radiation Docket Office may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays, at the following address: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor). You may contact the docket office by phone at (202) 260–7548. A reasonable fee may be charged for copying.

World Wide Web. The Annex documents may also be retrieved from EPA's website at: *http://www.epa.gov/ttn/oarpg/gener.html.*

FOR FURTHER INFORMATION CONTACT: Tim Smith (telephone (919) 541–4718; smith.tim@epa.gov) or Rich Damberg (telephone (919) 541–5592; damberg.rich@epa.gov), Mail Drop 15, EPA, Air Quality Strategies and Standards Division, Research Triangle Park, North Carolina, 27711.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public that the WRAP has submitted an Annex to the 1996 report of the GCVTC to EPA on September 29, 2000. We have published the Annex on our website at the following address: *http://www.epa.gov/ttn/oarpg/gener.html.* The EPA is not providing a formal public comment period on the Annex, but should members of the general public wish to provide EPA any comments on the WRAP's Annex documents, EPA will consider these comments during its upcoming review of the Annex. The EPA would like to receive these informal comments in docket number A–2000–51 within 30 days of the date of publication of this notice.

On July 1, 1999, EPA published regulations in 40 CFR 51.300–309 to address regional haze in mandatory Federal Class I areas (156 national parks and wilderness areas) (64 FR 35714; July 1, 1999). Regional haze is a type of visibility impairment that is caused by the emissions of air pollutants from numerous sources across a broad region.

In the final regional haze rule, we included optional provisions that allow nine Western States to implement the specific recommendations of the GCVTC for improving visibility across the Colorado Plateau within the framework of the national regional haze program. These optional provisions are contained in section 40 CFR 51.309 of the regional haze rule. When EPA published the final regional haze rule, we recognized that the optional approach would be contingent on the submittal of an Annex to the GCVTC report by October 1, 2000 that contains acceptable stationary source sulfur dioxide emissions milestones for the nine-State region for the 2003–2018 period, as well as a backstop market trading program that would be implemented if any interim milestone is not achieved.

Specifically, section 51.309(f) of the regional haze rule required that the GCVTC (or a regional planning body formed to implement the Commission recommendations) submit to EPA an Annex to the GCVTC report no later than October 1, 2000 that provides for stationary source sulfur dioxide emissions milestones for the years 2003, 2008, 2013, and 2018. These milestones must provide for steady and continuing emissions reductions for the 2003–2018 time period consistent with the GCVTC's definition of reasonable progress, its goal of 50 to 70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, the applicable requirements under the CAA, and the timing of implementation plan assessments of progress and identification of deficiencies which will be due in the years 2008, 2013, and 2018. The emission reduction milestones must be shown to provide for greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to section 51.308(e)(2) of the regional haze rule.

In addition to the emission milestones, the Annex was required by section 51.309 to contain documentation of a market trading program or other programs that would be implemented if current programs and voluntary measures fail to meet the emission milestones. This documentation must include model rules, memoranda of understanding, and other provisions describing in detail how emission reduction progress will be monitored, what conditions will require the market trading program to be activated, how allocations will be made, and how the program will operate.

This notice fulfills EPA's commitment under section 51.309(f)(3) of the regional haze rule to publish the Annex upon receipt. It does not contain EPA comments on the Annex or constitute any formal action on the Annex package at this time. The EPA stated in the regional haze rule that if we find, after public notice and opportunity for comment, that the Annex meets the requirements of the regional haze rule and applicable requirements under the CAA, EPA would incorporate recommendations from the Annex into the regional haze rule. The EPA would then review State implementation plans (SIPs) submitted in 2003 to determine whether they meet all of the requirements in the revised section 309 and provide for "reasonable progress" under the regional haze rule. However, if we find that the Annex does not meet the requirements in section 309(f), then each of the affected Western States must meet the requirements of section 51.308, the same regional haze requirements that apply to other States.

Based on discussions with WRAP participants, EPA anticipates that the WRAP will submit supplemental information to clarify certain issues discussed in the Annex. For example, the WRAP has committed to providing a protocol as part of the Annex that accounts for possible changes in emissions monitoring techniques at certain facilities that use continuous emissions monitors. The EPA will also provide a notice of availability indicating the receipt of any supplemental information related to the Annex and make it available on the EPA website.

In the coming months, the EPA will consider any supplemental information and any public comments received in its review of the Annex for consistency with the regional haze rule and the CAA. If EPA finds that the Annex meets the requirements in the regional haze rule and CAA, EPA will propose appropriate revisions to the regional haze rule.

Dated: November 6, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–29226 Filed 11–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6902–2]

Final NPDES General Permits for Water Treatment Facility Discharges in the States of Massachusetts and New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final NPDES General Permits—MAG640000 and NHG640000.

SUMMARY: The Director of the Office of Ecosystem Protection, EPA-New England, is issuing Notice of Final National Pollutant Discharge Elimination System (NPDES) general permits for water treatment facility discharges to certain waters of the States of Massachusetts and New Hampshire for the purpose of reissuing the current permit which expired on January 9, 2000. These general NPDES permits establish notice of intent (NOI) requirements, effluent limitations,

standards, prohibitions and management practices for the water treatment facility discharges. Owners and/or operators of facilities discharging effluent from water treatment facilities including those currently authorized to discharge under the expired general permit will be required to submit to EPA-New England, a notice of intent to be covered by the appropriate general permit and will receive a written notification from EPA of permit coverage and authorization to discharge under one of the general permits. *The eligibility requirements are discussed in detail under section D.2.b and the reader is strongly urged to go to that section before reading further.* This general permit does not cover new sources as defined under 40 CFR 122.2.

DATES: The general permit shall be effective on the date specified in the final general permit published in the **Federal Register** and will expire five years from the final publication date of the **Federal Register**.

ADDRESSES: Notices of intent to be authorized to discharge under these permits should be sent to: Environmental Protection Agency, Office of Ecosystem Protection (CPE), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023.

The submittal of other information required under these permits or individual permit applications should also be sent to the above address.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final permit may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday excluding holidays from: Suprokash Sarker, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, telephone: 617–918–1693.

SUPPLEMENTARY INFORMATION:

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Changes From the Previous Permit

- General Permits for each of the states of MA and NH are presented separately.
- State of NH—limits of pH flexibility is added.
- All States—commingling of effluent from water treatment facility is allowed so long as the effluent can be monitored before it mixes with other streams of wastewater.
- Notification by Permittees, Geographic Area and Administrative Aspects (request to be covered and eligibility to apply) are transferred from Fact Sheet and Supplemental Information to part I, Permit section I.C.

Fact Sheet and Supplemental Information

I. Introduction

The Director of the Office of Ecosystem Protection, EPA-New England, is issuing final general permits for water treatment facility discharges to certain waters of the States of Massachusetts and New Hampshire. This document contains part I of the final general NPDES permits and part II, Standard Conditions.

II. Coverage of General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act. Although such permits are generally issued to individual discharges, EPA's regulations authorize the issuance of "general permits" to categories of discharges (see 40 CFR 122.28). EPA may issue a single, general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollution control measures.

A. The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

B. The similarity of the discharges prompted EPA to issue the December 9, 1994 general permit. When reissued, this permit will enable facilities currently covered under the expired general permit to maintain compliance with the Act and will extend environmental and regulatory controls to new dischargers and avoid a backlog of individual permit applications. Violations of a condition of a general permit constitute a violation of the Clean Water Act and subjects the discharger to the penalties in section 309 of the Act.

III. Exclusions

EPA has determined that this general permit will not be available to "New Source" dischargers as defined in 40 CFR 122.2 due to the site specific nature of the environmental review required by the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* for those facilities. "New Sources" must comply with New Source Performance Standards (NSPS) and are subject to the NEPA process in 40 CFR 6.600. Consequently EPA has determined that it would be more appropriate to address "New Sources" through the individual permit process.

EPA has determined that this general permit will not be available for discharge(s) into the impaired water on the Federal Clean Water Act 303(d) list which are not attaining state water quality standards.

Any owner or operator authorized by a general permit may request to be excluded from coverage of a general permit by applying for an individual permit. This request may be made by submitting a NPDES permit application together with reasons supporting the request. The Director may also require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Director to take this action. However, individual permits

will not be issued for sources covered by these general permits unless it can be clearly demonstrated that inclusion under the general permit is inappropriate. The Director may consider the issuance of individual permits when:

A. The discharger is not in compliance with the terms and conditions of the general permit;

B. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

C. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general NPDES permit;

D. A Water Quality Management plan or Total Maximum Daily Load (TMDL) containing requirements applicable to such point sources is approved;

E. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary; or,

F. The discharge(s) is a significant contributor of pollution or in violation of State Water Quality Standards for the receiving water.

In accordance with 40 CFR 122.28(b)(3)(iv), the applicability of the general permit is automatically terminated on the effective date of the individual permit.

IV. Permit Basis and Other Conditions of the General NPDES Permit

A. Types of Discharge

Under this general permit, owners and operators of potable water treatment plants in Massachusetts and New Hampshire may be granted authorization to discharge process generated wastewaters into waters of the respective states as follows:

a. Treated presedimentation underflow;

b. Treated underflow from the coagulation/settling processes using aluminium compounds or polymers as coagulants; and

c. Treated filter backwash water from filters.

This general permit shall apply specifically to operators that have a discharge from a point source such as a sludge settling lagoon or other device whereby comparable control of suspended solids is possible.

B. Effluent Limitations

1. Statutory Requirements

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States without a permit. Section 402 of the Act, 33 U.S.C. 1342, authorizes EPA to issue NPDES permits allowing discharges that will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314, and 1341). Those statutory provisions state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) Meet standards reflecting specified levels of technology-based treatment requirements; (2) comply with State Water Quality Standards; and (3) comply with other state requirements adopted under authority retained by states under CWA section 510, 33 U.S.C. 1370.

EPA is required to consider technology and water quality requirements when developing permit limits. 40 CFR part 125, subpart A sets the criteria and standards that EPA must use to determine which technology-based requirements, requirements under section 301(b) of the Act and/or requirements established on a case-by-case basis under section 402(a)(1) of the Act, should be included in the permit.

The Clean Water Act requires that all discharges, at a minimum, must meet effluent limitations based on the technology-based treatment requirements for dischargers to control pollutants in their discharge. Section 301(b)(1)(A) of the Act requires the application of Best Practicable Control Technology Currently Available (BPT) with the statutory deadline for compliance being July 1, 1977, unless otherwise authorized by the Act. Section 301(b)(2) of the Act requires the application of Best Conventional Control Technology (BCT) for conventional pollutants, and Best Available Technology Economically Achievable (BAT) for non-conventional and toxic pollutants. The compliance deadline for BCT and BAT is as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989.

2. Technology-Based Effluent Limitations

EPA has not promulgated National Effluent Guidelines for water treatment facility discharges. EPA also believes that the limits established to meet the Water Quality Standards discussed below are sufficient to satisfy BAT/BCT described in section 304(b) of the Act.

3. Water Quality Based Effluent Limitations

Under section 301(b)(1)(C) of the Act, discharges are subject to effluent limitations based on water quality standards. Receiving stream requirements are established according to numerical and narrative standards adopted under state and/or federal law for each stream use classification. Section 401 of the CWA requires that EPA obtain State certification which ensures that all water quality standards and other appropriate requirements of state law will be satisfied. Regulations governing State certification are set forth in 40 CFR 124.53 and 124.55.

The States of Massachusetts and New Hampshire have narrative criteria in their water quality regulations. See Massachusetts 314 CMR 4.05(5)(e) and New Hampshire Part Env-Ws 1703.21 that prohibits toxic discharges in toxic amounts. The permit does not allow for the addition of materials or chemicals in amounts which would produce a toxic effect to any aquatic life.

Water quality standards applicable to water treatment facility discharges covered by this general permit include TSS and pH for all states. The limitations for TSS and pH are based upon limitations in the existing permit in accordance with the anti-backsliding requirements found in 40 CFR 122.44(1). A summary of the limits and testing requirements for each state is described below:

Massachusetts and New Hampshire: Limits of monthly average and maximum daily TSS and pH. Testing requirements for Chlorine, Aluminum, LC50 and C–NOEC.

The state of New Hampshire may consider a change in pH under certain conditions. The following language reveals when pH can be changed for the state of New Hampshire:

The pH limits in the draft permit remain unchanged from the existing permit, however, language has been added to this draft permit allowing for a change in pH limit(s) under certain conditions as per State Permit Conditions (part I.B.2.a.). A change would be considered if the applicant can demonstrate to the satisfaction of NHDES–WD that the in-stream pH standard will be protected when the discharge is outside the permitted range, then the applicant or NHDES–WD may request (in writing) that the permit limits be modified by EPA to incorporate the results of the demonstration.

Anticipating the situation where NHDES–WD grants a formal approval changing the pH limit(s) to outside the

6.5 to 8.0 Standard Units (S.U.), EPA has added a provision to this draft permit (see New Hampshire part I.B.1.g.). That provision will allow EPA to modify the pH limit(s) using a certified letter approach. This change will be allowed as long as it can be demonstrated that the revised pH limit range does not alter the naturally occurring receiving water pH. Reference part I.B.2.a. STATE PERMIT CONDITIONS in that permit. However, the pH limit range cannot be less restrictive than found in the applicable National Effluent Limitation Guideline for the facility or to a default range of 6.0 to 9.0 S.U. in the situation of no applicable guideline, whichever is more stringent.

If the State approves results from a pH demonstration study, this permit's pH limit range can be relaxed in accordance with 40 CFR 122.44(l)(2)(i)(B) because it will be based on new information not available at the time of this permit's issuance. This new information includes results from the pH demonstration study that justifies the application of a less stringent effluent limitation. EPA anticipates that the limit determined from the demonstration study as approved by the NHDES–WD will satisfy all effluent requirements for this discharge category and will comply with New Hampshire's Surface Water Quality Regulations amended on December 10, 1999.

C. Antidegradation Provisions

The conditions of the permit reflect the goal of the CWA and EPA to achieve and maintain water quality standards. The environmental regulations pertaining to the State Antidegradation Policies which protect the State's surface waters from degradation of water quality are found in the following provisions: Massachusetts Water Quality Standards 314 CMR 4.04 *Antidegradation Provisions*; and New Hampshire RSA 485–A:8, VI Part Env-Ws 1708.

This general permit does not apply to any new or increased discharge to any outstanding national resource water or the territorial seas. It also does not apply to any new or increased discharge to other waters unless the discharge is shown to be consistent with the state's antidegradation policies. This determination shall be made in accordance with the appropriate State Antidegradation implementation procedures. EPA will not authorize these discharges under the general permit until it receives a favorable antidegradation review and certification from the States.

D. Monitoring and Reporting Requirements

Effluent limitations and monitoring requirements which are included in the general permit describe the requirements to be imposed on the facilities to be covered.

Facilities covered by the final general permits will be required to submit to EPA, New England Region and the appropriate State authority, a Discharge Monitoring Report (DMR) containing effluent data. The frequency of reporting is determined in accordance with each State's provisions (see the individual State permits).

The monitoring requirements have been established to yield data representative of the discharge under authority of section 308(a) of the Act and 40 CFR 122.41(j), 122.44(i) and 122.48, and as certified by the State.

E. Endangered Species

The limits are sufficiently stringent to assure water quality standards, both for aquatic life protection and human health protection, will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the final permits is unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA has consulted with the United States Fish and Wildlife Service and National Marine Fisheries Service on this determination and has received concurrences from them.

F. Standard Permit Condition

40 CFR 122.41 and 122.42 must be complied with. Specific language will be provided to permittees in part II of the permit.

G. State (401) Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification process is complete and EPA has received 401 certifications from all States. In addition, EPA and the Commonwealth of Massachusetts jointly issue the final permit.

H. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.*, and its implementing regulations (15 CFR part 930) require that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with the CZMP. In the case of general permits, EPA has the responsibility for making the consistency certification and submitting it to the state for concurrence. EPA has requested the Executive Office of Environmental Affairs, MACZM, 100 Cambridge Street, Boston, MA 02202; and the Office of State Planning, New Hampshire Coastal Program, 2½ Beacon Street, Concord, NH 03301, to provide a consistency concurrence that the proposed general permit is consistent with the MA and NH Coastal Zone Management Program respectively and EPA has received consistency concurrences from all states.

I. Environmental Impact Statement Requirements

The general permits do not authorize discharges from any new sources as defined under 40 CFR 122.2. Therefore, the National Environmental Policy Act, 33 U.S.C. 4321 *et seq.*, does not apply to the issuance of these general NPDES permits.

J. National Historic Preservation Act of 1966, 16 U.S.C. SS470 et seq.

Facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the National Historic Preservation Act of 1996, 16 U.S.C. SS470 *et seq.* are not authorized to discharge under this permit.

K. Essential Fish Habitat

Under the 1996 Amendments (Public Law 104–267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* (1998)), EPA is required to consult with NMFS if EPA's action or proposed actions that it funds, permits or undertakes, "may adversely impact any essential fish habitat." 16 U.S.C. 1855(b). The Amendments broadly define "essential fish habitat" (EFH) as "waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." 16 U.S.C. 1802(10). Adverse impact means any impact which reduces the quality and/or quantity of EFH 50 CFR 600.910(a). Adverse effects may include direct (*e.g.*, contamination or physical disruption), indirect (*e.g.*, loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative or synergistic consequences of actions.

Essential Fish Habitat is only designated for fish species for which federal Fisheries Management Plans

exist. 16 U.S.C. 1855(b)(1)(A). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999.

The limits for this general permit are sufficiently stringent to assure that state water quality standards will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the proposed permits is unlikely to adversely affect any fish or shellfish currently listed with a Fisheries Management Plan or its critical habitat. EPA sought written concurrence from the National Marine Fisheries Service on this determination and incorporated their comments in section III (Exclusions), 2nd paragraph of the Fact Sheet and part I.E.2.(8) of the permit.

V. Other Legal Requirements

A. Executive Order 12866

EPA has determined that this general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2040–0086 (NPDES permit application) and 2040–0004 (Discharge Monitoring Reports).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permit issued today, however, is not a "rule" subject to the requirements of 5 U.S.C. 553(b) and is therefore not subject to the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" (defined to be the same as "rules" subject to the RFA) on tribal, state and local governments and the private sector. The permit issued today, however, is not a "rule" subject to the RFA and is therefore not subject to the requirements of UMRA.

Dated: November 3, 2000.

Mindy Lubber,

Regional Administrator, EPA, New England.

Part I—Draft General Permits Under the National Pollutant Discharge Elimination System (NPDES)

Note: The following two draft general permits have been combined for purposes of this **Federal Register**. Part I A and Part I B contain general permits for the states of MA (including both Commonwealth and Indian Country Lands) and NH respectively. Part I.C. is common to all three permits.

A. Massachusetts General Permit

[*Permit No. MAG640000*]

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the "CWA"), and the Massachusetts Clean Waters Act, as amended, (M.G.L. Chap. 21, sections 26–53), operators of facilities located in Massachusetts, which discharge effluent from water treatment facilities to the classes of waters as designated in the Massachusetts Water Quality Standards, 314 CMR 4.00 *et seq.*, are authorized to discharge to all waters, unless otherwise restricted, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

The permit allows effluent from water facility discharges to be commingled with other discharges as long as the effluent from the water treatment facility can be monitored separately for compliance. This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication and supersedes the permit issued on December 9, 1994.

The permit allows effluent from water facility discharges to be commingled with other discharges as long as the effluent from the water treatment facility can be monitored separately for compliance. This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication and supersedes the permit issued on December 9, 1994.

Signed this 2nd day of November, 2000

Linda M. Murphy,

Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Boston, MA 02114

Glenn Haas,

Acting Assistant Commissioner, Bureau of Resource Protection, Massachusetts Department of Environmental Protection, Boston, MA.

Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge effluent from its water treatment facility.

a. Each outfall discharging effluent from its water treatment facility shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristic	Discharges limitations Other units (specify)		Monitoring requirements	
	Avg. monthly	Max. daily	measurement [1] frequency	Sample type
Flow, (mgd)	.....	1.0	1/week	Total daily
TSS, (mg/l)	30	50	1/week	4 grabs.
pH, (s.u.)	(see part I.B.1.e or f)	.....	1/week	4 grabs.
Total Residual Chlorine (mg/l) [2].	Report	Report	1/week	4 grabs.
Aluminum, Tot. Rec. (mg/l)	.....	Report	1/month	4 grabs.
LC–50 and C–NOEC, (%) [3]	(see part I.B.1.g)	.....	.....	24-hr. comp.

[1] Samples shall be taken only when discharging.

[2] Test and report only if chlorination is used in the process.

[3] LC–50 is the concentration of effluent in a sample that causes mortality to 50% of the test population at a specific time of observation. C–NOEC, No Observed Chronic Effect Concentration, is the highest concentration of effluent to which organisms are exposed in a life-cycle or partial life-cycle test which cause no adverse effect on growth, survival and reproduction.

b. The discharge shall not cause a violation of the water quality standards.

c. There shall be no discharge of floating solids or visible foam in other than trace amounts.

d. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or if the effluent is commingled with another discharge, prior to such commingling.

e. The pH of the effluent for discharges to Class A and Class B waters shall be in the range of 6.5–8.3 standard units and not more than 0.5 units outside of the background range. There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

f. The pH of the effluent for discharges to Class SA and Class SB waters shall be in the range of 6.5–8.5 standard units and not more than 0.2 units outside of the normally occurring range. There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

g. Chronic (and modified acute) toxicity test(s) shall be performed on the water treatment facility discharge by the permittee upon request by EPA and/or MADEP. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24-hour composite sample to be taken during normal facility operation. The results of the test (C–NOEC and LC_{50}) shall be forwarded to State and EPA within 30 days after completion.

State Permit Conditions

1. This Discharge Permit is issued jointly by the U.S. Environmental Protection Agency (EPA) and the Department of Environmental Protection under Federal and State law, respectively. As such, all the terms and conditions of this permit are hereby incorporated into and constitute a discharge permit issued by the Director of the Massachusetts Division of Watershed Management pursuant to M.G.L. Chap. 21, section 43.

2. Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of this Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this Permit is declared, invalid, illegal or otherwise issued in violation of State law such permit shall remain in full force and effect under Federal law as an NPDES Permit issued by the U.S. Environmental Protection Agency. In the event this Permit is declared invalid, illegal or otherwise issued in violation of Federal law, this Permit shall remain in full force and effect under State law as a Permit issued by the Commonwealth of Massachusetts.

B. New Hampshire General Permit

[Permit No. NHG640000]

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the "CWA"), operators of facilities discharging effluent from water treatment facility located in New Hampshire are authorized to discharge to all waters, unless otherwise restricted by State Water Quality Standards, New Hampshire RSA 485-A:8, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. The permit allows effluent from water treatment facility to be commingled with other discharges as long as the effluent from water treatment facility can be monitored separately for compliance.

This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication and supersedes the permit issued on December 9, 1994.

Signed this 2nd day of November, 2000.

Linda M. Murphy,

Director, Office of Ecosystem Protection, Environmental Protection Agency, Boston, MA 02114.

Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge effluent from its water treatment facility.

a. Each outfall discharging effluent from water treatment facilities shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristic	Discharges limitations Other units (specify)		Monitoring requirements	
	Avg. monthly	Max. daily	Measurement [1] frequency	Sample type
Flow, (mgd)		1.0	1/week	Total daily.
TSS, (mg/l)	30	50	1/week	Grab.
pH, (s.u.) (see part I.C.1.e)	For limits see part I.C.2.a		1/week	Grab.
Total Residual Chlorine, (mg/1) [2].	Report	Report	1/week	Grab.
Aluminum, Tot. Rec., (mg/1)		Report	1/month	Grab.
LC–50 and C–NOEC, (%) [3]	see part I.C.1.f)			24-hour comp.

[1] Samples shall be taken only when discharging.

[2] Test and report only if chlorination is used in the process.

[3] LC–50 is the concentration of effluent in a sample that causes mortality to 50% of the test population at a specific time of observation. C–NOEC, No Observed Chronic Effect Concentration, is the highest concentration of effluent to which organisms are exposed in a life-cycle or partial life-cycle test which cause no adverse effect on growth, survival and reproduction at a specific time of observation as determined from hypothesis testing where the test results (growth, survival and/or reproduction) exhibit a linear dose-response relationship. However, where the test results do not exhibit a linear dose-response relationship, report the lowest concentration where there is no observable effect.

b. The discharge shall not cause a violation of the water quality standards of the receiving water.

c. The discharge shall be adequately treated to insure that the surface water remains free from pollutants in concentrations or combinations that settle to form harmful deposits, float as foam, debris, scum or other visible pollutants. It shall be adequately treated to insure that the surface waters remain free from pollutants which odor, color, taste or turbidity in the receiving water which is not naturally occurring and would render it unsuitable for its designated uses.

d. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or, if the effluent is commingled with another permitted discharge, prior to such commingling.

e. The permittee may submit a written request to the EPA requesting a change in the permitted pH limit range to be not less restrictive than any applicable federal effluent guideline for the facility or to a default range of 6.0 to 9.0 S.U. in the situation of no applicable guideline, whichever is more stringent. The permittee's written request must include the State's letter containing an original signature (no copies). The State's letter shall state that the permittee has demonstrated to the State's satisfaction that as long as discharges to the receiving water from a specific outfall are within a specific numeric pH range the naturally occurring receiving water pH will be unaltered. That letter must specify for each outfall the associated numeric pH limit range. Until written notice is received by certified mail from the EPA indicating the pH limit range has been changed, the permittee is required to meet the permitted pH limit range in the respective permit.

f. One chronic (and modified acute) toxicity test shall be performed on the water treatment facility's discharge by the permittee upon request by EPA and/or the NHDES. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24-hour composite sample to be taken during normal facility operation. The results of the test (C–NOEC and LC_{50}) shall be forwarded to the State and EPA within 30 days after completion.

2. State Permit Conditions

a. The permittee shall comply with the following conditions which are included as State Certification requirements.

(1) The pH range for class B waters shall be 6.5–8.0 S.U. or as naturally occurs in the receiving water. The 6.5–8.0 S.U. range must be achieved in the final effluent unless the permittee can demonstrate to Division that: (1) The range should be widened due to naturally occurring conditions in the receiving water or (2) the naturally occurring source water pH is unaltered by the permittees operation. The scope of any demonstration project must receive prior approval from the Division.

b. This NPDES Discharge Permit is issued by the U.S. Environmental Protection Agency under Federal and State law. Upon final issuance by the EPA, the New Hampshire Department of Environmental Services, Water Division, may adopt this Permit, including all terms and conditions, as a state permit pursuant to RSA 485–A:13.

C. Common Elements for All Permits:

1. Conditions of the General NPDES Permit

a. *Geographic Areas.*

• *Massachusetts* (Permit No. MAG640000). All of the discharges to be authorized by the general NPDES permit for dischargers in the Commonwealth of Massachusetts are into all waters of the Commonwealth unless otherwise restricted by the Massachusetts Surface Water Quality Standards, 314 CMR 4.00 (or as revised), including 314 CMR 4.04(3) *Protection of Outstanding Resource Waters.*

• *New Hampshire.* (Permit No. NHG640000). All of the discharges to be authorized by the general NPDES permit for dischargers in the State of New Hampshire are into all waters of the State of New Hampshire unless otherwise restricted by the State Water Quality Standards, New Hampshire RSA 485–A:8 (or as revised).

b. *Notification by Permittees.* Operators of facilities whose discharge, or discharges, are effluent from water treatment facilities and whose facilities are located in the geographic areas described in part I.C.1.a above, may submit to the Regional Administrator, EPA—New England, a notice of intent to be covered by the appropriate general permit. Notifications must be submitted by permittees who are seeking coverage under this permit for the first time and by those permittees who received coverage under the expired permit. This written notification must include for each individual facility, the owner's and/or operator's legal name, address and telephone number; the facility name, address, contact name and telephone number; the number and type of facilities (SIC code) to be covered; the facility location(s); a topographic map (or other map if a topographic map is not available) indicating the facility location(s)and discharge point(s); latitude and longitude of outfall(s); the name(s) of the receiving waters into which discharge will occur; the source of water *i.e.,* river intake, private well etc. to be treated; an antidegradation review where necessary see section IV. C of the Fact Sheet; new and increased discharges from water treatment facility that may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat are not authorized under this general permit (see section IV.E of the Fact Sheet); and a list of water treatment chemicals used by the facility. The notice must be signed in accordance with the signatory requirements of 40 CFR 122.22.

Each facility must certify that the discharge for which it is seeking coverage under this general permit consists solely of effluent from discharges from the water treatment facilities. If the discharge of the water treatment facility subsequently mixes with other wastewater (e.g. stormwater) prior to discharging to a receiving water, the permittee must certify that the monitoring it will provide under this general permit will be only for water treatment facility. An authorization to discharge under this general permit, where the water treatment facility discharges to a municipal or private storm drain owned by another party, does not convey any rights or authorization to connect to that drain.

Each facility must also submit a copy of the notice of intent to each State authority as appropriate (see individual state permits for appropriate authority and address).

The facilities authorized to discharge under the final general permit will receive written notification from EPA, New England Region, with State concurrence. Failure to submit to EPA, New England Region, a notice of intent to be covered and/or failure to receive from EPA written notification of permit coverage means that the facility is not authorized to discharge under this general permit.

2. Administrative Aspects

a. *Request to be covered.* A facility is not covered by any of these general permits until it meets the following requirements. First, it must send a notice of intent to EPA and the appropriate State indicating it meets the requirements of the permit and wants to be covered. And second, it must be notified in writing by EPA that it is covered by this general permit.

b. *Eligibility to Apply.* Any facility operating under an effective (unexpired) individual NPDES permit may request that the individual permit be revoked and that coverage under the general permit be granted, as outlined in 40 CFR 122.28(b)(3)(v). If EPA revokes the individual permit, the general permit would apply to the discharge.

Facilities with expired individual permits that have been administratively continued in accordance with 40 CFR 122.6 may apply for coverage under this

general permit. When coverage is granted the expired individual permit automatically will cease being in effect. Proposed new dischargers may apply for coverage under this general permit and must submit the NOI 90 days prior to the discharge.

Facilities with coverage under the current general permit issued on December 9, 1994, effective on January 9, 1995 and expired on January 9, 2000 need to apply for coverage under this general permit within 60 days from the effective date of the permit. Failure to submit a Notice of Intent within 60 days for continuation of the discharge will be considered discharging without a permit as of the expiration date of the expired permit (January 9, 2000) for enforcement purposes. A Notice of Intent is not required if the permittee submits a Notice of Termination (see part I.F.1) of discharge before the sixty days expires.

c. *Continuation of this General Permit After Expiration.* If this permit is not reissued prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and in effect as to any particular permittee as long as the permittee submits a new Notice of Intent two (2) months prior to the expiration date in the permit. However, once this permit expires EPA cannot provide written notification of coverage under this general permit to any permittee who submits Notice of Intent to EPA after the permit's expiration date. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

(1) Reissuance of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

(2) The permittee's submittal of a Notice of Termination; or

(3) Issuance of an individual permit for the permittee's discharges; or

(4) A formal permit decision by the Director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

D. Monitoring and Reporting

Massachusetts: Monitoring results obtained during the previous 3 months shall be summarized for each quarter and reported on separate Discharge Monitoring Report Form(s) postmarked no later than the 15th day of the month following the completed reporting period. The reports are due on the 15th day of January, April, July and October. The first report may include less than 3 months information.

New Hampshire: Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report Form(s) postmarked no later than the 15th day of the month following the completed reporting period. The reports are due on the 15th day of the month following the reporting period.

The reports as stated above should be sent to EPA and the States at the following addresses:

1. *EPA:* Submit original signed and dated DMRs and all other reports required herein at the following addressee: U.S. Environmental Protection Agency, Water Technical Unit (SEW), Post Office Box 8127, Boston, MA 02114.

2. *Massachusetts Department of Environmental Protection:* a. The Regional Offices wherein the discharge occurs, shall receive a copy of the DMRs required herein:

Massachusetts Department of Environmental Protection, Western Regional Office, 436 Dwight Street, Springfield, MA 01103

Massachusetts Department of Environmental Protection, Southeastern Regional Office, 20 Riverside Drive, Lakeville, MA 02347

Massachusetts Department of Environmental Protection, Northeastern Regional Office, 205A Lowell Street, Wilmington, MA 01887

Massachusetts Department of Environmental Protection, Central Regional Office, 627 Main Street, Worcester, Massachusetts 01608

b. Copies of DMRs, toxicity test reports and all other notifications required by this permit shall also be submitted to the State at:

Massachusetts Department of Environmental Protection, Division of Watershed Management, 627 Main Street, Worcester, MA 01608.

c. Copies of the State Application Form BRP WM 13, Appendix C—Request for General Permit coverage for Surface Water Discharge from a Water Treatment Facility , and the Transmittal Form for Permit Application and Payment may be obtained at the DEP website at *(www.state.ma.us/dep)* by clicking on "Permit Applications" and "Watershed Management"; by telephoning the DEP Info Service Center (Permitting) at (617) 338–2255 or 1–800–462–0444 in 508, 413, 978 and 781 area codes; or from any DEP Regional Service Center located in each Regional Office.

Three copies of the transmittal form are needed. Copy 1 (the original) of the transmittal form and Appendix C form should be sent to Massachusetts Department of Environmental Protection, 627 Main Street, Worcester, MA 01608. Copy 2 of the transmittal form and the $500 fee should be sent to DEP, P.O. Box 4062, Boston, MA 02111. Municipalities are fee-exempt, but should send a copy of the transmittal form to that address. Keep Copy 3 of the transmittal form and a copy of the application for your records.

3. *New Hampshire Department of Environmental Services:* Signed copies of all reports required by this permit shall be sent to the State at: New Hampshire Department of Environmental Services, Water Division, P.O. Box 95, 6 Hazen Drive, Concord, New Hampshire 03302–0095.

E. Additional General Permit Conditions

1. Termination of Operations

Operators of facilities and/or operations authorized under this permit shall notify the Director upon the termination of discharges. The notice must contain the name, mailing address, and location of the facility for which the notification is submitted, the NPDES permit number for the water treatment facility discharge identified by the notice, and an indication of whether the water treatment facility discharge has been eliminated or the operator of the discharge has changed. The notice must be signed in accordance with the signatory requirements of 40 CFR 122.22.

2. When the Director May Require Application for an Individual NPDES Permit

a. The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take such action. Instances where an individual permit may be required include the following:

(1) The discharge(s) is a significant contributor of pollution;

(2) The discharger is not in compliance with the conditions of this permit;

(3) A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point source;

(4) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(5) A Water Quality Management Plan or Total Maximum Daily Load

containing requirements applicable to such point source is approved;

(6) Discharge to the territorial sea

(7) Discharge to outstanding natural resource water.

(8) Discharge into waters that are not attaining state water quality standards.

(9) The point source(s) covered by this permit no longer:

(a) Involves the same or substantially similar types of operations;

(b) Discharges the same types of wastes;

(c) Requires the same effluent limitations or operating conditions;

(d) Requires the same or similar monitoring; and

(e) In the opinion of the Director, is more appropriately controlled under a general permit than under an individual NPDES permit.

b. The Director may require an individual permit only if the permittee authorized by the general permit has been notified in writing that an individual permit is required, and has been given a brief explanation of the reasons for this decision.

3. When an Individual NPDES Permit May Be Requested.

a. Any operator may request to be excluded from the coverage of this general permit by applying for an individual permit.

b. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to that owner or operator is automatically terminated on the effective date of the individual permit.

F. Summary of Responses to Public Comments

On June 30, 2000, EPA released in the **Federal Register** for public notice and comment a draft NPDES general permit for effluent from water treatment facility discharges in the states of ME, MA. and NH. The public comment period for this draft general permit expired on July 30, 2000.

1. The US Fish and Wildlife Service, in a letter dated August 1, 2000, concurred with EPA's opinion that the reissuance of the NPDES general permits will not jeopardize the continued existence of Atlantic salmon in Maine.

2. The National Marine Fisheries Service in a letter dated July 31, 2000 has commented that the discharge into waters that are not attaining state water quality standards should be excluded from this permit . EPA concurs with NMFS. Accordingly section III (Exclusions), 2nd paragraph of the Fact Sheet and part I.F.2.(8) of the permit are added. Otherwise, NMFS has concluded that reissuance of the general permits for the water treatment facility discharge(s) in the states of Massachusetts and New Hampshire will not likely adversely affect any endangered or threatened species including essential fish habitat under NMFS jurisdiction.

3. The State of Maine, in a letter dated August 29, 2000 has requested EPA to be excluded from this general permit. EPA agrees and the permit for the State of Maine (MEG640000) is taken out from this general permit.

4. Based on comments from MA DEP some address corrections are made in the draft permit.

Part II, Standard Conditions

Section A—General Requirements

1. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

a. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under section 405 (d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

b. The CWA provides that any person who violates sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any of such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the CWA is subject to a civil penalty not to exceed $25,000 per day for each violation. Any person who *negligently* violates such requirements is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who *knowingly* violates such requirements is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both. Note: See 40 CFR 122.41(a)(2) for additional enforcement criteria.

c. Any person may be assessed an administrative penalty by the Administrator for violating sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the CWA. Administrative penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.

2. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

3. Duty To Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator, upon request, copies of records required to be kept by this permit.

4. Reopener Clause

The Regional Administrator reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA in order to bring all discharges into compliance with the CWA.

5. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA, or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

6. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges.

7. Confidentiality of Information

a. In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, *EPA may make the information available to the public without further notice.* If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

b. Claims of confidentiality for the following information *will* be denied:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and effluent data as defined in 40 CFR 2.302(a)(2).

c. Information required by NPDES application forms provided by the Regional Administrator under section 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

8. Duty To Reapply

If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain a new permit. The permittee shall submit a new notice of intent at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Regional Administrator. (The Regional Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

9. State Authorities

Nothing in part 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

10. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, and local laws and regulations.

Section B—Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass

a. *Definitions.* (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs B.4.c and 4.d of this section.

c. *Notice.* (1) *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e (24-hour notice).

d. *Prohibition of bypass.* (1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless: (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c)(i) The permittee submitted notices as required under paragraph 4.c of this section.

(ii) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in paragraph 4.d of this section.

5. Upset

a. *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary non-compliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph B.5.c of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in paragraphs D.1.a and 1.e (24-hour notice); and

(4) The permittee complied with any remedial measures required under B.3. above.

d. *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Section C—Monitoring and Records

1. Monitoring and Records

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application *except for the information concerning storm water discharges which must be retained for a total of 6 years.* This retention period may be extended by request of the Regional Administrator at any time.

c. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

d. Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, unless other test procedures have been specified in the permit.

e. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The permittee shall allow the Regional Administrator, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D—Reporting Requirements

1. Reporting Requirements

a. Planned changes. The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject to the effluent limitations in the permit, not to the notification requirements under 40 CFR 122.42(a)(1).

(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition or change may justify the application of permit conditions different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

b. *Anticipated noncompliance.* The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. *Transfers.* This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See section 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Regional Administrator for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Administrator.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

e. *Twenty-four hour reporting.*

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances.

A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period

of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See section 122.41(g))

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in the permit to be reported within 24 hours. (See section 122.44(g))

(3) The Regional Administrator may waive the written report on a case-by-case basis for reports under paragraph D.1.e if the oral report has been received within 24 hours.

f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

g. *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs D.1.d, D.1.e and D.1.f of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph D.1.e of this section.

h. *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

2. Signatory Requirement

a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (See section 122.22)

b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports

Except for data determined to be confidential under paragraph A.8. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Regional Administrator. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in section 309 of the CWA.

Section E—Other Conditions

1. *Definitions* for purposes of this permit are as follows:

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject to, including water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions.

Average means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For total and/or fecal coliforms, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average weekly discharge limitation means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Best Professional Judgement (BPJ) means a case-by-case determination of Best Practicable Treatment (BPT), Best Available Treatment (BAT) or other appropriate standard based on an evaluation of the available technology to achieve a particular pollutant reduction.

Composite Sample—A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and Reporting) and combined proportional to flow, or a sample continuously collected proportionally to flow over that same time period.

Continuous Discharge means a "discharge" which occurs without interruption throughout the operating hours of the facility except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA or "The Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92–500, as amended by Public Law 95–217, Public Law 95–576, Public Law 96–483 and Public Law 97–117; 33 U.S.C. 1251 *et seq.*

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the daily discharge is calculated as the average measurement of the pollutant over the day.

Director means the person authorized to sign NPDES permits by EPA and/or the State.

Discharge Monitoring Report Form (DMR) means the EPA standard national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

Discharge of a pollutant means:

(a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or

(b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

This term does not include an addition of pollutants by any "indirect discharger."

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise "effluent limitations."

EPA means the United States "Environmental Protection Agency."

Grab Sample—An individual sample collected in a period of less than 15 minutes.

Hazardous Substance means any substance designated under 40 CFR part 116 pursuant to section 311 of CWA.

Maximum daily discharge limitation means the highest allowable "daily discharge."

Municipality means a city, town, borough, county, parish, district, association, or other public body created by of under State law and having jurisdiction over disposal or sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under section 208 of CWA.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

New discharger means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants";

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source"; and

(d) Which has never received a finally effective NPDES permit for discharges at that "site".

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122.(a)(1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such.

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means "National Pollutant Discharge Elimination System."

Non-Contact Cooling Water is water used to reduce temperature which does not come in direct contact with any raw material, intermediate product, a waste product or finished product.

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al.* v. *Train*, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in appendix A of 40 CFR part 122.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands.

Secondary Industry Category means any industry category which is not a "primary industry category."

Toxic pollutant means any pollutant listed as toxic in appendix D of 40 CFR part 122, under section 307(a)(1) of CWA.

Uncontaminated storm water is precipitation to which no pollutants have been added and has not come into direct contact with any raw material, intermediate product, waste product or finished product.

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands."

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(l) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) (d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)–(f) of this definition.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

2. Abbreviations when used in this permit are defined below:

cu. M/day or M3/day—cubic meters per day
mg/l—milligrams per liter
ug/l—micrograms per liter
lbs/day—pounds per day
kg/day—kilograms per day
Temp. °C—temperature in degrees Centigrade
Temp. °F—temperature in degrees Fahrenheit
Turb.—turbidity measured by the Nephelometric Method (NTU)
pH—a measure of the hydrogen ionconcentration
CFS—cubic feet per second
MGD—million gallons per day
Oil & Grease—Freon extractable material
ml/l—milliliter(s) per liter
Cl_2—total residual chlorine

[FR Doc. 00–29225 Filed 11–14–00; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 6, 2000.

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: Written comments should be submitted on or before December 15, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., 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: 3060–0855.

Title: Telecommunications Reporting Worksheet and Associated Requirements, CC Docket No. 96–45.

Form Numbers: FCC Forms 499–A and 499–S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 5,000.

Estimate Time Per Response: 5.5 to 8.0 hours.

Frequency of Response: Recordkeeping; Monthly, quarterly, semi-annual, and annual reporting requirements; Third party disclosure.

Total Annual Burden: 171,000 hours.

Total Annual Costs: None.

Needs and Uses: Pursuant to the Communications Act of 1934, as amended, telecommunications carriers (and certain other providers of telecommunications services) must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. The FCC is currently seeking comment on proposals to modify the Commission's rules relating to contributions to the federal universal service support mechanisms. If adopted, the proposals on which the Commission seeks consent in the Further Notice may entail altering the current revenue reporting requirements to which interstate telecommunications carriers are subject under sections 47 CFR Sections 54.709 and 54.711 of the Commission's Rules.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–29189 Filed 11–14–00; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council Nominations

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: This notice requests nominations for membership in the Federal Communications Commission's Technological Advisory Council ("Council"), which has been renewed for a second two-year term beginning December 11, 2000.

DATES: Nominations will be accepted until November 22, 2000.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room 7–B452, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson at knilsson@fcc.gov or 202–418–0845.

SUPPLEMENTARY INFORMATION: Increasing innovation and rapid advances in technology have accelerated changes in the ways that telecommunications services are provided to, and accessed by, users of communications services. The FCC must stay abreast of future developments in communications and related technologies to fulfill its responsibilities under the Communications Act. The Technological Advisory Council, which held its first meeting on April 7, 1999, was designed to provide a mechanism by which a diverse array of distinguished technologists can meet and provide "cutting edge" advice to the FCC on technological innovations that are likely to affect electronic, optical, and radio communications and related industries.

Nominees and applicants for membership on the Council should have national, or international, reputations as leading technologists in their areas of expertise. In the case of nominees or applicants who are affiliated with private sector companies, nominees will frequently hold the title of Chief Scientist, or Chief Technology Officer; and in the case of academic and other research organizations, applicants and nominees will frequently hold an endowed professorship, or fellowship, or senior management or technical position within that research or development organization. Individuals may apply for, or nominate another individual for, membership on the Council. Each nomination or application must include:

(1) The name and title of the applicant or nominee and a description of the area, or areas, of expertise possessed by the applicant or nominee;

(2) The applicant's or nominee's mail address, e-mail address (where available), telephone number, and facsimile number;

(3) Reasons why the applicant or nominee should be appointed to the Council; and

(4) The basis for concluding that the applicant or nominee has achieved peer recognition as a technical expert.

The Technological Advisory Council has been organized as a Federal Advisory Committee under the Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, as amended Public Law 94–409, section 5(c), Sept. 13, 1976, 90 Stat. 1247; 1977 Reorg. Plan No. 1, section 5F, 42 FR 56101, 91 Stat. 1634; Public Law 96–523, section 2, Dec. 12, 1980, 94 Stat. 3040; Public Law 97–375, title II, section 201(c), Dec. 21, 1982, 96 Stat. 1822. The Council, which was initially chartered on December 11, 1998, has been rechartered for an additional period that will expire on December 11, 2002. The Council will meet quarterly at the FCC which will provide facilities for those meetings. Members of the Council serve without Federal government compensation, and are not entitled to travel expenses, per diem or subsistence allowances. Nominations, and applications, for membership on the Council will be accepted through November 22, 2000.

Nominations and applications should be sent to Kent Nilsson, Network Technology Division, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–29190 Filed 11–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2450]

Petitions for Reconsideration of Action in Rulemaking Proceedings

November 7, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by November 30, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: Revision of the Commission's Rules to Ensure Compatibility with enhanced 911 Emergency Calling Systems (CC Docket No. 94–102).

Number of Petitions Filed: 2.

Subject: Amendment of Parts 1, 2 and 101 of the Commission's rules to License Fixed Services at 24 GHz (WT Docket No. 99–327).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–29188 Filed 11–14–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 002758–018.

Title: Oakland—APL Preferential Assignment Agreement.

Parties:

City of Oakland

American President Lines, Ltd.

Synopsis: The proposed amendment adjusts the compensation and rental amounts under the agreement. The term of the agreement continues to run through June 30, 2001.

Agreement No.: 011732.

Title: Evergreen/Lloyd Triestino Pacific Slot Charter Agreement.

Parties:

Evergreen Marine Corp. (Taiwan) Ltd. ("EMC")

Lloyd Triestino Di Navigazione S.p.A.("L.T.").

Synopsis: The proposed agreement would authorize EMC to charter space to L.T. on its vessels that operate in the trade between United States West Coast ports and ports in the Far East. The parties may interchange equipment, enter into cooperative working arrangements, and jointly contract for shoreside services. They may also discuss and agree on rates and terms and conditions of service relative to the carriage of cargo in the trade, including cargo carried under the parties' individual service contracts.

Agreement No.: 011733.
Title: Common Ocean Carrier Platform Agreement.
Parties:
A.P. Møller-Maersk Sealand, CMA CGM, S.A.
Hamburg Süd
Mediterranean Shipping Company, S.A.
P&O Nedlloyd Limited.
Synopsis: The proposed agreement authorizes the parties to establish and operate a common ocean carrier platform on the Internet that will serve as a means by which they and other providers of transportation services interact with their customers through a common set of transactions.

Agreement No.: 201108.
Title: Lease between the Port of New Orleans and Empire Stevedoring.
Parties:
Port of New Orleans
Empire Stevedoring (LA), Inc.
Synopsis: The agreement provides for the lease of certain areas of the First Street Wharf. The agreement runs through November 2, 2001 and can be extended for two additional 1-year periods.

Agreement No.: 201109.
Title: Lease Agreement between Broward County and H.T. Shipping, Inc.
Parties:
Broward County
H.T. Shipping, Inc.
Synopsis: The agreement provides for the lease of certain areas in Port Everglades. The agreement runs through January 31, 2005.

Agreement No.: 201110.
Title: Oakland—Hanjin Preferential Assignment Agreement.
Parties:
City of Oakland
Hanjin Shipping Company, Ltd.
Synopsis: The agreement provides for the use of certain facilities at Oakland's Inner Harbor Area.

Dated: November 9, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–29264 Filed 11–14–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

TAT International, Inc., 41–79 Main Street, Flushing, NY 11355.
Officers: Audie Wang, Treasurer/ Secretary, (Qualifying Individual), Timothy C. O'Nell, President.

Dated: November 9, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–29265 Filed 11–14–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License number: 4219.
Name: Atlantic Pacific International, Inc.
Address: 3049 Ualena Street, #715, Honolulu, HI 96819.
Date revoked: October 8, 2000.
Reason: Failed to maintain a valid bond.

License number: 14808N.
Name: Korea Marine Transportation, Inc.
Address: 2500 83rd Street, Bldg. 1–W, North Bergen, NJ 07047.
Date revoked: October 26, 2000.
Reason: Failed to maintain a valid bond.

License number: 1048F.
Name: Mark F. Samuels & Co.
Address: 11222 S. La Cienega Blvd., Suite 560, Inglewood, CA 90304.
Date revoked: October 20 2000.
Reason: Failed to maintain a valid bond.

License number: 14781N.
Name: Samshin, Inc. d/b/a Korea Cargo Express.
Address: 8750 N.W. 36th Street, #260, Miami, FL 33178.
Date revoked: October 26, 2000.
Reason: Failed to maintain a valid bond.

License number: 4526F.
Name: Trafik Services, Inc.
Address: 300 Wampanoag Trail, East Providence, RI 02915.
Date revoked: October 25, 2000.
Reason: Failed to maintain a valid bond.

License number: 10339N.
Name: Unitrans Shipping Corp.
Address: 180–02 Eastgate Plaza, Jamaica, NY 11434.
Date revoked: November 2, 2000.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–29267 Filed 11–14–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by OSRA 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
2363F	Cargoza Forwarding Corporation, 2801 NW. 74th Avenue, Suite 202, Miami, FL 33166.	Sept. 13, 2000.
4168F	Continental Express International, Inc., 7506 SW. 26th Court, Davie, FL 33314.	Sept. 17, 2000.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–29266 Filed 11–14–00; 8:45 am]

BILLING CODE 6730–01–PM

FEDERAL MEDIATION AND CONCILIATION SERVICE

Federal Mediation and Conciliation Service Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Draft Fiscal Year 2001 Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 2001 Program Guidelines/Application Solicitation for the Labor-Management Cooperation program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. This Solicitation contains changes in the length of time for the grant budget period.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202–606–8181.

A. Introduction

The following is the draft solicitation for the Fiscal Year (FY) 2001 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the forementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (company), area, industry, or public sector levels. A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon a particular city, county, contiguous multicounty, or statewide jurisdiction. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists either of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 2001, competition will be open to company/plant, area, private industry, and public sector committees. Public Sector committees will be divided into two sub-categories for scoring purposes. One sub-category will consist of committees representing state/local units of government and public institutions of higher education. The second sub-category will consist of public elementary and secondary schools.

Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (*e.g.*, job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application should have numbered pages and discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses why the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail what the labor-management committee will accomplish during the life of the grant. Applications that promise to provide

objectives after a grant is awarded will receive little or no credit in this area. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in specific and measurable terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on expansion efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

3. *Approach*—This section of the application specifies how the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (*e.g.*, members represent 70% of the area or company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees, a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for when they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using September 17, 2001, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from all proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the applicant.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities that can document that a major purpose or function of their organization is the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant with be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as

law firms or other third-parties failing to meet the above criteria.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to grantees who seek funds on behalf of an entirely difference committee whose efforts are totally outside of the scope of the original grant.

D. Allocations

The FY 2001 appropriation for this program is expected to be $1.5 million, of which at least $1,000,000 will be available competitively for new applicants. Specific funding levels will not be established for each type of committee. The review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its nonreserved appropriation to be awarded on an non-competitive basis. These funds will be used only to support applications that have been solicited by the Director of the Service and are not subject to the dollar range noted in Section E.

FMCS reserves the right to retain up to five percent of the FY2001 appropriation to contract for program support purposes (such as evaluation) other than administration.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to expand existing or establish new labor-management committees will be for a period of 18 months. If successful progress is made during this initial budget period and all grant funds are not obligated within 18 months, these grants may be extended for up to six months. No continuation awards will be made.

The dollar range of awards is as follows:

- Up to $65,000 over 18 months for company/plant committees or single department public sector applicants;
- Up to $125,000 per 18-month period for area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

F. Cash Match Requirements and Cost Allowability

All applicants must provide at least 10 percent of the total allowable project costs. Matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for committee purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for time spent at committee meetings or time spent in committee training sessions. Applicants generally will not be allowed to claim all or a portion of existing full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY2001 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications must be signed by both a labor and management representative and be postmarked or electronically transmitted no later than May 19, 2001. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus three copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW, Washington, D.C. 20427. FMC will not consider videotaped submissions or video attachments to submissions. Those wishing to send their application by e-mail should consult the FMCS web site (www.fmcs.gov) to determine how and if to proceed.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more Grant Review Boards. The Board(s) will recommend selected applications for rejection or further funding consideration. The Director, Program Services, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY2001 grant applicants will be notified of results and all grants awards will be made before September 15, 2001. Applications submitted after the May 19 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Program Services.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. Please consult the FMCS web site (www.fmcs.gov) to determine when/if the application can be submitted electronically.

These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427; or by calling 202–606–8181.

C. Richard Barnes,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 00–29026 Filed 11–14–00; 8:45 am]

BILLING CODE 6732–01–M

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 (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 11, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer), 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. FleetBoston Financial Corporation, Boston, Massachusetts; to merge with and acquire 100 percent of the voting shares of Summit Bancorp, Princeton, New Jersey, and thereby indirectly acquire Summit Bank, Hackensack, New Jersey; Summit Bank, Bethlehem, Pennsylvania; and Summit Bank, Norwalk, Connecticut.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Sooner Southwest Bankshares, Inc., Tulsa, Oklahoma; to acquire 100 percent of the voting shares of The First National Bancorporation of Heavener, Inc., Heavener, Oklahoma, and thereby indirectly acquire First National Bank, Heavener, Oklahoma.

2. Heritage Group, Inc., Aurora, Nebraska; to acquire 100 percent of the voting shares of Heritage Bank, N.A., Doniphan, Nebraska, a *de novo* bank.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Mason National Bancshares, Inc., Mason, Texas, and Mason National Bancshares of Nevada, Inc., Carson City, Nevada; to become bank holding companies by acquiring Mason National Bank, Mason, Texas.

2. Shelby Bancshares, Inc., Center, Texas, and Shelby Bancshares of Nevada, Inc., Carson City, Nevada; to become bank holding companies by acquiring Shelby Savings Bank, SSB, Center, Texas.

Board of Governors of the Federal Reserve System, November 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–29169 Filed 11–14–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, November 20, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Future capital framework.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

Contact Person for More Information: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 9, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–29301 Filed 11–9–00; 4:58 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will discuss its draft report *Ethical and Policy Issues in International Research.* Most Commission members will participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on November 22 from 1:00–1:30 pm.

Dates/Times/Location

November 22, 2000, 10:00 am–5:00 pm, National Institutes of Health, 45 Center Drive, Building 45 (Natcher Conference Center), Conference Rooms E1 and E2, Bethesda, Maryland.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received.

Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special

accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Crank, National Bioethics Advisory Commission, 6705 Rockledge Drive, Suite 700, Bethesda, Maryland 20892–7979, telephone (301) 402–4242, fax number (301) 480–6900.

Dated: November 7, 2000.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 00–29163 Filed 11–14–00; 8:45 am]

BILLING CODE 4167–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. 30DAY–02–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES) OMB No. 0920–0237—Revision—The National Health and Nutrition Examination Survey (NHANES) has been conducted in several cycles since 1970 by the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The current cycle of NHANES began in February 1999. The survey will now be conducted on a continuous, rather than episodic, basis. About 6,700 individuals receive a health interview in their homes annually; of these, 5,000 persons complete a physical examination. Participation in the survey is voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutritional status of the U.S. population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States civilian, noninstitutionalized population. NHANES monitors the prevalence of chronic conditions and risk factors such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental exposures, and diet. NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from NHANES can be compared to those from previous surveys to monitor changes in the health of the U.S. population. NHANES will also establish a national probability sample of genetic material for future genetic research for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate long-term national health objectives, food fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs.

The annualized burden for this collection is 51,741 hours.

Respondent	Number of responses	Responses/ respondent	Hours/ response
Screener (Scrn) Interview only	13,750	1	10/60
Scrn Household (HH) Interview only	750	1	26/60
Scrn HH Sample Person (SP) Interview only	1,050	1	1 6/60
Scrn/HH/SP & Primary Medical Exam (Prim MEC) only	5,250	1	6 40/60
Scrn/HH/SP, Prim MEC & full MEC replicate exam	255	1	11 40/60
Scrn/HH/SP MEC & dietary replicate interview only	1,050	1	9 1/60
Home Exam	70	1	2 36/60
Optional Studies	1,180	1	15/60
Hepatitis C follow-up	100	1	30/60

Dated: November 8, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–29209 Filed 11–14–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–04–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Information Collection Procedures for Evaluating Toxicological Profiles (0923–0020)—Extension—Agency for Toxic Substance and Disease Registry (ATSDR). The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability

Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prepare toxicological profiles in accordance with guidelines developed by ATSDR and EPA. Each profile is revised and republished as necessary, but no less often than every three years. The principal audiences for the toxicological profiles are health professionals at the federal, state, and local levels, interested private sector organizations and groups, and members of the public.

This is a request for a three-year extension of a previously approved data collection to collect information pertaining to: (a) Affiliation of users of the profiles, (b) clarity of discussion in the profiles, (c) consistency of information in the profiles, (d) completeness of information in the profile, and (e) utility of information in the profile.

The information will be used to maintain customer satisfaction concerning use of the profiles by these multi-disciplinary users. This will also ensure that we continue to provide a client-oriented product. This effort will be accomplished through enhancement of the system used for updating existing toxicological profiles and improving the utility of newly developed profiles by use of these user surveys. There is no cost to respondents. The estimated burden hours to respondents are 250.

Respondents	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Individuals completing questionnaires	1000	1	15/60	250

Dated: November 8, 2000.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–29210 Filed 11–14–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–03–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

A Research Program to Develop Optimal NIOSH Alerts for Occupational Safety and Health—New—The mission of the National Institute of Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. The Alert is one of the primary publications by which NIOSH communicates health and safety recommendations to at-risk workers. The Alert is mailed to workers affected by a particular health or safety hazard and contains information about the nature of the hazard, as well as recommendations for avoiding or controlling it. Despite the important role of the Alert in conveying health and safety information to workers, these publications have not been routinely pretested and evaluated for effectiveness. Therefore, the degree to which the NIOSH Alerts actually produce risk awareness, as well as comprehension, acceptance and use of the recommended health and safety measures, is unknown.

NIOSH proposes to apply recent theoretical advances in communication research to the development of NIOSH Alerts in order to ensure maximal effectiveness in conveying health and safety information to workers. The Elaboration Likelihood Model (ELM) is a communication theory that has received much empirical support. During the past year, an initial test (still in progress) was conducted to compare a standard Alert to an Alert with revised content and format based on the postulates of the ELM. Although this initial study will be informative, much additional research of this nature is necessary to gain an understanding of the communication variables that contribute to high levels of worker awareness, comprehension, acceptance, and use of safety recommendations.

According to the ELM, the greatest impact on long-term health/safety attitudes and behaviors should occur when workers are motivated and able to elaborate upon a message, and when a message contains strong arguments. Therefore, the current investigation aims to (1) examine variables that will increase level of message-related elaboration and (2) create messages that contain strong arguments. The effectiveness of the standard version of the Alert for Preventing Injuries and Deaths from Skid-Steer Loaders will be compared with revised versions of this Alert that incorporate variables known to increase message elaboration and strong arguments selected through pretesting. Specifically, the revised Alerts will use high imagery language to increase message elaboration. After the initial messages are developed, they will be pretested using a sample of 60 farmers and 60 West Virginia University Agricultural Sciences students. Following this pretesting phase, data will be gathered from (1) 300 volunteer farmers who attend an on-site testing and (2) a national random sample of 300 farmers, and (3) 600 West Virginia University Agricultural Science students. In each of these cases, participants will be randomly assigned to receive either a standard or revised version of the Alert, and the effect of the different Alert formats on safety attitudes and behaviors will be assessed.

Data collected in this investigation should further our understanding of the variables that increase effectiveness in communicating health and safety information to workers. By continuing to systematically apply postulates of the ELM to the design of the Alerts, it should become possible to develop a standard communication template to use in future NIOSH publications. The total estimated annualized burden is 660 hours.

Type of respondent	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs.)
Farmers (pretesting)	60	1	.5
Student (pretesting)	60	1	.5
Farmers	300	1	.333
Farmers	300	2	.333
Students	600	1	.5

Dated: November 8, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–29259 Filed 11–14–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–05–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

NIOSH Training Grants, 42 CFR Part 86, Application and Regulations (OMB No. 9020–0261)—Extension—National Institute for Occupational Safety and Health (NIOSH). Public law 91–596 requires CDC/NIOSH to provide an adequate supply of professionals to carry out the purposes of the Act to assure a safe and healthful work environment. NIOSH supports educational programs through training grant awards to academic institutions for the training of industrial hygienists, occupational physicians, occupational health nurses and safety professionals. Grants are provided to 15 Education and Research Centers (ERCs) which provide multi-disciplinary graduate academic and research training for professionals, continuing education for practicing professionals and outreach programs in the Region. There are also currently 41 Training Project Grants (TPGs) which provide single discipline academic and technical training throughout the country. 42 CFR Part 86, Grants for Education Programs in Occupational Safety and Health, Subpart B—Occupational Safety and Health Training, provides guidelines for implementing Public Law 91–596.

The training grant application form (CDC2.145.A) is used by the National Institute of Occupational Safety and Health to collect information from new grant applicants submitting competing applications, and from existing applicants for competing renewal grants. The information is used to determine the eligibility of applicants for grant review and by peer reviewers during the peer review process to evaluate the merit of the proposed training project. CDC Form 2.145B is used for non-competing awards to evaluate the annual progress of the applicant during the approved project period.

Extramural training grant awards are made annually following an extramural review process of the training grant applications, review by an internal Training Grants Council and an internal review of non-competing applicants. The estimated annualized burden is 6,161 hours.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden per response (in hrs)
Universities	61	1	101

Dated: November 8, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–29260 Filed 11–14–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0530]

FDA Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 004

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA will recognize for use in premarket reviews (FDA Recognized Consensus Standards). This publication entitled "Modifications to the List of Recognized Standards, Recognition List Number: 004" (Recognition List Number: 004) will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Written comments concerning this document may be submitted at any time. See section VI of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies on a 3.5′ diskette of "Modifications to the List of Recognized Standards, Recognition List Number:

004," to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Written comments concerning this document must be submitted to the contact person (address below). Comments should be identified with the docket number found in brackets in the heading of this document. This document may also be accessed on FDA's Internet site at http://www.fda.gov/cdrh/fedregin.html. See section V of this document for electronic access to the searchable data base for the current list of "FDA Recognized Consensus Standards," including Recognition List Number: 004 modifications, and other standards related information.

FOR FURTHER INFORMATION CONTACT: To comment on this document and/or to recommend additional standards for recognition: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 12725 Twinbrook Pkwy., Rockville, MD 20852, 301–827–4777.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards, developed by international and national organizations, for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled "Recognition and Use of Consensus Standards." This notice described how FDA will implement its standards program recognizing the use of certain standards and provided the initial list of recognized standards.

In **Federal Register** notices published on October 16, 1998 (63 FR 55617) and July 12, 1999 (64 FR 37546), FDA modified its initial list of recognized standards. These notices described the addition, withdrawal, and revision of certain standards recognized by FDA. When these notices were published, the agency maintained "html" and "pdf" versions of the list of "FDA Recognized Consensus Standards." Both versions were publicly accessible at the agency's Internet site. The agency maintains the current list in a searchable data base accessible to the public. See section V of this document for electronic access information.

II. Discussion of Modifications to the List of Recognized Standards, Recognition List Number: 004

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews for devices. FDA will incorporate these modifications in the list of "FDA Recognized Consensus Standards" in the agency's searchable data base. FDA will use the term "Recognition List Number: 004" to identify supplementary information sheets for standards added to the list for the first time, standards added to replace withdrawn standards, and still recognized standards for which minor revisions are made to clarify the application of the standards.

At the end of this notice, FDA lists modifications the agency is making that involve: (1) The initial addition of standards not previously recognized by FDA and (2) the addition of standards in conjunction with the withdrawal of other standards that are replaced by these later, or amended, or different standards.

Under headings "A" through "L" below, FDA describes modifications that involve: (1) The withdrawal of standards and their replacement by others ("replacement" standards are included in the list at the end of this notice, but not "withdrawn" standards); (2) the correction of errors made in previously recognized standards, e.g., the name of the standard; (3) the withdrawal of standards not replaced; and (4) the minor revision of supplementary information sheets for standards that FDA still recognizes, e.g., to clarify the extent of recognition, or applicable devices.

Item numbers discussed below identify entries in the searchable data base list of "FDA Recognized Consensus Standards." "Previous item" refers to entries in the list after modification on July 12, 1999 (64 FR 37546). "Current item" refers to entries in the list after Recognition List Number: 004 modifications are included. Within each category of standards, entries begin (or began) with item 1. Item numbers are not repeated if an entry is withdrawn, replaced, or added.

A. Biocompatibility

1. ASTM E1397–91 is withdrawn under previous item 5. ASTM E1397–91 (1998) is added under current item 37.
2. ASTM E1398–91 is withdrawn under previous item 6. ASTM E1398–91 (1998) is added under current item 38.
3. ASTM F763–87 (1993) is withdrawn under previous item 35. ASTM F763–99 is added under current item 40.
4. ASTM F981–93 is withdrawn under previous item 14. ASTM F981–99 is added under current item 41.
5. USP 23, "Biological Reactivity Tests, In Vitro-Direct Contact Test (87)," is withdrawn under previous item 23. The USP 24 version, Biological Tests <87>, is added under current item 46.
6. USP 23, "Biological Reactivity Tests, In Vitro-Elution Test (87)," is withdrawn under previous item 24. The USP 24 version, Biological Tests <87> is added under current item 47.
7. USP 23 (1988), "Biological Reactivity Tests, In Vivo, Classification of Plastics Sample Preparation," is withdrawn under previous item 31. The USP 24 version, Biological Tests <88>, is added under current item 48.
8. USP 23, "Biological Reactivity Test, In Vivo, Classification of Plastics-Intracutaneous Test (88)," is withdrawn under previous item 25. The USP 24 version, Biological Tests <88>, is added under current item 49.
9. USP 23, "Biological Reactivity Tests, In Vivo-Systemic Injection Test (88)," is withdrawn under previous item 27. The USP 24 version, Biological Tests <88>, is added under current item 50.

B. Cardiovascular/Neurology

1. ASTM F1058–91 is withdrawn under previous item 13. ASTM F1058–97 is added under current item 28.
2. IEC 60601–2–30 (1995–03) is withdrawn, under previous item 19. IEC 60601–2–30: 1999–12 is added under current item 29.
3. IEC 60601–2–25 (1993–03) is withdrawn under previous item 17. IEC 60601–2–25 Amendment 1 (1999) is added under current item 30.

C. Dental/ENT

1. ANSI/ADA Specification No.15a (1992) is withdrawn under previous item 47. ANSI/ADA Specification No. 15: 1999 is added under current item 85.
2. ANSI/ADA Specification No. 38 (1991) is withdrawn under previous item 54. ANSI/ADA Specification No. 38: 2000 is added under current item 86.
3. ANSI/ADA Specification No. 69 (1991) is withdrawn under previous item 57. ANSI/ADA Specification No. 69: 1999 is added under current item 87.

4. ANSI/ADA Specification No. 78 (1994) is withdrawn under previous item 58. ANSI/ADA Specification No. 78: 2000 is added under current item 88.

D. General (General Applicability)

1. ANSI/AAMI/ISO 10993–1 (1997) is withdrawn under previous item 13. ANSI/AAMI/ISO 10993–1 (1997) is added back to the list as current item 51 under the Biocompatibility category of standards.

E. General Plastic Surgery/General Hospital

1. ASTM D6124–97 is withdrawn under previous item 45. ASTM D6124–00 is added under current item 51.

2. ASTM D5250 (1992) is withdrawn under previous item 35. ASTM D5250–00 is added under current item 52.

3. ASTM D5151 (1992) is withdrawn under previous item 34. ASTM D5151–99 is added under current item 53.

4. ASTM D3578 (1995) is withdrawn under previous item 31. ASTM D3578–00 is added under current item 54.

5. ASTM D3577 (1998) is withdrawn under previous item 30. ASTM D3577–00 is added under current item 55.

6. USP 23 <11>, "Sterile Sodium Chloride for Injection," is withdrawn. The USP 24 <11> version of this standard is added under current item 56.

7. USP 23 <11>, "Sterile Water for Injection," is withdrawn under previous item 28. The USP 24 <11> version of this standard is added under current item 57.

8. USP 23, "Absorbable Surgical Sutures," is withdrawn under previous item 40. The USP 24 version of this standard is added under current item 58.

9. USP 23, "Tensile Strength," is withdrawn under previous item 44. The USP 24 version of this standard is added under current item 59.

10. USP 23, "Sutures-Diameter <861>," is withdrawn under previous item 42. The USP 24 <861> version of this standard is added under current item 60.

11. USP 23, "Suture Needle Attachment <871>," is withdrawn under previous item 43. The USP 24 <871> version of this standard is added, under current item 61.

F. In Vitro Devices

1. NCCLS standard M11–A3 (1993) is withdrawn under previous item 9. FDA intended to replace this standard with NCCLS standard M11–A4 (1997), which it added to the list on July 12, 1999 (64 FR 37546) and which remains as current item 45.

G. OB GYN/Gastroenterology

1. In the supplementary information sheet(s) for IEC 60601–2–18: 1996, which was identified under previous item 5, minor revisions are made to the devices affected, related Code of Federal Regulations (CFR) citation(s) and procode(s), and relevant guidance. This standard remains recognized and identified under current item 5.

H. Ophthalmic

1. ISO 9394: 1994 is withdrawn under previous item 6, from the list of recognized consensus standards. ISO 9394: 1998 is added under current item 15.

I. Orthopaedics

1. ASTM F75–92 is withdrawn under previous item 2. ASTM F75–98 is added under current item 86.

2. ASTM F90–96 is withdrawn under previous item 4. ASTM F90–97 is added under current item 87.

3. ASTM F136–96 is withdrawn under previous item 5. ASTM F136–98 is added under current item 88.

4. ASTM F138–92 is withdrawn under previous item 6. ASTM F138–97 is added under current item 89.

5. ASTM F560–92 is withdrawn under previous item 9. ASTM F560–98 is added under current item 90.

6. ASTM F561–87 is withdrawn under previous item 10. ASTM F561–97 is added under current item 91.

7. ASTM F565–85 (R1996) is withdrawn under previous item 12. ASTM F565–85 (1996)(e1) is added under current item 92.

8. ASTM F601–86 (1992) is withdrawn under previous item 13. ASTM F601–98 is added under current item 93.

9. ASTM F603–83 is withdrawn under previous item 14. ASTM F603–83 (1995) is added under current item 94.

10. ASTM F620–96 is withdrawn under previous item 16. ASTM F620–97 is added under current item 96.

11. ASTM F621–92 is withdrawn under previous item 17. ASTM F621–97 is added under current item 97.

12. ASTM F629–86 is withdrawn under previous item 18. ASTM F629–97 is added under current item 98.

13. ASTM F648–84 is withdrawn under previous item 19. ASTM F648–98 is added under current item 99, with changes to the extent of recognition made in the supplementary information sheet(s).

14. ASTM F746–87 is withdrawn under previous item 22. ASTM F746–87 (1994) is added under current item 100.

15. ASTM F786–82 is withdrawn under previous item 23. It is not replaced.

16. ASTM F787–82, is withdrawn under previous item 24. It is not replaced.

17. ASTM F897–84 (R1993) is withdrawn under previous item 26. ASTM F897–84 (1997) is added under current item 101.

18. The title of ASTM F961–96, identified under previous item 28, is corrected to read "Standard Specification for Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy Forgings for Surgical Implants (R30035)." It remains identified as current item 28.

19. ASTM F983–86 is withdrawn under previous item 29. ASTM F983–86 (1996) is added under current item 102.

20. ASTM F1089–87 is withdrawn under previous item 32. ASTM F1089–87 (1994) is added, under current item 104.

21. ASTM F1091–91 (R1996) is withdrawn under previous item 33. ASTM F1091–91 (1996) E01 is added under current item 105.

22. ASTM F1147–95 is withdrawn under previous item 35. ASTM F1147–99 is added under current item 107.

23. ASTM F1160–91 is withdrawn under previous item 36. ASTM F1160–98 is added under current item 108.

24. ASTM F1185–88 (1993) is withdrawn under previous item 37. ASTM F1185–88 (1993) E01 is added under current item 109.

25. ASTM F1264–96a is withdrawn under previous item 38. ASTM F1264–99 is added under current item 110.

26. ASTM F1350–96 is withdrawn under previous item 42. ASTM F1350–91 (1996) E01 is added under current item 112.

27. ASTM F1377–92 is withdrawn under previous item 43. ASTM F1377–98a is added under current item 113.

28. In the supplementary information sheet(s) for ASTM F1672–95, identified under previous item 55, minor changes are made to the extent of recognition, devices affected, and related CFR citation(s) and procode(s). This standard remains recognized and identified under current item 55.

29. ASTM F1798 is withdrawn under previous item 59. ASTM F1798–97 is added under current item 114.

30. ASTM F1800 is withdrawn under previous item 60. ASTM F1800–97 is added under current item 115.

31. ASTM F1801 is withdrawn under previous item 61. ASTM F1801–97 is added under current item 116.

32. ISO 5832–2: 1993 is withdrawn under previous item 63. ISO 5832–2:1999 is added under current item 117.

33. ISO 5832–9: 1992 is withdrawn under previous item 68. ISO 5832–9:1995 is added under current item 118.

34. ISO 5832–10: 1996 is withdrawn under previous item 69. It is not replaced.

35. ISO 5834–2: 1985 is withdrawn under previous item 72. ISO 5834–2: 1998 is added under current item 119.

36. In the supplementary information sheets for ISO 7206–4: 1989 and ISO 7206–8: 1995, which were identified under previous items 78 and 79, respectively, minor changes are made to the devices affected, processes impacted, type of standards, and related CFR citations and procodes. They remain recognized and identified under current items 78 and 79.

J. Radiology

1. UL–122 is withdrawn under previous item 30. UL–122 (Fourth Edition) is added under current item 50.

2. UL–187 is withdrawn under previous item 31. UL–187 (Seventh Edition) is added under current item 51.

3. UL–544 (Third Edition) is withdrawn under previous item 32. UL–544 (Fourth Edition) is added under current item 52.

4. IEC 60601–2–8 (1987–04) is withdrawn under previous item 35. IEC 60601–2–8 (1999–04) is added under current item 54.

5. IEC 60601–2–29 (1993–04) is withdrawn under previous item 41. IEC 60601 2–9 (1999–01) is added under current item 55.

K. Software

1. In the supplementary information sheets for ISO/IEC 12207 and IEEE/EIA 12207.0–1996, which were identified under previous items 1 and 3, respectively, minor changes are made to the identities of organizations associated with the standards and the extent of recognition. These standards remain recognized and identified under current items 1 and 3.

L. Sterility

1. ANSI/AAMI ST24: 1992 is withdrawn under previous item 13. ANSI/AAMI ST24: 1999 is added under current item 38.

2. USP 23: 1995, is withdrawn under previous item 29. USP 24: 2000 is added under current item 39.

3. USP 23: 1995, "Biological Indicator for Dry-Heat Sterilization, Paper Strip," is withdrawn under previous item 30. The USP 24: 2000 version of this standard is added under current item 40.

4. USP 23: 1995, "Biological Indicator for Ethylene Oxide Sterilization, Paper Strip," is withdrawn under previous item 31. The USP 24: 2000 version of this standard is added under current item 41.

5. USP 23: 1995, "Microbial Limits Test <61>," is withdrawn under previous item 32. The USP 24: 2000 <61> version of this standard is added under current item 42.

6. USP 23: 1995, "Microbiological Tests, Sterility Tests <71>," is withdrawn under previous item 33. The USP 24: 2000 <71> version of this standard is added under current item 43.

7. USP 23: 1995, "Biological Tests and Assays, Bacterial Endotoxin Test (LAL) <85>," is withdrawn under previous item 34. The USP 24: 2000 <85> version of this standard is added under current item 44.

8. USP 23: 1995, "Pyrogen Test (USP Rabbit Test) <151>," is withdrawn under previous item 35. The USP 24: 2000 <151> version of this standard is added under current item 45.

9. USP 23: 1995, "Sterilization and Sterility Assurance of Compendial Articles <1211>," is withdrawn under previous item 36. The USP 24: 2000 <1211> version of this standard is added under current item 46.

III. List of Recognized Standards

FDA maintains the agency's current list of "FDA Recognized Consensus Standards" in a searchable data base that may be accessed directly at FDA's Intranet site at http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm. The modifications and minor revisions described in this notice will be incorporated into the data base and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective.

Additional modifications and minor revisions as needed, to the list of recognized consensus standards, will be announced in the **Federal Register** once a year, or more often, if necessary.

IV. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (address above). To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

V. Electronic Access

In order to receive "Guidance on the Recognition and Use of Consensus Standards" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 321 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of "Guidance on the Recognition and Use of Consensus Standards" may also do so by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes this guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing "Modifications to the List of Recognized Standards, Recognition List Number: 004" will be available on the CDRH home page.

The CDRH home page may be accessed at http://www.fda.gov/cdrh. The "Guidance on the Recognition and Use of Consensus Standards," and the searchable data base for "FDA Recognized Consensus Standards," may be accessed through hyper links at http://www.fda.gov/cdrh/stdsprog.html. This **Federal Register** notice of modifications in FDA's recognition of consensus standards will be available, upon publication, at http://www.fda.gov/cdrh/fedregin.html.

VI. Submission of Comments and Effective Date

Interested persons may, at any time, submit to the contact person (address above) written comments regarding this document. 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 will be considered in determining whether to amend the current listing of "Modifications to the List of Recognized Standards, Recognition list: 004."

The recognition of standards announced in this notice of modifications will become effective on

[*insert date of publication in the* **Federal Register**].

VII. Listing of New Entries

The list of new entries and consensus standards added as "Modifications to the List of Recognized Standards," under Recognition List Number: 004, is as follows:

Item Number	Title of Standard	Reference Number and Date
	Biocompatibility	
37	Standard Practice for the In Vitro Rat Hepatocyte DNA Repair Assay	ASTM E1397–91 (1998)
38	Standard Practice for the In Vivo Rat Hepatocyte DNA Repair Assay	ASTM E1398–91 (1998)
39	Standard Practice for Selecting Generic Biological Test Methods for Materials and Devices	ASTM F748–98
40	Standard Practice for Short-Term Screening of Implant Materials	ASTM F763–99
41	Standard Practice for Assessment of Compatibility of Biomaterials for Surgical Implants with Respect to Effect of Materials on Muscle and Bone	ASTM F981–99
42	Standard Practice for Testing for Whole Complement Activation in Serum by Solid Materials	ASTM F1984–99
43	Standard Practice for Testing for Biological Responses to Particles In Vitro	ASTM F1903–98
44	Standard Practice for Testing for Biological Responses to Particles In Vivo	ASTM F1904–98
45	Standard Practice for Assessment of Compatibility of Absorbable/Resorbable Biomaterials for Implant Applications	ASTM F1983–99
46	Biological Reactivity Test, In Vitro—Direct Contact Test	USP 24 Biological Tests <87>
47	Biological Reactivity Test, In Vitro—Elution Test	USP 24 Biological Tests <87>
48	Biological Reactivity Test, In Vivo—Procedure—Preparation of Sample	USP 24 Biological Test <88>
49	Biological Reactivity Test, In Vivo—Intracutaneous Test	USP 24 Biological Tests <88>
50	Biological Reactivity Tests, In Vivo—Systemic Injection Test	USP 24 Biological Test <88>
51	Biological Evaluation of Medical Devices—Part 1: Evaluation and Testing	ANSI/AAMI/ISO 10993–1 (1997)
	Cardiovascular/ Neurology	
25	Cardiac Defibrillators—Connector Assembly for Implantable Defibrillators-Dimensional and Test Requirements	ISO 11318–93/Amendment 1:1996 (E)
26	Medical Electrical Equipment, Part 2: Particular Requirements for the Safety of Transcutaneous Partial Pressure Monitoring Equipment	IEC 60601–2–23: 1993
27	Medical Electrical Equipment, Part 2: Particular Requirements for the Safety of Direct Blood Pressure Monitoring Equipment	IEC 60601–2–34 (1994–12)
28	Standard Specification for Wrought Cobalt-Chromium-Nickel-Molybdenum-Iron Alloys for Surgical Implant Applications (UNS R30003 and UNS R30008)	ASTM F1058–97
29	Medical Electrical Equipment, Part 2: Particular Requirements for the Safety, Including Essential Performance, of Automatic Cycling Non-Invasive Blood Pressure Monitoring Equipment	IEC 60601–2–30: 1999–12
30	Medical Electrical Equipment, Part 2: Particular Requirements for the Safety of Electrocardiographs	IEC 60601–2–25 Amendment 1 (1999)
	Dental/ ENT	
85	Synthetic Resin Teeth	ANSI/ADA Specification No. 15: 1999
86	Metal-Ceramic Systems	ANSI/ADA Specification No. 38: 2000
87	Dental Ceramic	ANSI/ADA Specification No. 69: 1999
88	Endodontic Obturating Points	ANSI/ADA Specification No. 78: 2000
89	Polymer-Based Crown and Bridge Resins	ANSI/ADA Specification No. 53: 1999
90	Specifications for Instruments to Measure Aural Acoustic Impedance and Admittance (Aural Acoustic Immittance)	ANSI/ASA S3.39: 1996
	General (Generally Applicable)	
22	General Tolerances—Part 1: Tolerances for Linear and Angular Dimensions Without Individual Tolerance Indications	ISO 2768–1 (1989)
23	General Tolerances—Part 2: Geometrical Tolerances for Features Without Individual Tolerance Indications	ISO 2768–2 (1989)
24	Analysis Techniques for System Reliability—Procedure for Failure Modes and Effects Analysis (FMEA)	IEC 60812 (1985)

Item Number	Title of Standard	Reference Number and Date
	General Plastic Surgery/ General Hospital	
46	Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of High Frequency Surgical Equipment	IEC 60601–2–2: Third Edition 1998–09
47	Standard Test Method for Analysis of Protein in Natural Rubber and its Products Using the Modified Lowry Method	ASTM D5712–99
48	Standard Test Method for the Immunological Measurement of Antigenic Protein in Natural Rubber and its Products	ASTM D6499–00
49	Standard Test Method for Human Repeat Insult Patch Testing or Medical Gloves	ASTM D6355–98
50	Standard Specification for Nitrile Examination Gloves for Medical Application	ASTM D6319–00
51	Standard Test Method for Residual Powder on Medical Gloves	ASTM D6124–00
52	Standard Specification for Poly (Vinyl Chloride) Gloves for Medical Application	ASTM D5250–00
53	Standard Test Method for Detection of Holes in Medical Gloves	ASTM D5151–99
54	Standard Specification for Rubber Examination Gloves	ASTM D3578–00
55	Standard Specification for Rubber Surgical Gloves	ASTM D3577–00
56	Sterile Sodium Chloride For Irrigation	USP 24 <11>
57	Sterile Water for Injection	USP 24 <11>
58	Absorbable Surgical Sutures	USP 24
59	Tensile Strength	USP 24
60	Sutures—Diameters	USP 24 <861>
61	Sutures Needle Attachment	USP 24 <871>
	OB GYN/ Gastroenterology	
19	Optical and Optical Instruments—Medical Endoscopes and Endoscopic Accessories—Part 1: General Requirements	ISO 8600–1: 1997
20	Optical and Optical Instruments—Medical Endoscopes and Endoscopic Accessories—Part 3: Determination of Field of View and Direction of View of Endoscopes with Optics	ISO 8600–3: 1997
21	Optical and Optical Instruments—Medical Endoscopes and Certain Accessories—Part 4: Determination of Maximum Width of Insertion Portion	ISO 8600–4: 1997
22	Standard Practice for Cleaning and Disinfecting of Flexible Fiberoptic and Video Endoscopes Used in the Examination of Hollow Viscera	ASTM F1518–94
	Ophthalmic	
15	Optics and Optical Instruments—Determination of Biological Compatibility of Contact Lens Material—Testing of the Contact Lens System by Ocular Study with Rabbit Eyes	ISO 9394–1998
16	Optics and Optical Instruments—Contact Lenses—Part 2: Determination of Oxygen Permeability and Transmissibility by the Coulometeric Method	ISO 9913–2: 2000
17	Optics and Optical Instruments—Ophthalmic Instruments—Slit-Lamp Microscopes	ISO 10939: 1998
18	Optics and Optical Instruments—Ophthalmic Instruments—Indirect Ophthalmoscopes	ISO 10943: 1999
19	Ophthalmic Optics—Contact Lenses—Classification of Contact Lenses and Contact Lens Materials	ISO 11539: 1999
20	Ophthalmic Implants—Intraocular Lenses—Part 1: Vocabulary	ISO 11979–1: 1999
21	Ophthalmic Implants—Intraocular Lenses—Part 2: Optical Properties and Tests Methods	ISO 11979–2: 2000
22	Ophthalmic Implants—Intraocular Lenses—Part 3: Mechanical Properties and Test Methods	ISO 11979–3: 1999
23	Ophthalmic Optics—Contact Lenses and Contact Lens Care Products—Determination of Physical Compatibility of Contact Lens Care Products with Contact Lenses	ISO 11981–1999
24	Ophthalmic Optics—Contact Lenses and Contact Lens Care Products—Guidelines for Determination of Preservative Uptake and Release	ISO 11986: 1999
25	Optics and Optical Instruments—Ophthalmic Instruments—Retinoscopes	ISO 12865: 1998
26	Ophthalmic Optics—Contact Lens Care Products—Guidelines for Determination of Shelf-Life	ISO 13212: 1999

Item Number	Title of Standard	Reference Number and Date
	Orthopaedics	
86	Standard Specification for Cobalt-28 Chromium-6 Molybdenum Casting Alloy and Cast Products for Surgical Implants (UNS R30075)	ASTM F75–98
87	Standard Specification for Wrought Cobalt-20 Chromium-15 Tungsten-10 Nickel Alloy for Surgical Implant Applications (UNS R30605)	ASTM F90–97
88	Standard Specification for Wrought Titanium-6 Aluminum-4 Vanadium ELI (Extra Low Interstitial) Alloy (R56401) for Surgical Implant Applications	ASTM F136–98
89	Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Bar and Wire For Surgical Implants (UNS S31673)	ASTM F138–97
90	Standard Specification for Unalloyed Tantalum for Surgical Implant Applications (UNS R 05200, UNS R05400)	ASTM F560–98
91	Recommended Practice for Retrieval and Analysis of Implanted Medical Devices, and Associated Tissues	ASTM F561–97
92	Standard Practice for Care and Handling of Orthopedic Implants and Instruments	ASTM F 565–85 (1996) (e1)
93	Standard Practice for Fluorescent Penetrant Inspection of Metallic Surgical Implants	ASTM F601–98
94	Standard Specification for High-Purity Dense Aluminum Oxide for Surgical Implant Application	ASTM F603–83 (1995)
95	Standard Test Method for Constant Amplitude Bending Fatigue Tests of Metallic Bone Staples	ASTM F1539–95
96	Standard Specification for Titanium-6 Aluminum-4 Vanadium ELI Alloy Forgings for Surgical Implants (UNS R56401)	ASTM F620–97
97	Standard Specification for Stainless Steel Forgings for Surgical Implants	ASTM F621–97
98	Standard Practice for Radiography of Cast Metallic Surgical Implants	ASTM F629–97
99	Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants	ASTM F648–98
100	Standard Test Method for Pitting or Crevice Corrosion of Metallic Surgical Implant Materials	ASTM F746–87 (1994)
101	Standard Test Method for Measuring Fretting Corrosion of Osteosynthesis Plates and Screws	ASTM F897–84 (1997)
102	Standard Practice for Permanent Marking of Orthopaedic Implant Components	ASTM F983–86 (1996)
103	Standard Test Method for Pull-Out Fixation Strength of Metallic Bone Staples	ASTM F1540–95
104	Standard Test Method for Corrosion of Surgical Instruments	ASTM F1089–87 (1994)
105	Standard Specification for Wrought Cobalt-Chromium Alloy Surgical Fixation Wire	ASTM F1091–91 (1996) E01
106	Standard Test Method for Determining Axial Pull-Out Strength of Medical Bone Screws	ASTM F1691–96
107	Standard Test Method for Tension Testing of Calcium Phosphate and Metallic Coatings	ASTM F1147–99
108	Standard Test Method for Shear and Bending Fatigue Testing of Calcium Phosphate and Metallic Medical Coatings	ASTM F1160–98
109	Standard Specification for Composition of Ceramic Hydroxylapatite for Surgical Implants	ASTM F1185–88 (1993) E01
110	Standard Specification and Test Methods for Intramedullary Fixation Devices	ASTM F1264–99
111	Standard Guide for Evaluating Modular Hip and Knee Joint Components	ASTM F1814–97a
112	Standard Specification for Stainless Steel Surgical Fixation Wire	ASTM F1350–91 (1996) E01
113	Standard Specification for Cobalt-28 Chromium-6 Molybdenum Powder for Coating of Orthopedic Implants (UNS R30075)	ASTM F1377–98a
114	Standard Guide for Evaluating the Static and Fatigue Properties of Interconnection Mechanisms and Subassemblies Used in Spinal Arthrodesis Implants	ASTM F1798–97
115	Standard Test Method for Cyclic Fatigue Testing of Metal Tibial Tray Components of Total Knee Joint Replacements	ASTM F1800–97
116	Standard Practice for Corrosion Fatigue Testing of Metallic Implant Materials	ASTM F1801–97
117	Implants for Surgery—Metallic Materials—Part 2: Unalloyed Titanium	ISO 5832–2:1999

Item Number	Title of Standard	Reference Number and Date
118	Implants for Surgery—Metallic Materials—Part 9: Wrought High Nitrogen Stainless Steel	ISO 5832–9: 1995
119	Implants for Surgery—Ultra-high-Molecular-Weight Polyethylene—Part 2: Moulded Forms	ISO 5834–2: 1998
120	Standard Specification and Test Method for Metallic Bone Plates	ASTM F0382–99
121	Implants for Surgery—Femoral and Tibial Components for Partial and Total Knee Joint Prosthesis—Part 1: Classification, Definitions and Designation of Dimensions—Second Edition	ISO 7207–1: 1994
122	Implants for Surgery—Components for Partial and Total Knee Joint Prosthesis—Part 2: Articulating Surfaces Made of Metal, Ceramic and Plastics Materials	ISO 7207–2: 1994
	Radiology	
50	Standard for Safety of Photographic Equipment—Fourth Edition	UL–122
51	Standard for Safety: X-ray Equipment—Seventh Edition	UL–187
52	Standard for Safety: Medical and Dental Equipment—Fourth Edition	UL–544
53	Radiation Protection—Sealed Radioactive Sources—General Requirements and Classification	ISO 2919 (1999)
54	Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Therapeutic X-ray Equipment Operating in the Range 10kV to 1MV	IEC 60601–2–8 (1999–04)
55	Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Radiotherapy Simulators	IEC 60601–2–29 (1999–01)
56	Medical Electrical Equipment—Dosimeters with Ionization Chambers and/or Semi-Conductor Detectors as used in X-ray Diagnostic Imaging	IEC 61674–1997
57	Medical Electrical Equipment—Dosimeters with Ionization Chambers as used in Radiotherapy	IEC 60731–1997
58	Classification of Sealed Radioactive Sources	ANSI/HPS N43.6–1997
59	Radiotherapy Simulators—Functional Performance Characteristics—First Edition	IEC 61168: 1993
60	Radiotherapy Equipment—Coordinates, Movements, and Scales	IEC 1217–1996
	Software	
4	Software in Programmable Components	ANSI/UL 1998
5	Standard for Developing Software Life Cycle Processes	IEEE 1074: 1997
6	Standard for Software Verification and Validation	IEEE 1012: 1998
	Sterility	
38	Automatic General Purpose Ethylene Oxide Sterilizers and Ethylene Oxide Sterilant Sources Intended for Use in Health Care Facilities, Third Edition	ANSI/AAMI ST 24: 1999
39	Biological Indicator for Dry-Heat Sterilization, Paper Strip	USP 24: 2000
40	Biological Indicator for Ethylene Oxide Sterilization, Paper Strip	USP 24: 2000
41	Biological Indicator for Steam Sterilization, Paper Strip	USP 24: 2000
42	Microbial Limits Test <61>	USP 24: 2000
43	Microbiological Tests, Sterility Tests <71>	USP 24: 2000
44	Biological Tests and Assays, Bacterial Endotoxin Test (LAL) <85>	USP 24: 2000
45	Pyrogen Test (USP Rabbit Test) <151>	USP 24: 2000
46	Sterilization and Sterility Assurance of Compendial Articles <1211>	USP 24: 2000
47	Flash Sterilization: Steam Sterilization of Patient Care Items for Immediate Use	ANSI/AAMI ST37: 1996
48	Table-Top Dry Heat (Heated Air) Sterilization and Sterility Assurance in Dental and Medical Facilities	ANSI/AAMI ST40: 1992/(R) 1998
49	Ethylene Oxide Sterilization in Health Care Facilities: Safety and Effectiveness	ANSI/AAMI ST41: 1999
50	Steam Sterilization and Sterility Assurance Using Table-Top Sterilizers in Office-Based, Ambulatory-Care Medical, Surgical, and Dental Facilities	ANSI/AAMI ST42: 1998
51	Safe Use and Handling of Glutaraldehyde-Based Products in Health Care Facilities	ANSI/AAMI ST58: 1996
52	Biological Indicators Part 1: General Requirements Sterilization of Health Care Products	ANSI/AAMI ST59: 1999

Item Number	Title of Standard	Reference Number and Date
53	Sterilization of Health Care Products—Chemical Indicators—Part 2: Class 2 Indicators for Air Removal Test Sheets and Packs	ANSI/AAMI ST66: 1999
54	Sterilization of Medical Devices—Microbiological Methods—Part 2: Tests of Sterility Performed in the Validation of a Sterilization Process	ANSI/AAMI/ISO 11737–2: 1998
55	Sterilization of Single-Use Medical Devices Incorporating Materials of Animal Origin—Validation and Routine Control of Sterilization by Liquid Chemical Sterilants	ANSI/AAMI/ISO 14160: 1998
56	Standard Test Method for Determination of Leaks in Flexible Packaging by Bubble Emission	ASTM D3078: 1994
57	Standard Practice for Performance Testing of Shipping Containers and Systems	ASTM D4169: 1999
58	Standard Test Method for Seal Strength of Flexible Barrier Materials	ASTM F88: 1999
59	Standard Test Methods for Failure Resistance of Unrestrained and Nonrigid Packages for Medical Applications	ASTM F1140: 1996
60	Standard Terminology Relating to Barrier Materials for Medical Packaging	ASTM F1327: 1998
61	Standard Guide for Integrity Testing of Porous Barrier Medical Packages	ASTM F1585: 1995
62	Standard Test Method for Microbial Ranking of Porous Packaging Materials (Exposure Chamber Method)	ASTM F1608: 1995
63	Standard Test Method for Determining Integrity of Seals for Medical Packaging by Visual Inspection	ASTM F1886: 1998
64	Standard Test Method for Detecting Seal Leaks in Porous Medical Packaging by Dye Penetration	ASTM F1929: 1998
65	Standard Guide for Accelerated Aging of Sterile Medical Device Packages	ASTM F1980: 1999
66	Transfusion and Infusion Assemblies and Similar Medical Devices <161>	USP 24: 2000

Dated: October 31, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–29165 Filed 11–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Scholarship Program for Students of Exceptional Financial Need (EFN) and Program of Financial Assistance for Disadvantaged Health Professions Students (FADHPS): Regulatory Requirements (OMB No. 0915–0028)—Reinstatement, with change.

The EFN Scholarship Program, authorized by section 736 of the Public Health Service (PHS) Act, and the FADHPS Program, authorized by section 740(a)(2)(F) of the PHS Act, provides financial assistance to schools of allopathic and osteopathic medicine and dentistry for awarding tuition scholarships to health professions students who are of exceptional financial need. To be eligible for support under the FADHPS Program, a student must also be from a disadvantaged background. In return for this support, students of allopathic and osteopathic medicine must agree to complete residency training in primary care in 4 years, and practice in primary care for 5 years after completing residency training.

The program regulations contain recordkeeping requirements designed to ensure that schools maintain adequate records for the Government to monitor program activity and that funds are spent as intended.

The estimate of burden for the regulatory requirements of this clearance are as follows:

Form	Number of respondents	Responses per respondents	Total responses	Minutes per response	Total burden (in hours)
EFN/FADHPS	80	1	80	10	13

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. · Written comments should be received within 60 days of this notice.

Dated: November 7, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–29108 Filed 11–14–00; 8:45 am]

BILLING CODE 4160–15–U

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: Social Support for Homeless Mothers: Implications for Best Practices and Program Design—New

The Health Care for the Homeless Clinicians' Network (HCHCN) of the National Health Care for the Homeless Council, Inc., through a cooperative agreement with the Bureau of Primary Health Care, Health Resources and Services Administration, proposes to conduct a study on the social support available to homeless mothers, most of whom are parenting children alone. The study will be of adult homeless women and will be conducted by convening focus groups and administering a questionnaire to focus group members. The study is designed to look at clients' life events, histories of violence, medical and physical illness, social support, children's needs, and services use. The results will help to define best practices as they relate to social support processes and enable HCH programs to offer the appropriate mix of supports necessary to help mothers transition into permanent housing. The participants will be recruited from ten sites of the national Health Care for the Homeless program.

The estimated response burden is as follows:

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Focus Group (including survey)	100	1	1.5	150

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 7, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–29107 Filed 11–14–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Proposed Collection; Comment Request, The Jackson Heart Study, Annual Follow-Up Component—Phase III

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* The Jackson Heart Study, Annual Follow-Up Component—Phase III. *Type of Information Collection Request:* Revision (OMB 0925–0464; expiration 04/30/2002). *Need and use of Information Collection:* The Jackson Heart Study (JHS) Clinical Component will involve 6,500 African-American men and women aged 35–84, representative of African-American residents of Jackson, Mississippi. Family members are to be included in order to permit future studies of familial and genetic contributions to cardiovascular disease (CVD). The examination includes a series of questionnaires, physical assessments and laboratory measurements. Data collected in this study includes both conventional risk factors and new or emerging factors that may be related to CVD. Some of the newer areas of focus include early indicators of disease, genetics, sociocultural influences such as socioeconomic status and discrimination, and physiological relations between common disorders such as high blood pressure, obesity and diabetes and their influence on CVD and will take three years to complete. The JHS Clinical Component has received Clinical Exemption (CE–99–11–09) from the NIH Clinical Exemption Review

Committee. However, collection of follow information also involves third party individuals (next-of-kin decedents and physicians). This information is necessary for the interpretation and analysis of clinical findings and outcomes to ascertain the relationship between mortality and morbidity in the clinical study cohort. The information collected will be used by the public and private sector for public health planning, medical education, other epidemiologic studies, and biomedical research. *Frequency of Response:* One-Time. *Affected Public:* Individuals or families; Businesses or other for profit; not-for-profit institutions. *Type of Respondents:* third party respondents (next-of-kin decedents and physicians). The annual reporting burden is as follows: *Estimated Number of Respondents:* 480. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours Per Response* are shown in the table below; and *Estimated Total Annual Burden Hours Requested:* 160. The annualized cost to respondents is estimated at: $3,600.

Estimates of the annual reporting burden to respondents.

Type of respondents	Estimated number of respondents	×	Estimated number of responses per respondent	×	Average burden hours per response	=	Estimated total annual burden hours requested
Morbidity and Mortality AFU 3rd party next-of-kin decedents ..	240		1		0.33		80
Morbidity and Mortality AFU 3rd party Physicians	240		1		0.33		80
Total	480		.....		.....		160

Note.—There are no Capital Costs, Operating Costs or Maintenance Cost for this study.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Cheryl Nelson, Jackson Heart Study Project Officer, 6701 Rockledge Drive, Room 8152, MSC 7934, Rockville, MD 20892–7934, or call non-toll-free number (301) 435–0451 or E-mail your request, including your address to: cn80n@.nih.gov

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before January 16, 2001.

Dated: October 20, 2000.

Peter Savage,

Acting Director, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute.

[FR Doc. 00–29132 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Development of Novel Imaging Technologies.

Date: December 6–7, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29138 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Iniltial Review Group, Subcommittee A—Cancer Centers.

Date: December 7–8, 2000.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: David E. Maslow, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8054, Bethesda, MD 20892–7405, 301/496–2330.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29139 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee D—Clinical Studies.

Date: December 5, 2000.

Time: 7:30 am to 6 pm.

Agenda: to review and evaluate grant applications.

Place: The Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

Contact Person: Martin H. Goldrosen, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8050, Rockville, MD 20852–7408, (301) 496–7930.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29141 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: November 13, 2000.

Open: 8:30 am to 2 pm.

Agenda: The agenda includes the Director's Report, a presentation on Proposed Program Initiatives, Public Comments, and other business of the Council.

Closed: 2 pm to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: NIH Neuroscience Office Building, 6001 Executive Blvd., Rockville, MD 20892.

Contact Person: Richard Nahin, Ph.D., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 106, Bethesda, MD 20892, 301/496–4792.

The public comments session is scheduled from 1:30–2 pm. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Richard Nahin, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 106, Bethesda, Maryland, 20892, 301–496–4792, Fax: 301–480–3621. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 pm on November 8, 2000. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Nahin at the address listed above up to ten calendar days (November 23, 2000) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Richard Nahin, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 106, Bethesda, Maryland 20892, (301) 496–4792, Fax 301–480–3621.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Dated: November 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 00–29131 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: November 27, 2000.

Time: 11 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John D. Harding, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0810.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29135 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Eye Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Eye Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Eye Institute.

Date: December 4–5.

Open: December 4, 2000, 9 am to 10 am.

Agenda: Opening remarks by the Director, Intramural Research Program, on matters concerning the intramural program of the NEI.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 10B16, Bethesda, MD 20892.

Closed: December 4, 2000, 10 am to 5 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 10B16, Bethesda, MD 20892.

Closed: December 5, 2000, 9 am to 5 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 10B16, Bethesda, MD 20892.

Contact Person: Robert B. Nussenblatt, MD, Director, Intramural Research Program, National Eye Institute, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, 301–496–3123.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29143 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Program Project Review Committee.

Date: November 30, 2000.

Time: 8:30 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Administrator, Review Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301/435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29142 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Ethical, Legal, Social Implications Review Committee.

Date: December 5, 2000.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, Building 31, Room B2B32, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29140 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 28, 2000.

Time: 8:3 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Sheraton Premiere at Tyson's Corner, 8661 Leesburg Pike, Vienna, VA 22182.

Contact Person: Susan M. Matthews, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6134, MSC 9607, Bethesda, MD 20892–9607, 301–443–5047.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29130 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 4, 2000.

Time: 8:30 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29133 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, December 4, 2000, 8:30 am to December 4, 2000, 5:00 pm, Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on October 25, 2000, 65 FR 63878.

The meeting time has been changed to 10:30 am to 6:00 pm on the same day at the same hotel. The meeting is closed to the public.

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29134 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 1, 2000.

Time: 11 am to 1 pm.
Agenda: To review and evaluate grant applications.
Place: 45 Natcher Bldg, Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Tracy A Shahan, PhD, Scientific Review Administrator, National Institutes of Health/NIAMS, Natcher Bldg., Room 5AS25H, Bethesda, MD 20892, (301) 594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.
Date: December 8, 2000.
Time: 8:00 am to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Richard J Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, Room 5As37B, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29136 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.
Date: November 17, 2000.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Chevy Chase, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Richard J Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, Room 5As37B, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Pane.
Date: November 20, 2000.
Time: 3 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: 45 Natcher Bldg., Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29137 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.
Date: January 30, 2001.
Time: 8:30 am to 5 pm.
Agenda: The Committee will provide advice of scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.
Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.
Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601, 301–435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29148 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Integrated Review Group, Metabolic Pathology Study Section.
Date: November 1–3, 2000.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 2, 2000.
Time: 10 am to 11 am.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Gillian Einstein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892, 301–435–4433, einsteig@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 9, 2000.
Time: 2 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Syed Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, 301–435–1043.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 14, 2000.
Time: 8 am to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB 02.
Date: November 14, 2000.
Time: 10 am to 11:30 am.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1169, dowellr@drg.nih.gov
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 14, 2000.
Time: 1:30 pm to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Debora L. Hamernik, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, Bethesda, MD 20892, (301) 435–4511, hamernid@csr.nih.gov
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 14, 2000.
Time: 2 pm to 3 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Rona L. Hirschberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 14, 2000.
Time: 3 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Lawrence N. Yager, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, 301–435–0903, yagerl@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 14, 2000.
Time: 3:30 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 14, 2000.
Time: 4 pm to 6 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 2000.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 2000.
Time: 9 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Donald Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15–16, 2000.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's Inn, 1615 Rhode Island Ave., NW., Washington, DC 20036.
Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15–17, 2000.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Jumer's Castle Lodge, 209 South Broadway, Urbana, IL 61801.
Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 2000.
Time: 10 a.m. to 12 p.m.
Agendo: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contoct Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levin@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Dote: November 15, 2000.
Time: 5 pm to 7 pm.
Agendo: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.
Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Dote: November 15–16, 2000.
Time: 6 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Ploce: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.
Contoct Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, sipej@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Geriatrics and Rehabilitation Medicine.
Dote: November 16–17, 2000.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Ploce: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.
Contoct Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Dote: November 16–17, 2000.
Time: 8 am to 5 pm.
Agendo: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Sharon K. Pulfer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 6.
Date: November 16–17, 2000.
Time: 8 am to 5 pm.
Agendo: To review and evaluate grant applications.
Ploce: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contoct Person: Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16–17, 2000.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Ploce: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave., NW., Washington, DC 20007.
Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Dote: November 16–17, 2000.
Time: 8:30 am to 5 pm.
Agendo: To review and evaluate grant applications.
Ploce: Ramada Bethesda, 8400 Wisconsin Ave., Bethesda, MD 20814.
Contoct Person: Ronald Dubois, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel.
Dote: November 16, 2000.
Time: 10 am to 5 pm.
Agendo: To review and evaluate grant applications.
Ploce: Radisson Barcelo Hotel, 2121 P St., NW., Washington, DC 20037.
Contoct Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel.
Dote: November 16, 2000.
Time: 2 pm to 4 pm.
Agendo: To review and evaluate grant applications.
Ploce: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contoct Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel.
Dote: November 17, 2000.
Time: 8 am to 4 pm.
Agendo: To review and evaluate grant applications.
Ploce: Holiday Inn, Bethesda, MD 20814.
Contoct Person: Debora L. Hamernik, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, Bethesda, MD 20892, (301) 435–4511, hamernid@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel.
Dote: November 17, 2000.
Time: 8:30 am to 6 pm.
Agendo: To review and evaluate grant applications.
Ploce: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contoct Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, laingc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 17, 2000.
Time: 8:30 am to 9:30 am.
Agendo: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, sipej@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Integrated Review Group, Biological Sciences Subcommittee 1.

Date: November 17, 2000.

Time: 8:30 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, N.W., Washington, DC 20037.

Contact Person: Nancy Pearson, PhD, Chief, Genetic Sciences Integrated Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1047.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 9:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St. NW, Washington, DC 20037.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, sipej@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB 01.

Date: November 17, 2000.

Time: 2 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1169, dowellr@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 2 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, corsaroc@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN1–04.

Date: November 17, 2000.

Time: 2 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, schwarte@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 3:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St. NW, Washington, DC 20007.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306, 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29129 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 3, 2000, 12:30 pm to November 3, 2000, 2:00 pm, NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on October 31, 2000, 65 FR 64977–64979.

The meeting will be held November 8, 2000, 4:00 pm to 5:30 pm. The location remains the same. The meeting is closed to the public.

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29144 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 12, 2000, 8 am to November 12, 2000, 6 pm, Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on November 2, 2000, 65 FR 65870–65872.

The meeting will be November 12, 2000, 7 pm to November 13, 2000, 3:30

pm. The location remains the same. The meeting is closed to the public.

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29145 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 13, 2000, 2:00 pm to November 13, 2000, 4:00 pm, Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on November 2, 2000, 65 FR 65870–65872.

The meeting times have been changed to 4:00 pm–6:00 pm. The date and location remain the same. The meeting is closed to the public.

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federol Advisory Committee Policy.

[FR Doc. 00–29146 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 8, 2000, 7:30 AM to November 10, 2000, 4:00 pm, Georgetown Suites, 1111 30th Street, NW., Washington, DC, 20007 which was published in the **Federal Register** on November 2, 2000, 65 FR 65870–65872.

The starting time of the meeting has been changed to 7:30 pm on November 8, 2000. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: November 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29147 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 8, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Ploce: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contoct Person: Larry Pinkus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 2000.

Time: 7 pm to 8 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contoct Person: Luigi Giacometti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 20, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Ploce: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contoct Person: Marjam G. Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 20, 2000.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, (ZRG1 HEM–2 (01)M.

Date: November 20, 2000.

Time: 1 pm to 2 pm.

Agendo: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contoct Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel.

Dote: November 21, 2000.

Time: 1:35 pm to 2:50 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 5.

Date: November 21–22, 2000.

Time: 6 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Range Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.893, National Institutes of Health, HHS)

Dated: November 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–29149 Filed 11–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Survey of Persons Requesting "Hablemos en Confianza" and "Activity Book" Substance Abuse Prevention Materials—New—In the United States, Hispanic/Latinos present a disproportionately higher prevalence of alcohol, tobacco, cocaine, and marijuana use than other ethnic groups. In the Spring of 1995, the Secretary of the U.S. Department of Health and Human Services authorized the establishment of the Departmental Working Group on Hispanic Issues. Part of the Hispanic Agenda for Action calls for an increase in the Department's capacity to reach out and communicate with Hispanic/Latino populations using culturally and language appropriate techniques. In-depth literature review documented a lack of materials focusing on substance abuse prevention targeting Hispanic/Latino populations. Based on formative research, the "Hablemos en Confianza" kit (HEC) and the "Activity Book" were designed specifically to respond to this need for culturally and language appropriate materials.

The HEC kit consists of five booklets addressing various aspects of communication between parents/caregivers with children, three *fotonovelas* with open-ended stories of Hispanic/Latino families who are learning to discuss and resolve the issue of alcohol and drug use by their children, and a poster for youth 13–17 years old; the "Activity Book" has games and coloring sections for children 4–6 years of age and introduces topics of healthy behavior to prompt family members to talk to each other about physican and emotional issues. The dissemination of the materials was initiated in October, 1999 through the National Clearinghouse for Alcohol, and Drug Information (NCADI). The information resulting from the proposed survey will be employed by SAMHSA's Center for Substance Abuse Prevention (CSAP) to assess the quality of the materials regarding cultural adequacy and clarity, as well as the short term impact of the messages. This information will be instrumental in highlighting areas that should be addressed in future CSAP prevention/education materials targeting Hispanic/Latino audiences.

The adequacy of the prevention messages will be assessed by conducting a survey to collect data on five major areas: (1) Assess the degree to which the materials raise awareness in parents/caregivers about the potential communication problems with their children regarding substance use/abuse matters; (2) assess the degree to which the materials prompt parents/caregivers to generate intent or to pursue actions toward improving communication with their children; (3) assess the degree to which the materials are perceived as providing and/or increasing adults' capacity to communicate with youth; (4) assess the quality of the materials (clarity of the messages, cultural adequacy, and attractiveness of the materials); and (5) determine whether there are aspects to be modified and/or enhanced in the development of future materials focusing substance use/abuse targeted to Hispanic/Latino audiences. The study population is composed of parents or care givers (person responsible for the care of the children) who have requested the materials from NCADI and those who order small multiples (50 copies or fewer) that are small organizations that have a working knowledge of the materials they distribute.

The following table presents the response burden for this project.

No. of respondents	Responses/respondent	Hours/response	Total burden
1,000	1	.25	250

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 7, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–29123 Filed 11–14–00; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–28]

Notice of Proposed Information Collection: Comment Request; Description of Materials

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 16, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and

Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clearity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Description of Materials.

OMB Control Number, if applicable: 2502–0192.

Description of the need for the information and proposed use: This request for OMB review involves an extension of an approved information collection using Form HUD–92005, Description of Materials. Form HUD–92005 is the document HUD uses as an official record of the construction materials proposed for single family dwellings. Form HUD–92005 reflects the requirements of 24 CFR 200.929d and is universally accepted throughout the single family home construction industry. Without Form HUD–92005 or a similar record, it would be extremely difficuilt for HUD to determine if the proposed construction met regulatory requirements.

Agency form numbers, if applicable: HUD–92005.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 2,500 which will generate 50,000 responses, frequency of response is on occasion, the estimated time per response is ½ hour, and the total annual burden requested is 25,000 hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 3, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–29096 Filed 11–14–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–29]

Notice of Proposed Information Collection: Comment Request; Adjustable Rate Mortgages (ARMS)

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 16, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Adjustable Rate Mortgages (ARMS).

OMB Control Number, if applicable: 2502–0322.

Description of the need for the information and proposed use: This request for OMB review involves an extension of an approved information collection for Adjustable Rate Mortgages or ARMS (OMB control number 2502–0322). The National Housing and Urban-Rural Recovery Act of 1983 (HURRA) requires that lenders, at the time of loan approval, provide the borrower with a written explanation of the ARM's features. Additionally, HURRA requires that the lender provide an annual notification of the adjustment in the interest rate. These disclosures are meant to ensure borrowers are fully and timely notified of their financial obligations under the terms of the mortgage.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 20,000 which will generate 100,000 responses, frequency of response is on occasion, the estimated time per response is .07 hour, and the total annual burden requested is 7,000 hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 7, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 00–29097 Filed 11–14–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–836521

Applicant: Dan Holland, Fallbrook, California.

The permittee requests an amendment to take (capture, handle, mark, and release) the southwestern arroyo toad (*Bufo microscaphus californicus*) and take (capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys and scientific research throughout each species' range in California for the purpose of enhancing their survival.

Permit No. TE–034293

Applicant: Bureau of Reclamation, Klamath Falls, Oregon.

The applicant requests a permit to take (capture, handle, tag, and release; sacrifice) the shortnose sucker (*Chasmistes brevirostris*) and the Lost River sucker (*Deltistes luxatus*) throughout each species' range in conjunction with scientific research for the purpose of enhancing their survival. These activities were previously authorized under subpermit BUETM–3.

Permit No. TE–035528

Applicant: Bureau of Land Management, Hines, Oregon.

The applicant requests a permit to take (remove and reduce to possession) Malheur wirelettuce (*Stephanomeria malheurensis*) throughout the species' range in conjunction with scientific research for the purpose of enhancing its survival. This activity was previously authorized under subpermit FRANW–7.

Permit No. TE–034969

Applicant: California Department of Transportation, Fresno, California.

The applicant requests a permit to take (capture) the giant kangaroo rat (*Dipodomys ingens*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), riparian brush rabbit (*Sylvilagus bachmani riparius*), riparian woodrat (*Neotoma fuscipes riparia*), and the blunt-nosed leopard lizard (*Gambelia sila*) in conjunction with surveys in Fresno, Madera Tulare, Kings, Kern, San Joaquin, Amador, Calaveras, Tuolumne, Mariposa, Merced, Stanislaus, Alpine, Mono, Inyo, Santa Cruz, San Benito, Monterey, San Luis Obispo, and Santa Barbara Counties, California for the purpose of enhancing their survival.

Permit No. TE–035336

Applicant: John Everett Vollmar, Davis, California.

The applicant requests a permit to take (harass by survey, collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys throughout each species' range in California, and also requests authorization to display voucher specimens for educational purposes, for the purpose of enhancing their survival.

Permit No. TE–837448

Applicant: Douglas Allen, San Diego, California.

The permittee requests a permit amendment to take the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys throughout each species' range in California for the purpose of enhancing their survival.

Permit No.'s TE–014444 and TE–014496

Applicants: California Army National Guard, Camp Roberts, California and California Polytechnic State University, San Luis Obispo, California.

The permittees are requesting a permit amendment to take (capture and replace radio-collars) the San Joaquin kit fox (*Vulpes macrotis mutica*) throughout the species' range in California in conjunction with research to monitor dispersal from Camp Roberts, California for the purpose of enhancing its survival.

Permit No. TE–035619

Applicant: Brad R. Blood, Downey, California.

The applicant requests a permit to take (survey by pursuit) the El Segundo blue butterfly (*Euphilotes battoides allyni*) throughout the species' range in California in conjunction with surveys for the purpose of enhancing its survival.

Permit No. TE–019947

Applicant: Scott Crawford, Tustin, California.

The permittee requests a permit amendment to take (survey by pursuit) the El Segundo blue butterfly, (*Euphilotes battoides allyni*) throughout the species' range in California in conjunction with surveys for the purpose of enhancing its survival.

Permit No. TE–035655

Applicant: Dr. Fred Andoli, San Luis Obispo, California.

The applicant requests a permit to take (capture and handle; collect tissue samples) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys and genetic research in Santa Barbara County, California for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received on or before December 15, 2000.

ADDRESSES: Written data or comments should be submitted to the Chief—Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: November 6, 2000.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–29118 Filed 11–14–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Regional Director's Permit Amendment (TE–676811–1).

SUMMARY: The Regional Director, Region 2, U.S. Fish and Wildlife Service, Albuquerque, New Mexico (Applicant), requests authorization to amend U.S. Fish and Wildlife Service Endangered Species Permit TE–676811, from September 1, 2000 through December 31, 2003. This amendment updates the Regional Director's permit to include species that have recently been listed. The permit allows "take" of species listed as threatened or endangered under the Endangered Species Act for scientific research and recovery purposes or the enhancement of propagation or survival for approved recovery activities. This notice is provided pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written comments on this permit amendment must be received on or before December 15, 2000.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the permit number for this application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service (see address above). Please refer to the permit number for this amendment when requesting copies of documents. Documents and other associated information are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Bryan Arroyo,

Assistant Regional Director, Ecological Services, Region 2, Fish and Wildlife Service.

[FR Doc. 00–29126 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of the Menominee Tribe of Wisconsin Settlement Funds—Termination Act Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the plan for the use and distribution of the Menominee Indian Tribe of Wisconsin settlement fund is effective as of September 20, 2000. The settlement fund was created under section 3 the Act of August 17, 1999, Public Law 106–54, 113 Stat. 398.

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–4631–MIB, 1849 C Street, NW, Washington, DC 20240. Telephone number: (202) 208–2475.

SUPPLEMENTARY INFORMATION: Subsection 3(c)(1) of the Act of August 17, 1999, *supra,* and section 3(b) of the Indian Tribal Judgment Funds Act, 25 U.S.C. 1403(b), requires that a plan be prepared and submitted to Congress for the use and distribution of the Menominee settlement funds. The plan for the use and distribution of the funds was submitted to Congress on May 22, 2000, by letters dated May 19, 2000. The receipt of the letters was recorded in the Congressional Record published on May 24, 2000. The plan became effective on September 20, 2000, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

For the Use and Distribution of the Menominee Indian Tribe of Wisconsin Judgment Funds

The funds appropriated on September 27, 1999, in satisfaction of an award granted to the Menominee Indian Tribe of Wisconsin (Tribe) pursuant to the Act of August 17, 1999, Pub. L. 106–54, 113 Stat. 398, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be distributed as herein provided.

A. Per Capita Distribution

Approximately $16,026,000 (58.8 percent of the judgment funds remaining after payment of litigation expenses) shall be made available for a $2,000 per capita payment to all duly enrolled tribal members that filed enrollment applications with the Tribe on or before October 15, 1999. Judgment fund per capita shares shall also be set aside for the estates of tribal members that were living on August 17, 1999, but deceased prior to the per capita distribution, provided, that enrollment applications were filed with the Tribe prior to the application deadline date.

If the estimated amount is not sufficient to cover the per capita portion of the distribution, funding adjustments can be made from the *Alternative and Additional Projects* account.

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of incarcerated members who are eligible for the per capita payment shall be placed in Individual Indian Money (IIM) accounts, provided that the Tribe provides a certified list of those individuals to the Bureau of Indian Affairs along with the written requests from those individuals requesting that their per capita funds be placed in a non-supervised IIM account. The per capita shares of deceased individual beneficiaries shall be determined in accordance with 43 CFR, Subpart D. Per capita shares of legal incompetents and minors shall be placed in IIM accounts and shall not be available for disbursement until a payment plan is developed by the Tribe for the disbursement of funds from the supervised IIM accounts as required under 25 U.S.C. 1403(b)(3). The payment plan for the shares belonging to legal incompetents and minors must be approved by the Secretary. The Tribe may make the per capita distribution as authorized under 25 U.S.C. 117(b).

B. Programming

The programming funds shall be allocated by the Tribe for the following projects. The programming funds are authorized for expenditure in accordance with the revised tribal plan approved by the Menominee Tribal Legislature under Resolution No. 00–14, on March 23, 2000.

Renovation and Expansion of the Tribal Courthouse—Principal and investment income earned after the account is established by the Tribe will be available for the renovation and expansion project	$1,500,000

Education Endowment—Perpetual investment of principal funds, expenditures from interest income earned after the endowment fund is established	4,000,000
Burial Fund Endowment—Perpetual investment of principal funds, expenditures from interest income earned after the endowment fund is established	2,000,000
Health Care Endowment—Perpetual investment of principal funds, expenditures from interest income earned after the endowment fund is established	2,000,000
Utilities Capital Improvement Fund—Principal and investment income earned after the account is established by the Tribe will be available for water and sewer projects and for use as matching grant funds for such projects	1,500,000
Alternative and Additional Projects—Principal and investment income earned after the accounts are established by the Tribe will be available for alternative and additional projects. Any funds remaining after completing the per capita distribution and the renovation and expansion of the tribal courthouse shall also be available for the following alternative and additional projects:	218,665
a. Telecommunications/Emergency Government Improvements (est. $125,000)	
b. Animal Shelter (est. $50,000)	
c. Recreation Supplement (est. $50,000)	
d. Eagles' Nest Operations Funding Supplement (est. $50,000)	
Use of Interest Funds—All interest earned on the judgment funds from the date of appropriation (September 27, 1999) until the date the funds are transferred to the Tribe in accordance with this plan, shall be added to the Tribe's FY 2000 Tribal budget (revenue side) to reduce the reliance on transfers from reserve by the like amount (Estimated to be $1,500,000)..	

C. Feasibility of Participation by Tribal Members Not on or Near the Reservation

The vast majority of the proposed uses of the judgment funds will be available to all tribal members. A share in the per capita distribution, eligibility for burial assistance, and access to both the health and education benefits provided through the establishment of these endowments means that 85 percent of the available settlement funds will be available to all tribal members regardless of residence.

D. General Provisions

The programming portion of the judgment fund shall be disbursed to the Tribe as soon as practical. If the tribal payment roll is certified by the Bureau of Indian Affairs Director, Midwest Region prior to the effective date of the plan, the program portion of the funds shall be disbursed to the Tribe within 30 days of the effective date of the plan. Otherwise, the program funds shall be disbursed to the Tribe within 30 days of the certification of the Tribal payment roll. Once the program funds are disbursed to the Tribe, the United States Government shall no longer have any trust responsibility for the investment, supervision, administration, or expenditure of the program portion of the judgment funds.

None of the funds distributed per capita, including the investment income earned thereon while held in trust, or made available under this plan for programming shall be subject to Federal or State income taxes. Nor can any of these funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act, or except for per capita shares in excess of $2,000, any federal or federally assisted program.

This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Dated: November 2, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–29150 Filed 11–14–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–01–1020–AE–24–1A]

Utah Resource Advisory Council Meeting Postponed

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management's Utah Statewide Resource Advisory Council meeting scheduled for November 8–9, 2000, in Bluff, Utah, will now be postponed until after the first of next year.

FOR FURTHER INFORMATION: Sherry Foot, Special Programs, Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, 84111; phone (801) 539–4195.

Dated: November 7, 2000.

Robert A. Bennett,

Associate State Director.

[FR Doc. 00–29121 Filed 11–14–00; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 3, 2000. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by November 30, 2000.

Carol D. Shull,

Keeper of the National Register.

CONNECTICUT

New Haven County
New England Cement Company Kiln and Quarry, Address Restricted, Woodbridge, 00001454

GEORGIA

Echols County
Corbett Farm, Rte 2, Lake Park, 00001455

ILLINOIS

Vermilion County
Temple Building, 102–106 N. Vermilion St., Danville, 00001457

IOWA

Marion County
East Amsterman School, 1010 198th Place, Pella, 00001471
Polk County
Hallett Flat—Rawson & Co. Apartment Building, 1301–1307 Locust St., Des Moines, 00001456

MARYLAND

Baltimore Independent City
Standard Oil Building, 501 St. Paul St., Baltimore (Independent City), 00001461
Washington County
Hills, Dales, and the Vineyard, 16 Dogstreet Rd., Keedysville, 00001460

MASSACHUSETTS

Berkshire County
Jacob's Pillow Dance Festival, George Carter Rd., Becket, 00001458

MISSISSIPPI

Hinds County
Evers, Medgar, House, 2332 Margaret Walker Alexander Dr., Jackson, 00001459
Hinds County Armory, 1012 Mississippi St., Jackson, 00001462

NEW HAMPSHIRE

Coos County
Weeks, William Dennis, Memorial Library, 128 Main St., Lancaster, 00001464
Merrimack County
Durgin, Gershom, House, 391 Franklin Hwy.,
Rockingham County
Danville Town House, 210 Main St., NH 111A, Danville, 00001465

NEW JERSEY

Somerset County
Relief Home Company No. 2 Engine House, 16 Anderson St., Raritan Borough, 00001466

NEW YORK

Niagara County
District #10 Schoolhouse, (Cobblestone Architecture of New York State MPS) 9713 Seaman Rd., Hartland, 00001467
Oswego County
Oswego West Pierhead Lighthouse, Lake Ontario, 0.5 mi. N of Oswego R., Oswego, 00001468

WASHINGTON

Whatcom County
Nuxwt'iqw'em, Address Restricted, Upper Middle Fork, 00001472

WISCONSIN

Vernon County
Masonic Temple Building, 116 S. Main St., Viroquoa, 00001469

WYOMING

Converse County
North Douglas Historic District, Roughly bounded by Second St., Clay St., Sixth St., and Center St., Douglas, 00001470

A Request for a MOVE has been made for the following resource:

CONNECTICUT

Litchfield County
Sloan-Raymond-Fitch House, 249 Danbury Rd., Wilton, 82004344

[FR Doc. 00–29120 Filed 11–14–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP (BJS)–1307]

Hate Crime Statistics Data Collection in Selected Police and Sheriffs' Departments

AGENCY: Office of Justice Programs, Bureau of Justice Statistics, Justice.

ACTION: Notice of solicitation for award of cooperative agreement.

SUMMARY: The purpose of this notice is to announce a public solicitation for services related to understanding why police and sheriff's departments do not report hate crimes to the FBI that are known to officers in their jurisdiction.

DATES: Proposals must arrive at the Bureau of Justice Statistics (BJS) on or before 5 p.m. ET, Sunday, December 31, 2000, or be postmarked on or before December 31, 2000.

ADDRESSES: Proposals should be mailed to: Application Coordinator, Bureau of Justice Statistics, 810 Seventh St. NW., Washington, DC 20531; (202) 616–3497.

FOR FURTHER INFORMATION CONTACT: Charles R. Kindermann, Ph.D., Senior Statistician, Bureau of Justice Statistics, (202) 616–3489 or Carol Kaplan, Chief, National Criminal History Improvement Program (202) 307–0759.

SUPPLEMENTARY INFORMATION:

Background

The Hate Crime Statistics Act, reauthorized in June 1996, mandates that the Attorney General collect statistics and publish an annual report on hate crimes. During hearing testimony and in subsequent letters, members of Congress expressed an interest in a study that will facilitate better participation by police agencies. BJS, consistent with its role as the statistical arm of the Justice Department and its longstanding interest in hate crime statistics, developed this solicitation to learn more about the impediments to local jurisdictions' participation in the collection of hate crime statistics and transmission of the statistics to the FBI for compilation at the national level.

BJS funded a project that resulted in the report *Improving the Quality and Accuracy of Bias Crime Statistics Nationally: An Assessment of the First Ten Years of Bias Crime Data Collection.* The project included a review of national hate crime trends, a summary of results from a national law enforcement survey regarding officer attitudes about hate crime, and several other sources. The compilation of these data sources gives key insight into how hate crime reporting can be improved and how hate crime data should be interpreted. Electronic copies of the full report and an executive summary can be found at <*www.dac.neu.edu/cj/*>.

A survey of 2,657 law enforcement agencies was conducted to document impressions from law enforcement departments about the factors which impede or encourage accurate hate crime reporting. The findings from the report are as follows:

- There are serious disparities between what officers believed about the prevalence of bias crime and their agencies' official hate crime statistics.
- One of the major reasons cited for the disparity involves the break down in the two-step process of a local agency reporting to a state agency, which then compiles the hate crime reports. Many respondents felt that the indication of bias was occasionally lost within the departmental bureaucracy or process of transmitting data.
- Although it has been recommended by the International Association of Chiefs of Police, as well as advocacy groups, that police agencies develop and approve a formal policy for dealing with hate crime incidents, still only a minority of police agencies from across the country state that they had an official policy regarding hate crime.

The impetus for this solicitation is the report's recommendation that "the data indicate that in some number of cases an *information disconnect* occurs between the investigating officer and UCR reporting. Many officers stated that they knew of hate crimes that occurred in their jurisdiction but were not reflected in the official report. It is possible that officers note bias motivation in incident report narratives, but the information from such narrative is never documented into the UCR records. A more detailed analysis of the breakdown between hate crimes that are investigated locally and those that are reported nationally should be undertaken."

There are a number of possible explanations why an agency's numbers reported to the FBI might not reflect hate crimes that are known to officers on the street. Among the possibilities are these:

- The definition of hate crime provided by the FBI may be inconsistent with the State's definition (or local definition), and officers follow their state law in classifying events as incidents of hate crime. If this hypothesis is true, it is particularly troublesome in states that do not have any hate crime statute.
- The incident forms used by some departments contain so many information elements (checks/boxes/narrative) that a specific item indicating bias is not checked off although other information on the form clearly indicates that the offense was bias motivated.
- During the review process (post-incident report), a decision is made that the incident was bias motivated. Yet the crime report as sent to the FBI is not categorized as a hate crime. For example, the original officer doesn't put an indication of hate crime, the responding detective identifies it as a hate crime, but the crime report as entered into UCR data remains the same as the first officer noted.
- There may be very little revising of the data sent to the FBI regardless of changes in determination and circumstance. The reversal of a decision that an incident is a hate crime (*e.g.*, by a community review group) may also not be reflected in the database.
- Because the vast majority of the crime report forms do not have the "bias motivated" box checked off, it is a natural instinct to skip it.
- The transfer of information and data forms from local, state, and federal agencies creates additional "slippage" points where the "bias crime" indicator may be omitted in the data files.

The work to be carried out under this solicitation will be closely coordinated with the FBI, which assembles information provided by state and local agencies and publishes national hate crime statistics.

Objectives

This solicitation is being issued to address the following recommendation: "The study identified several problem areas in the reporting process where bias crime information may be overlooked or misclassified. Further research should look in more depth at the areas of disconnect to better improve the quality of the data."

Up to $150,000 will be made available for this project.

The organization that is awarded the grant will select specific law enforcement agencies as hosts for the study, and must include both agencies believed to have "good" hate crime reporting, and agencies that have not reported hate crime statistics at all to the FBI or are believed to report only a small fraction of the hate crimes that do occur. The purpose of selecting host agencies will be to assist them in improving their hate crime reporting and also to develop recommendations for improving hate crime reporting by law enforcement agencies nationwide. The law enforcement agencies must agree in writing to participate in the study and will become partners with the FBI and BJS to address and recommend solutions to the impediments to accurate hate crime reporting. A steering committee will be appointed that will direct the introduction of new procedures and practices to improve the reporting of hate crimes in law enforcement agencies that agree to participate in the study.

Funding provided under this solicitation will support a data collection program which will follow the sequence of events from a crime report which is known or presumed to be a hate crime by the officer completing the report through the crime reporting procedures to ascertain whether the crimes were reported to the FBI as hate crimes, and if not, whether the failure to report accurately reflects the nature of the event or is the result of gaps in the transmission of information to the FBI's UCR data files. The project, in addition to helping the participating departments improve their practices, will result in recommendations for other agencies' practices and a more detailed statistical analysis of hate crimes that are investigated locally as compared to those that are reported nationally to the FBI.

Type of Assistance

Assistance will be made available under a cooperative agreement

Statutory Authority

The cooperative agreement to be awarded pursuant to this solicitation will be funded by the Bureau of Justice Statistics consistent with its mandate as set forth in 42 U.S.C. 3732.

Eligibility Requirements

Both profit making and nonprofit organizations may apply for funds. Consistent with OJP fiscal requirements, however, no fees may be charged against the project by profit-making organizations.

Scope of Work

The recipient of funds will perform the following tasks in pursuit of the objectives stated above:

1. Develop a detailed timetable for each task involved in the project. After the BJS grant monitor has agreed to the timetable, all work must be completed as scheduled.
2. Collect data about hate crime incidents in the participating agencies' jurisdictions and prepare a statistical summary showing the status of "bias crime indicators" in each of the stages through which the data are transmitted until included or not included in the FBI's hate crimes report.
3. Develop recommendations for improving hate crime reporting by law enforcement agencies, both those with "good" hate crime reporting practices and those who have not reported hate crime statistics to the FBI, to develop recommendations for improving hate crime reporting by police departments.
4. Prepare a final report summarizing the results in a way that will help BJS, the FBI, and law enforcement agencies improve hate crime reporting.
5. Archive the data that are collected in the study.

Award Procedures

Proposals should describe in appropriate detail the procedures to be undertaken in furtherance of each of the activities described under Scope of Work. Information on staffing levels and qualifications should be included for each task and descriptions of experience relevant to the project should be included. Resumes of the proposed project director and key staff should be enclosed with the proposal.

Applications will be reviewed competitively by a panel comprised of members selected by BJS. The panel will make recommendations to the Director, BJS. Final authority to enter into a cooperative agreement is reserved for the Director, BJS, or his designee.

Applications will be evaluated on the overall extent to which they respond to the priorities and technical complexities of the scope of work, conform to standards of high data collection quality, and appear to be fiscally feasible and efficient. Applicants will be evaluated on the basis of:

1. Familiarity with both the full report and executive summary of the report, *Improving the Quality and Accuracy of Bias Crime Statistics Nationally: An Assessment of the First Ten Years of Bias Crime Data Collection.*
2. Familiarity with FBI annual reports, *Crime in the United States* and *Hate Crime Statistics.*
3. Knowledge of issues related to hate crime data collection.
4. Knowledge of issues related to the Uniform Crime Reports (UCR) and the

National Incident Based Reporting System (NIBRS).

5. Experience in organizing meetings of Federal, state, or local professionals related to criminal justice issues.

6. Research expertise and experience in data gathering and report writing.

7. Availability of qualified professional and support staff and suitable equipment for project activities.

8. Demonstrated fiscal, management and organizational capability and experience suitable for providing sound data within budget and time constraints.

9. Reasonableness of estimated costs for the total project and for individual cost categories.

Application and Awards Process

An original and five (5) copies of a full proposal must be submitted with SF 424 (Rev. 1988), Application for Federal Assistance, as the cover sheet. Proposals must be accompanied by OJP Form 7150/1, Budget Detail Worksheet; OJP Form 4000/3 (Rev. 1–93), Assurances; OJP Form 4061/6, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; and OJP Form 7120–1 (Rev. 1–93), Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal funds from the Office of Justice Programs). If appropriate, applicants must complete and submit Standard Form LLL, Disclosure of Lobbying Activities. All applicants must sign Certified Assurances that they are in compliance with the Federal laws and regulations which prohibit discrimination in any program or activity that receives Federal funds. To obtain appropriate forms, contact Joyce Stanford, BJS Administrative Assistant, at (202) 616–3497 or go to the BJS web site at <http://www.ojp.usdoj.gov/bjs/apply.htm>.

The application should cover a 1-year period with information provided for completion of the entire project. Proposals must include a program narrative, detailed budget, and budget narrative. The program narrative shall describe activities as stated in the scope of work and address the evaluation criteria. The detailed budget must provide costs including salaries of staff involved in the project and portion of those salaries to be paid from the award; fringe benefits paid to each staff person; travel costs, and supplies required to complete the project. The budget narrative closely follows the content of the detailed budget. The narrative should relate the items budgeted to the project activities and should provide a justification and explanation for the budgeted items. Refer to the aforementioned timetable when developing the program narrative and budget information. This award will not be used to procure equipment for the conduct of the study.

Dated: November 8, 2000.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 00–29090 Filed 11–14–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,600 and NAFTA 3998]

Trinity Industries, Incorporated, Mt. Orab, OH; Notice of Negative Determination on Reconsideration

On October 4, 2000, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on October 18, 2000 (65 FR 62369).

The Department initially denied TAA to workers of Trinity Industries, Incorporated because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The Department denied NAFTA–TAA because the "contributed importantly" group eligibility requirement of section 250 was not met and because there was no shift in production to either Mexico or Canada. The workers at the subject firm were engaged in employment related to the production of aluminum rail cars.

The petitioner asserted that imports of rail cars contributed importantly to the worker separations and provided additional information which should have been considered by the Department in its survey of customers.

On reconsideration, the Department surveyed additional customers of the subject firm. The survey revealed that no customers were purchasing imported aluminum rail cars.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance and NAFTA–TAA for workers and former workers of Trinity Industries, Incorporated, Mt. Orab, Ohio.

Signed at Washington, D.C., this 1st day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29158 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,906]

Automation Technology Corp., Santa Cruz, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 24, 2000, in response to a petition filed by a company official on behalf of workers at Automation Technology Corp., Santa Cruz, California.

The company official who filed the original petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 31th day of October 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29157 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,434]

Baker Atlas, A/K/A Western Atlas, Inc., A/K/A Wedge Dia-Log, Inc., Houston, TX; Amended Notice of Revised Determination on Remand

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determination on Remand on January 4, 2000, applicable to workers of Baker Atlas, Houston, Texas. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2434).

At the request of the State agency, the Department reviewed the determination for workers of the subject firm. The workers are engaged in the exploration and drilling of crude oil. Information shows that in August 1998, Baker Atlas merged with Western Atlas, Inc. which owned Wedge Dia-Log, Inc. Information

also shows that some of the workers separated from employment at the subject firm had their wages reported to two separated Unemployment Insurance tax accounts; Western Atlas, Inc. and Wedge Dia-Log, Inc. Accordingly, the Department is amending the determination to properly reflect this matter.

The intent of the Department's certification is to include all workers of Baker Atlas adversely affected by increased imports.

The amended notice applicable to TA–W–35,434 is hereby issued as follows:

All workers of Baker Atlas, also known as Western Atlas, Inc. and also known as Wedge Dia-Log, Inc., Houston, Texas who became totally or partially separated from employment on or after November 30, 1997 through January 4, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 2nd day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29154 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,823; TA–W–37,823A]

Carleton Woolen Mills, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 18, 2000, applicable to workers of Carleton Woolen Mills, Inc., Winthrop, Maine. The notice was published in the **Federal Register** on September 12, 2000 (65 FR 55050).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of woolen fabric. New information shows that worker separations occurred at the New York, New York location of Carleton Woolen Mills, Inc. The New York, New York location provided administration, sales, styling, design and support function services for the subject firm's production facility in Winthrop, Maine. All operations at Carleton Woolen Mills, Inc. ceased on April 21, 2000.

Accordingly, the Department is amending the certification to cover workers of Carleton Woolen Mills, Inc., New York, New York.

The intent of the Department's certification is to include all workers of Carleton Woolen Mills, Inc. adversely affected by increased imports of woolen fabric.

The amended notice applicable to TA–W–37,823 is hereby issued as follows:

All workers of Carleton Woolen Mills, Inc., Winthrop, Maine (TA–W–37,823) and New York, New York (TA–W–37,823A) who became totally or partially separated from employment on or after July 23, 2000 through August 18, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 31st day of October, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29159 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 27, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 27, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of October, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 10/30/2000

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,248	Facemate PL	Somerworth, NH	10/20/2000	Finished textile.
38,249	Harriet and Henderson (Co.)	Somerville, GA	10/09/2000	Cotton and synthetic yarn.
38,350	Designer Hearths, Inc (Wkrs)	Missoula, MT	10/17/2000	Stone and tile hearth pads.
38,251	Technical Rubber (IUE)	Clifton, NY	10/10/2000	Rubber gaskets and rings.
38,252	A.O. Smith EPC (Co.)	Paoli, IN	10/19/2000	C frame electric motors.
38,253	Intercontinental Branded (UNITE)	Buffalo, NY	10/17/2000	Men's suits.

PETITIONS INSTITUTED ON 10/30/2000—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,254	Craftwood Designs (Co.)	Haleyville, AL	10/19/2000	Solid wooden chairs, cabinets, tables.
38,255	Still Man Heating Product (Co.)	Cookeville, TN	10/18/2000	Tubular electrical heating elements.
38,256	Wundies Santtony Wear (Wkrs)	Rockingham, NC	10/17/2000	Ladies' undergarment.
38,257	Pine State Kintwear (Wkrs)	Statesville, NC	10/13/2000	Sweaters.
38,258	U.S. Label Artistic (Co.)	Clinton, NC	10/12/2000	Printed labels for textile garments.
38,259	Precision Interconnect (Wkrs)	Waupun, WI	10/17/2000	Cables for medical equipment.
38,260	Austin Apparel, Inc. (Co.)	Lancaster, KY	10/18/2000	Blue jeans.
38,261	McNeil and NRM (Wkrs)	Akron, OH	10/05/2000	Tire presses.
38,262	Paramount Headwear, Inc. (Co.)	Mountain Grove, MO	09/28/2000	Headwear.
38,263	Columbia Footwear (Co.)	Hazelton, PA	10/21/2000	Shoes.
38,264	Chase Manhattan Bank (Co.)	Midland, TX	10/19/2000	Oil.
38,265	Hi Line Storage System (Wkrs)	Perkasie, PA	10/13/2000	Storage systems.
38,266	Jones and Vining (Wkrs)	Lewiston, ME	10/18/2000	Soles for footwear.
38,267	A and B Component (Wkrs)	Shubuta, MS	10/11/2000	Rotor cells for truck engines.
38,268	Ride Snowboard Mfg. (Co.)	Corona, CA	10/18/2000	Snowboards.
38,269	Hamilton Beach (Co.)	Mount Airy, NC	10/18/2000	Toasters, toaster ovens and parts.
38,270	General Electric Blooming (IBEW)	Bloomington, IN	10/10/2000	Side-By-Side refrigerator units.
38,271	Shipley Ronal (Wkrs)	Long Island, NY	08/21/2000	Chemicals.
38,272	Renfro Corporation (Wkrs)	Pulaski, VA	10/13/2000	Socks.
38,273	McNairy Shirtworks (Wkrs)	Adamsville, IN	10/17/2000	Ladies' turtle neck tops.
38,274	Tingley Rubber (USWA)	So. Plainfield, NJ	10/16/2000	Rubberized clothing.

[FR Doc. 00–29160 Filed 11–14–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,884]

Rycraft Incorporated, Corvallis, OR; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of September 18, 2000 the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance (TA–W–37,884). The denial notice was signed on August 25, 2000 and published in the **Federal Register** on September 12, 2000 (65 FR 55049).

The company provided additional information about customers which should have been considered by the Department in its survey of customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Dated: Signed at Washington, D.C. this 2nd day of November 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29156 Filed 11–14–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,914 and NAFTA–4042]

Joseph Timber Company, Joseph, OR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Joseph Timber Company, Joseph, Oregon. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,914 & NAFTA–4042; Joseph Timber Company, Joseph, Oregon (November 2, 2000)

Signed at Washington, D.C. this 7th day of November, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–29155 Filed 11–14–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04080]

Louisiana Pacific Corporation, Western Division, Hayden Lake, Idaho; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on August 7, 2000 in response to a petition filed on behalf of workers at Louisiana Pacific Corporation, Western Division, Hayden Lake, Idaho.

The petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve

no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 1st day of November, 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29153 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04180]

Plum Creek Timber, Pablo, MT; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 26, 2000 in response to a petition filed on behalf of workers at Plum Creek Timber, Pablo, Montana.

The petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 2nd day of November 2000.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 00–29152 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health: Notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH), established to advise the Secretary of Labor on issues relating to occupational safety and health programs, policies, and standards in the maritime industries in the United States will meet December 6 and 7, 2000 in Baltimore, Maryland.

DATES: MACOSH will meet:

On December 6, 2000, from 8:30 a.m. until approximately 5:00 p.m.; and

On December 7, 2000, from 8:30 a.m. until approximately 4:00 p.m.

ADDRESSES: The Committee will meet at the Hyatt Regency Baltimore on the Inner Harbor, 300 Light Street, Baltimore, MD 21202; telephone: (410) 528–1234. Mail comments, views, or statements in response to this notice to Chappell Pierce, Acting Director, Office of Maritime Standards, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–2086; FAX: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: Chappell Pierce, Acting Director, Office of Maritime Standards, OSHA; Telephone (202) 693–2086.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the meeting. Individuals with disabilities wishing to attend should contact Theda Kenney at (202) 693–2222 no later than December 1, 2000, to obtain appropriate accommodations.

Background

MACOSH was established pursuant to the authority in section 7 of the Occupational Safety and Health Act of 1970 to advise the Assistant Secretary of Labor for Occupational Safety and Health on issues relating to occupational safety and health for workers involved in shipbuilding, shipbreaking, ship repair, and longshoring in the maritime industries. Since its establishment in 1995, the Committee, has provided invaluable assistance and advice to the Assistant Secretary on maritime matters. MACOSH is chartered for two-year periods. The first meeting of the recently recharted committee was held on July 19 and 20, 2000, at Kings Point, New York.

Meeting Agenda

This meeting will include discussion of the following subjects: MACHOSH goals and objectives for the next two years, vertical tandem lifts in the longshoring industry, the maritime ergonomics project, an update on the NIOSH diesel exhaust epidemiology study, joint efforts with the OSHA Advisory Committee on Construction Safety and Health, an update on OSHA projects and priorities, and MACOSH workgroup reports.

Public Participation

Written data, views, or comments for consideration by MACOSH on the various agenda items listed above may be submitted, preferably with four copies, to Chappell Pierce. Submissions received by November 20, 2000, will be provided to the members of the Committee prior to the meeting. Requests to make an oral presentation to the Committee may be granted if time permits. Persons wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Chappell Pierce by November 28, 2000. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: This notice is issued under the authority of section 6(b)(1) and 7(b) of the Occupational Safety and Health act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2) and 29 CFR 1912.

Signed at Washington, D.C. this 8th day of November 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–29262 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: December 4, 2000, from 10:00 a.m. to 11:30 a.m.

ADDRESSES: United States Capitol Building, Room S–211.

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Third Report to Congress
Capitol Visitors Center
Other current issues and new business

The meeting is open to the public.

Dated: November 8, 2000.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 00–29106 Filed 11–14–00; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL SCIENCE FOUNDATION

Notice of Meeting; Seminar: Research to Develop an Artificial Retina

November 22, 2000.

Name: Seminar: "RESEARCH TO DEVELOP AN ARTIFICIAL RETINA".

Date and Time: November 22, 2000; 8:30 am–12 noon.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 110, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Gilbert Devey, Program Director, biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 2223, Telephone: (703) 292–8320.

Purpose of Meeting: The broad purpose of the meeting is to brief NSF management and program officers on federal agency research project support, other worldwide R&D directed to the development of a chronic retinal prosthesis, and to indicate the context in which NSF provides support for the research.

AGENDA

8:30 a.m.—Registration
9:00 a.m.—Welcome
9:15 a.m.—Presentation
10:15 a.m.—Break
10:30 a.m.—Discussion
11:30 a.m.—Open Discussion
11:45 a.m.—Wrap-Up

Dated: November 8, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–29170 Filed 11–14–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373, 50–374]

In the Matter of Commonwealth Edison Company (LaSalle County Station, Units 1 and 2); Exemption

I.

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating Licenses Nos. NPF–11 and NPF–18 for operation of LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois. The licenses state, among other things, that the facility is subject to all of the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II.

Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G states, "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR Part 50 specifies that the P–T limits must meet the safety margin requirements specified in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G. ASME Code specifies use of K_{1A} fracture toughness curve.

To address provisions of the proposed amendments to the technical specification (TS) P–T limits, in its submittal of February 29, 2000, the licensee requested that the staff exempt LaSalle from application of specific requirements of 10 CFR 50.60(a) and Appendix G, and substitute use of ASME Code Case N–640.

Code Case N–640 permits the use of an alternate reference fracture toughness (K_{1c} fracture toughness curve instead of K_{1a} fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the K_{1c} fracture toughness curve shown in ASME Code, Section XI, Appendix A, Figure A–2200–1 provides greater allowable fracture toughness than the corresponding K_{1a} fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–2210–1 (the K_{1a} fracture toughness curve), using Code Case N–640 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would be required.

Code Case N–640 (formerly Code Case N–626)

The licensee has proposed an exemption to allow the use of ASME Code Case N–640 in conjunction with ASME Code, Section XI; 10 CFR 50.60(a); and 10 CFR Part 50, Appendix G, to determine P–T limits.

The proposed amendments to revise the P–T limits for LaSalle rely in part on the requested exemption. These revised P–T limits have been developed using the K_{1c} fracture toughness curve, in lieu of the K_{1a} fracture toughness curve, as the lower bound for fracture toughness.

Use of the K_{1c} curve in determining the lower bound fracture toughness in the development of P–T operating limits curve is more technically correct than use of the K_{1a} curve since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{1c} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the initial conservatism of the K_{1a} curve since 1974 when the curve was codified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{1a} curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, P–T curves based on the K_{1c} curve would enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations.

Since the reactor coolant system (RCS) P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G, continued operation of LaSalle with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily require that the RPV maintain a temperature exceeding 212 degrees Fahrenheit in a limited operating window during pressure tests. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in primary containment. Implementation of the proposed P–T curves, as allowed by ASME Code Case N–640, does not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at lower coolant temperature. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served.

In summary. the ASME Code, Section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since

1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Code, Section XI, Appendix G, requirements by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

III.

Pursuant to 10 CFR 50.12(a), the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. . . ."

The underlying purpose of the requirement to use the K_{Ia} curve to develop P–T limits is to provide an adequate margin of safety against brittle failure of the RPV. Code Case N–640 permits application of the lower bound static initiation fracture toughness value (K_{Ia}) equation as the basis for establishing the curves in lieu of using the lower bound crack arrest fracture toughness value equation (*i.e.*, the K_{Ia} equation, which is based on conditions needed to arrest a dynamically propagating crack, and which is the method invoked by Appendix G to Section XI of the ASME Code). Use of the K_{Ic} equation in determining the lower bound fracture toughness in the development of the P–T operating limits curve is more technically correct than the use of the K_{Ia} equation since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{Ic} equation appropriately implements the use of the static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. Therefore, use of the K_{Ic} curve in developing P–T limits provides an adequate margin against brittle failure of the RPV. As a result, the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

Therefore, the staff concludes that requesting an exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N–640 may be used to revise the P–T limits for LaSalle County Station, Units 1 and 2.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest, and that special circumstances are present. Therefore, the Commission hereby grants Commonwealth Edison Company an exemption from the requirements of 10 CFR 50.60(a) and 10 CFR Part 50, Appendix G, for LaSalle County Station, Units 1 and 2.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (65 FR 60986). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.
Dated at Rockville, Maryland, this 8th day of November 2000.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–29249 Filed 11–14–00; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–00–039]

In the Matter of Mr. David D. Klepadlo; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. David D. Klepadlo (Mr. Klepadlo) is currently the President of David D. Klepadlo & Associates (K & A). K & A was the holder of Materials License No. 37–30236–01 issued by the Nuclear Regulatory Commission (NRC) on September 11, 1995, pursuant to 10 CFR Part 30, until such License was revoked on August 9, 1999, for non-payment of fees. The license authorized possession and use of two Troxler Electronics Laboratories (Troxler) portable nuclear density gauges (gauges).

II

On July 9, 1999, an Order Revoking License was issued to K & A for non-payment of fees, and on August 9, 1999, the license was revoked. Following the revocation of K & A's license, Mr. Oberg, an NRC inspector, contacted Mr. Klepadlo by telephone on August 12, 1999. Mr. Klepadlo told Mr. Oberg that he no longer possessed the two Troxler gauges, having returned them to Troxler, and further stated that he would look for the documentation showing the gauges were returned to Troxler and would contact the NRC. In a letter to the NRC dated September 3, 1999, Mr. Klepadlo stated, "These test gauges were returned to Troxler in North Carolina in the Fall of 1997 and have not been in our possession since that time." However, Mr. Klepadlo did not provide any documentation supporting that the gauges were returned to Troxler.

On October 25, 1999, the NRC sent a letter to K & A indicating that the NRC had not yet received any documentation from K & A that the gauges had been returned to Troxler, and that Troxler had no record of receipt of the gauges. This letter also requested that K & A verify the final disposition of the gauges. Since repeated attempts by the NRC failed to ascertain the disposition of the gauges, an NRC inspection was conducted at the K & A facility on February 22, 2000, during which both Troxler gauges were found to be stored at the facility.

III

The NRC requirement of 10 CFR 30.10(a)(1) prohibits deliberate misconduct that causes a licensee to be in violation of any license issued by the NRC. Also, the NRC requirement of 10 CFR 30.10(a)(2) prohibits an individual from deliberately submitting to the NRC information that the individual knows to be incomplete or inaccurate in some respect material to the NRC.

The NRC has concluded that Mr. Klepadlo violated 10 CFR 30.10(a)(1) and (a)(2). Specifically, after the NRC revoked K & A's Materials License No. 37–30236–01 on August 9, 1999, Mr. Klepadlo violated 10 CFR 30.10(a)(1) and (a)(2) when he knowingly and deliberately provided false information to the NRC, which caused K & A to violate 10 CFR 30.9. The violation occurred when Mr. Klepadlo: (1) told an NRC inspector during a telephone conversation on August 12, 1999, that he no longer possessed the gauges, having returned them to Troxler; and (2) signed and submitted a letter to the NRC on September 3, 1999, that the gauges were returned to Troxler in North

Carolina in the Fall of 1997 and have not been in K & A's possession since that time. This was false information because the gauges were at the K & A facility at the time of Mr. Klepadlo's August 12, 1999, statement and September 3, 1999, letter.

Before the NRC made this final enforcement decision, a letter from the NRC dated September 18, 2000, afforded Mr. Klepadlo an opportunity to request a predecisional enforcement conference or respond in writing to the apparent violation. Mr. Klepadlo responded to the apparent violation in a letter dated October 17, 2000, stating that the NRC's conclusion that he made false statements to the NRC concerning the location of the gauges was incorrect. Mr. Klepadlo stated that as President of K & A, he cannot personally know the location of every piece of equipment owned by the company, and therefore, was not aware of the specific location of the gauges at each and every moment.

Notwithstanding Mr. Klepadlo's contention, the NRC maintains that the violation was deliberate. In making this conclusion, the NRC considered that: (1) the Radiation Safety Officer (RSO) at K & A, who cared for the gauges, was laid off in January 1998; (2) Mr. Klepadlo, during a transcribed interview with an NRC investigator on June 13, 2000, stated under oath, that once the RSO had left employment at K & A, Mr. Klepadlo's "only objective in life" was to get rid of the gauges, and that's what he tried to do, spending a lot of time contacting everyone he knew; and (3) the gauges were found at the K & A facility during an NRC inspection on February 22, 2000. Mr. Klepadlo, having been unsuccessful in his attempts to get rid of the gauges and having stated that his only objective after the RSO left was to get rid of the gauges, must have known the gauges were at K & A at the time of his August 12, 1999, oral statement to Mr. Oberg, and in his September 3, 1999, letter to the NRC. Therefore, the NRC concludes that his false statements were also deliberate.

IV

The NRC must be able to rely on the integrity of Licensee employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Klepadlo's actions in deliberately violating Commission regulations, and deliberately and knowingly providing false information to the NRC calls into question his trustworthiness and reliability, and raises serious questions as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that any future licensed activities could be conducted in compliance with the Commission's requirements, and that the health and safety of the public would be protected, if Mr. Klepadlo were permitted to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that David D. Klepadlo be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Mr. Klepadlo is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance and willfulness of Mr. Klepadlo's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 30, and 10 CFR 150.20, *It Is Hereby Ordered, Effective Immediately, That:*

(1) David D. Klepadlo is prohibited from engaging in NRC-licensed activities for three years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including but not limited to those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

(2) If Mr. Klepadlo is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

(3) For a period of one year after the three year period of prohibition has expired, Mr. Klepadlo shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph V.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification Mr. Klepadlo shall include a statement of his commitment to comply with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Klepadlo of good cause.

VI

In accordance with 10 CFR 2.202, David D. Klepadlo must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Klepadlo or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Klepadlo if the answer or hearing request is by a person other than Mr. Klepadlo. If a person other than Mr. Klepadlo requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Klepadlo or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Klepadlo may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 3rd day of November 2000.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

[FR Doc. 00–29248 Filed 11–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–784]

The Office of Nuclear Material Safety and Safeguards Environmental Assessment, and Finding of No Significant Impact Related to the Approval of the Remediation (Decommissioning) Plan for the Formerly Licensed Union Carbide Corporation Facility (UCC), Lawrenceburg, Tennessee, License Nos. SNM–720 and SNM–724 (Terminated)

The U.S. Nuclear Regulatory Commission (hereafter referred to as NRC staff) is considering approval of the remediation (decommissioning) plan (DP) for the formerly licensed Union Carbide Corporation facility (UCC), Lawrenceburg, Tennessee (UCAR, 1998). This DP was submitted by UCAR Carbon Company, Inc. (UCAR) to NRC on August 19, 1998. UCAR is obligated to remediate the UCC site to meet the release criteria established in the Action Plan to Ensure Timely Remediation of Sites Listed in the Site Decommissioning Management Plan (hereafter known as the SDMP Action Plan) (NRC, 1992), and 10 CFR part 20 subpart E.

Introduction

On August 26, 1963, UCC was issued Special Nuclear Materials License No. SNM–724 (SNM–724), for testing equipment and nuclear fuels development. License No. SMB–720 (SNM–720), which authorized the possession of source material, was also held by the site. SNM–724 was terminated on June 4, 1974, and the U.S. Atomic Energy Commission (AEC) released the site for unrestricted use. SMB–720 was superceded by the State of Tennessee License No. S–5002–H8 and was terminated on August 28, 1975.

SNM–724 authorized possession of up to 500 grams (g) of fully-enriched (<94 percent) uranium for testing of equipment and processes in the Lawrenceburg Fuel Development Facility located at Highway 43 South, Lawrenceburg, Tennessee. On May 22, 1964, the license was amended to authorize possession of 150 kilograms (kg) of U^{235} to make graphite-coated uranium-thorium carbide particles and graphite-matrix fuel elements. The possession limit was increased to 475 kg on June 12, 1964.

By letter dated February 4, 1974, the UCC submitted "closeout" survey information and requested that SNM–724 be terminated and the facility be released for unrestricted use. On April 5, 1974, Region II performed a closeout inspection which was documented in their Inspection Report 70–784/74–1. Region II recommended that the license be terminated, and the facility be released for unrestricted use. By AEC letter dated June 4, 1974, SNM–724 was terminated and the UCAR facility released for unrestricted use.

In 1991, Oak Ridge National Laboratory (ORNL) was contracted by NRC, to review and evaluate all nuclear material licenses terminated by NRC or its predecessor agencies, since inception of material regulation in the late 1940s. One of the objectives of this review was to identify sites with potential for residual contamination, based on information in the license documentation. NRC evaluated the available survey data to determine if the information was sufficient to conclude that the site meets the existing guidelines for unrestricted use.

Radiological assessments performed at the UCAR facility and immediate vicinity have identified the presence of enriched and depleted uranium in soil excess of current radiological release criteria. Sampling identified soil/sediments contamination in small areas around the processing buildings.

Volumetric contaminations were found to be above the release criteria in four areas around Building 10: (1) Soil surrounding the incinerator pad; (2) sediment in the manholes and cooling water tanks; (3) laundry sump tank; and (4) the surface layer of concrete flooring. A number of core samples as well as near surface samples were taken near the incinerator pad and the range for total uranium concentration was 1.33 to 3,655 pCi/g. The estimated average depth of the soil contamination is one foot resulting in a contaminated soil volume estimate of 500 cubic feet. Volumetric contamination above the release critieria was found in three areas in and around Building 5: (1) Sink trap; (2) concrete flooring; and (3) asphalt outside exit.

There was no indication of radioactive material above the release criteria beyond the former restricted area boundary in the ground water, settling basins, or former sanitary sewer system.

UCAR will be conducting remediation activities without a license, because its license was terminated in 1974. However, remediation will be performed in accordance with current regulations and release limits (UCAR, 1998).

Planned Decommissioning Action

Decommissioning of the UCAR facility shall comply with 10 CFR part 20 subpart E for unrestricted use (NRC 1997) criteria. The conduct of decommissioning and decontamination in compliance with these criteria provides adequate protection of the public health and safety and of the environment. In implementing the decommissioning plan, UCAR shall reduce residual contamination in soil to be below the NRC's unrestricted release criteria identified in 10 CFR part 20, subpart E (NRC, July, 1997). Soils which exceed the derived concentration guideline level (DCGL) will be removed and disposed of as low level radioactive waste.

General exposure rate levels will be reduced to levels below 5 microroentgen per hour (microR/hr) above background, measured at 1 meter (m) above the surface.

UCAR is proposing to conduct a final survey to demonstrate: (1) That uranium and thorium contamination levels in the soil are below the [25 millirem per year (mRem/yr)] DCGL's and (2) that exposure rate measurements are less than 5 microR/hr measured 1 meter above the surface. UCAR has committed to conducting the final survey in accordance with NRC approved site survey plan, as well as any applicable regulatory requirements.

The Need for Planned Action

The former UCAR facility is currently being used to manufacture non-radiological carbon products. The planned action is necessary to reduce residual contamination at the site to meet NRC's unrestricted release criteria.

Alternative to the Planned Action

The alternative to the proposed action is to take no action. A no-action alternative would mean the site would not be remediated now. Although there is no immediate threat to the public health and safety from this site, not undertaking remediation, at this time, does not solve the regulatory and potential long-term health and safety problems associated with having residual contamination on site. In addition, pursuing no action would delay remediation until some time in the future, when remediation costs could be much higher than they are today. Therefore, the no-action alternative is not acceptable.

Environmental Impacts of the Planned Action

Radiological impacts that could result from the remediation of the former UCC site are direct exposure, inhalation, and ingestion hazards to workers. These hazards could occur during decontamination of building surfaces and excavation and packaging of contaminated soil.

The radioactive material of concern at this site is enriched uranium. Gamma exposure rate measurements taken at locations throughout the site do not exceed background levels, with the exception of five locations near the incinerator pad. The highest radiation exposure rate detected near the incinerator pad is 26 microR/hr above background. Because the gamma exposure rate measurements are low, direct exposure to workers is not a significant radiological hazard.

UCC will implement an occupational exposure monitoring program to ensure that internal and external exposures are well below the regulatory limits, and to ensure that no individual exceeds a regulatory limit. Respiratory protection will be required for workers when airborne radioactivity could result in exposures above the administrative action levels set in the health and safety plan.

Although the potential for external exposure is low, UCAR will survey work areas for direct radiation whenever remediation is being performed. If dose rates exceed 5 mrem/hr, or if the RSO determines that worker exposure could exceed 10 percent of the regulatory limits found in 10 CFR part 20, subpart C "Occupational Dose Limits," worker exposure will be monitored with thermoluminescent dosimeters.

UCAR has committed to implement a contamination monitoring and control program to detect and minimize the spread of contamination. Contamination monitoring will be accomplished by: (1) Conducting routine surveys; (2) use of access controls to prevent inadvertent personnel access to contaminated areas; (3) use of radiation work permits in areas where there is potential for workers to exceed 10 percent of the regulatory limits; (4) use of personal protection; and (5) employee training.

UCAR has committed to implementing a contaminant monitoring and control program to detect and minimize off-site effluent releases (UCAR, in its DP Section 3.3.4, 1998). The primary pathway for off-site release of radioactive material is airborne effluent. Inhalation and ingestion impacts will be minimized to the workers and public by controlling airborne material levels. Routine and special environmental monitoring will be conducted to detect, assess, and limit potential airborne releases. Air monitoring will be performed in work areas using Breathing Zone Air (BZA) samplers or high-volume air samplers. Administrative action levels at 10 percent of the regulatory limits for airborne effluents have been established. Investigations will be performed if administrative action levels are exceeded. No liquid wastes have been identified and none are expected.

Radioactive waste will be segregated from non-radioactive waste and stored in a controlled, fenced area. Radioactive waste will be stored inside, if possible. Otherwise, it will be stored outside and covered to protect against the weather. Radioactive waste will be packaged, labeled, manifested, and shipped in accordance with NRC and U.S. Department of Transportation requirements.

This site is being remediated to the criteria listed in 10 CFR part 20, subpart E for unrestricted use (NRC, 1997).

Agencies and Individuals Consulted

This environmental (EA) assessment was prepared by NRC staff. No other sources were used beyond those referenced in this EA. NRC staff provided a draft of the EA to Tennessee Department of Environment and Conservation, Division of Radiological Health for review. By e-mail dated May 1, 2000, the Tennessee Department of Environment and Conservation Division of Radiological Health agreed with NRC's conclusion that the proposed action will not have any significant effect on the quality of the human environment.

NRC contacted the U.S. Fish and Wildlife Service (FWS) to determine the potential impacts of the proposed action on threatened and endangered species near the UCAR facility. By letter dated September 10, 1999, the FWS informed NRC that the proposed action would have no impact on threatened and endangered species.

NRC staff provided a draft of the EA to U.S. Environmental Protection Agency (EPA) Region IV for review. By e-mail dated June 27, 2000, EPA did not have any comments on the proposed action. However, the EPA has noted the disagreement between the EPA and the NRC about the appropriate dose criteria to be used in decommissioning.

NRC also contacted the Tennessee State Historical Preservation Office to determine if any historical properties would be impacted by the proposed action. The Tennessee State Historical Preservation office informed the NRC, by letter dated May 2, 2000, that there are no National Register of Historic Places listed or eligible properties affected by the project.

Conclusion

During the decommissioning operation, radiological exposure to workers and annual average concentrations of radioactive material released off-site will be in accordance with Part 20 limits. UCAR has committed to perform remediation in accordance with an acceptable Health and Safety Plan. The Health and Safety Plan shall provide adequate controls to keep potential doses to workers and the public from direct exposure, airborne material, and released effluents as low as reasonably achievable.

NRC also believes that the remediation of the facility in accordance with 10 CFR part 20, subpart E for unrestricted use, adequately protects workers, members of the public, and the environment. The potential environmental impacts from the proposed action are not significant.

References

1. NRC, "Action Plan to Ensure Timely Remediation of Sites Listed in the Site Decommissioning Management Plan," 57 FR 13389, April 16, 1992.

2. NRC, "Radiological Criteria for License Termination," 10 CFR Part 20, Subpart E, 62 **Federal Register** 139, July 21, 1997.

3. NRC, "Multi-Agency Radiation Survey and Site Investigation Manual, (MARSSIM)," NUREG–1575, December 1997.

4. NRC, "Draft Manual for Conducting Radiological Surveys in Support of License Termination," NUREG/CR–5849, June 1992.

5. Union Carbide Company Inc., "Remediation (Decommissioning) Plan for the Formerly Licensed Union Carbide Corporation Facility (UCC), Lawrenceburg, TN," August 19, 1998.

Finding of No Significant Impact

NRC has prepared an EA related to the approval of UCAR's Remediation (Decommissioning) Plan, Terminated License No. SNM–724 and SMB–720. On the basis of this EA, NRC has concluded that the environmental impacts that would be created by the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined the Finding of No Significant Impact is Appropriate.

The EA and the document related to this proposed action are available for public inspection and copying at NRC's Electronic Reading Room at http://www.nrc.gov/NRC/ADAMS/index.html.

FOR FURTHER INFORMATION CONTACT: Rebecca Tadesse, Project Manager, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards. Telephone: (301) 415–6221.

Dated at Rockville, Maryland, this 9th day of November 2000.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–29251 Filed 11–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Plant Operations; Notice of Meeting

The ACRS Subcommittee on Plant Operations will hold a meeting on December 6, 2000, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 6, 2000–8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss changes to the Revised Reactor Oversight Process since implementation of the pilot program. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman and written statements will be accepted and made available to the Committee. 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 Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Ms. Maggalean W. Weston (telephone 301/415–3151) between 8 a.m. and 5:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: November 7, 2000.

James E. Lyons,

Associate Director for Technical Support.

[FR Doc. 00–29247 Filed 11–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission

DATES: Weeks of November 13, 20, 27, December 4, 11, and 18, 2000.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 13

Wednesday, November 15, 2000.

10 a.m.—Briefing by the Executive Branch (Closed—Ex. 1)

Friday, November 17, 2000

9:25 a.m.—Affirmation Session (Public Meeting), (If needed)

9:30 a.m.—Briefing on Risk-Informed Regulation Implementation Plan, (Public Meeting) (Contact: Tom King, 301–415–5790)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of November 20—Tentative

There are no meetings scheduled for the Week of November 20.

Week of November 27—Tentative

Monday, November 27, 2000

9 a.m.—Briefing by DOE on Plutonium Disposition Program and MOX Fuel Fabrication Facility Licensing (Public Meeting), (Contact: Drew Persinko, 301–415–6522)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 4—Tentative

Monday, December 4, 2000

1:55 p.m.–Affirmation Session (Public Meeting) (If needed)

2 p.m.—Briefing on License Renewal Generic Aging Lessons Learned (GALL) Report, Standard Review Plan (SRP), and Regulatory Guide (Public Meeting) (Contact: Chris Grimes, 301–415–1183)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 11—Tentative

There are no meetings scheduled for the Week of December 11.

Week of December 18—Tentative

Wednesday, December 20, 2000

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on the Status of the Fuel Cycle Facility Oversight Program Revision (Public Meeting)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Note: 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.

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, DC 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 wmn@nrc.gov or dkw@nrc.gov.

Dated: November 9, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–29354 Filed 11–13–00; 2:18 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 23, 2000, through November 3, 2000. The last biweekly notice was published on November 1, 2000.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

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 amendment 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 amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. 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 6D22, 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's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 15, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first Floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). 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 a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of

the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If 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 amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 22, 1999, as supplemented on September 11, 2000.

Description of amendment request: The proposed amendment would revise Technical Specification Sections 4.5.D, "Containment Air Filtration System (CAFS)," 4.5.E, "Control Room Air Filtration System (CRAFS)," 4.5.F, "Fuel Storage Building Air Filtration System (FSBAFS)," and 4.5.G, "Post-accident Containment Venting System (PACVS)," to address the testing requirements in Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

No. The proposed change would revise Section 4.5 to incorporate current NRC [Nuclear Regulatory Commission] testing requirements which affect how the charcoal would be tested in the laboratory. These changes would not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety System Settings and Safety Limits specified in the current Technical Specifications would remain unchanged. Therefore, the proposed changes would not involve a significant increase in the probability or in the consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes would implement testing methodology for ventilation system charcoal in accordance with Generic Letter 99–02, but would not alter equipment performance criteria or standards. The safety analysis of the facility would remain complete and accurate, and would not be affected by the new charcoal testing requirements. There would be no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated would still be valid. The operating procedures and emergency procedures would be unaffected. Consequently no new failure modes would be introduced as a result of the proposed change. Therefore, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. Since there would be no changes to the operation of the facility, to its physical design, or to the performance characteristics of any safety-related equipment, neither the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, nor Technical Specification bases would be affected. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Section Chief: Marsha Gamberoni.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: September 5, 2000.

Description of amendment request: The amendment revises Technical Specification 3.3.5.1, 3.3.6.1 and 3.3.6.2. The proposed changes would add notes to tables listing instrument channels that are common to, or support the operability of interrelated systems as governed by these technical specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change has no impact on previously analyzed accidents or transients and has no affect on design, operation, capacity, or surveillance requirements of the affected instrumentation channels. The change provides branching notes to the Loss of Coolant Accident (LOCA) Time Delay Relay (TDR) Functions of LCO [limiting condition of operation] 3.3.5.1 from instrument channels of the primary and secondary containment isolation channels of LCO 3.3.6.1 and LCO 3.3.6.2 and the associated support features for the LOCA TDR function. Since these instruments affect multiple LCOs, this change will assure that operators implement the most restrictive Action and Completion Time when a channel becomes inoperable or is placed in the tripped condition. Providing this branching to the more restrictive Actions makes explicit what is currently required for Operability and has no impact on any previously evaluated accident.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not impact any operational or physical aspect of WNP–2. The change only makes explicit the LCOs affected by the primary and secondary containment isolation instruments and the associated supported features for the LOCA TDR function.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change provides branching notes to the LOCA TDR channels of LCO 3.3.5.1 from instrument channels of the primary and secondary containment isolation channels of LCO 3.3.6.1 and LCO 3.3.6.2 and provides notes for identifying associated support features for the LOCA TDR function. This change only makes explicit what is currently required for LCO 3.3.5.1 Functions 1c, 1d, 2c and 2d instrument channel Operability. This change will make explicit the most restrictive Action when an instrument sensor or channel becomes inoperable or is placed in the tripped condition, thereby, maintaining the margin of safety in accordance with the Technical Specifications.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Section Chief: Stephen Dembek.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: October 3, 2000.

Description of amendment request: The proposed amendment would revise the Crystal River Unit 3 (CR–3) Improved Technical Specifications (ITS) 3.7.12, "Control Room Emergency Ventilation System (CREVS)," ITS 5.6.2.12, "Ventilation Filter Testing Program (VFTP)," ITS 3.3.16, "Control Room Isolation—High Radiation," and ITS 3.7.18, "Control Complex Cooling System." The proposed ITS changes are based on the results of revised public and control room dose calculations for CR–3 design basis radiological accidents using an alternative source term (AST).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously analyzed. The CR–3 Control Room Emergency Ventilation System (CREVS) and the Control Complex Habitability Envelope (CCHE) only function following the initiation of a design basis radiological accident. Therefore, the changes to the CREVS specification, the CREVS filter testing criteria, and the deletion of the requirement for control room isolation on high radiation proposed by this amendment will not increase the probability of any previously analyzed accident. The Control Complex Cooling System and Auxiliary Building Ventilation System are not initiators of any design basis accident. Therefore, the changes to the Control Complex Cooling System specification and the changes to the testing guidelines for the Auxiliary Building Ventilation System exhaust filters proposed by this amendment will not increase the probability of occurrence of any previously analyzed accident.

Revised dose calculations, which take into account the changes proposed by this amendment and the use of an AST, have been performed for the CR–3 design basis radiological accidents. The results of these revised calculations indicate that public and control room doses will not exceed the limits specified by 10 CFR 50.67 and Regulatory Guide 1.183. In addition, a comparison between results of the current public dose calculations and the revised public dose calculations indicate that the proposed changes will not result in a significant increase in predicted dose consequences for any of the analyzed accidents. Therefore, the proposed changes do not involve a significant increase in the consequences of any previously analyzed accident.

2. Does not create the possibility of a new or different kind of accident from any accident previously analyzed.

Limiting the requirements for the Control Complex Cooling System and CREVS to be operable to Modes 1, 2, 3, and 4, and changing the Auxiliary Building Ventilation System exhaust filter testing guidelines do not result in changes to the design or operation of these systems. Although the other changes proposed by this amendment could affect the operation of the CREVS and CCHE following a design basis radiological accident, none of these changes can initiate a new or different kind of accident since they are only related to system capabilities that provide protection from accidents that have already occurred. Therefore the proposed changes do not create the possibility of a new or different kind of accident from those previously analyzed.

3. Does not involve a significant reduction in the margin of safety.

The proposed changes to the control complex cooling specification do not affect the ability of the system to maintain control complex temperatures within safety-related equipment operability limits when the equipment is required. The results of revised control room dose calculations indicate that the proposed changes to the CREVS specification, the CREVS filter testing criteria, and removal of the CREVS actuation signal on high radiation will not affect the ability of the CREVS and CCHE to maintain control room doses less than required limits during design basis radiological accidents. The revised dose calculations also indicate that the Auxiliary Building Ventilation System exhaust filters are not required in order to maintain public or control room doses less than required limits; therefore the proposed changes to the testing requirements for these filters cannot adversely affect public or control room doses.

Based on the above, the revised technical specifications meet the same intent as the currently approved specifications. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Richard P. Correia.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 7, 1999, as supplemented February 4, 2000.

Description of amendment request: The proposed amendment requests the staff to evaluate the integrity of the Kewaunee Reactor Pressure Vessel (RPV) circumferential beltline weld using a Master Curve-based methodology.

The licensee submitted a request for exemptions to 10 CFR 50.61, 10 CFR 50 Appendix G, and 10 CFR 50, Appendix H, to allow the use of the Master Curve-based methodology for calculating the RPV Reference Temperature for Pressurized Thermal Shock (RT_{PTS}) based on the fracture toughness data from irradiated pre-cracked Charpy V-notch specimen testing of Kewaunee and Maine Yankee surveillance welds. The Master Curve methodology is based on American Society for Mechanical Engineers (ASME) Code Case N–629 and American Society for Testing and Materials Standard (ASTM) E–1921. In its submittals, the licensee also requested a revision of the facility's Pressure-Temperature (P/T) limit curves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Failure of a reactor vessel is not an accident that has been previously evaluated. Design provisions ensure that this is not a credible event. Since the potential consequences of a reactor vessel failure are so severe, industry and governmental agencies have worked together to ensure that failure will not occur. Compliance with 10 CFR 50.61, 10 CFR 50 Appendix G and H, and application of ASME Code Case N–514, ASME Code Case N–588, and the exemption requested in Attachment 1 ensures that failure of a reactor vessel will not occur. The proposed changes do not impact the capability of the reactor coolant pressure boundary piping (i.e., no change in operating pressure, materials, seismic loading, etc.) and therefore do not increase the potential for the occurrence of a LOCA.

The LTOP setpoint, LTOP system enabling temperature, and revised P/T limits reflected in proposed Figures TS 3.1–1 and TS 3.1–2 ensure that the Appendix G pressure/temperature limits are not exceeded, and therefore, ensure that RCS integrity is maintained. The changes do not modify the reactor coolant system pressure boundary, nor make any physical changes to the facility design, material, construction standards, or setpoints. The reactor coolant system full power operating pressure (2235 psig) is not being changed by this proposed amendment. The LTOP valve setpoint remains at ≤500 psig. The LTOP enabling temperature based on Figure TS 3.1–2 is 200°F and is consistent with ASME Code Case N–514 guidance of RT_{NDT} + 50°F. The LTOP enabling temperature is not changed by this amendment. The allowable combination of Appendix G pressure and temperature for the cooldown limits is marginally greater than the current limits. The combination of slightly greater allowable Appendix G pressure and temperature limits and low enabling temperature produces an adequate operating window. An adequate operating window reduces the likelihood of inadvertently lifting the LTOP relief valve while maneuvering the plant through the knee of the P–T curve during startup and shutdown. The probability of an LTOP event occurring is independent of the pressure-temperature limits for the RCS pressure boundary and enabling temperature. Therefore, the probability of a LTOP event is not increased.

The revised heatup and cooldown limit curves and corresponding LTOP enabling temperature were developed using test results from unirradiated and/or irradiated specimens that represent the KNPP reactor vessel beltline circumferential weld, closure head flange, and intermediate forging. The circumferential beltline weld and intermediate forging are the most limiting materials in the reactor coolant pressure boundary. These materials are limiting due to the effects of neutron irradiation which cause the flow properties to increase and the toughness to decrease. The circumferential beltline weld is the controlling material for evaluation of pressurized thermal shock. With NRC approval to use Code Case N–588 and the exemption requested in Attachment 1, the reactor vessel intermediate forging and head flange become the limiting and controlling materials for development of the Appendix G limit curves and corresponding LTOP system enabling temperature. 10 CFR 50, Appendix G states that the metal temperature of the closure flange regions must exceed the material unirradiated RT_{NDT} by at least 120°F for normal operation and 90°F for hydrostatic pressure tests and leak tests when the pressure exceeds 20 percent of the preservice hydrostatic test pressure. Fracture toughness, drop weight, and Charpy V-notch testing of the 1P3571 weld metal and drop weight, and Charpy V-notch testing of the intermediate forging material has been performed. The results of those tests have been used for derivation of the revised PTS assessment, the proposed Appendix G heatup and cooldown limit curves, and the corresponding LTOP system enabling temperature. The revised limit curves and corresponding LTOP enabling temperature have been developed using accepted engineering practices. The evaluations were performed in accordance with methods derived from the ASME Boiler and Pressure Vessel Code, criteria set forth in NRC Regulatory Standard Review Plan 5.3.2, and 10 CFR 50.61. The revised heatup and cooldown limit curves and corresponding LTOP enabling temperature ensures adequate fracture toughness for ferritic materials of the pressure-retaining components of the reactor coolant pressure boundary. These limit curves provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, and low temperature overpressure protection [corresponding to isothermal events during low temperature operations (i.e., ≤200°F)], thus ensuring the integrity of the reactor coolant pressure boundary.

The changes do not adversely affect the integrity of the RCS such that its function in the control of radiological consequences is affected. Radiological off-site exposures from normal operation and operational transients, and faults of moderate frequency do not exceed the guidelines of 10 CFR 100. In addition, the changes do not affect any fission product barrier. The changes do not degrade or prevent the response of the LTOP relief valve or other safety-related systems to previously evaluated accidents. In addition, the changes do not alter any assumption previously made in the radiological consequence evaluations nor affect the mitigation of the radiological consequences of an accident previously evaluated. Therefore, the consequences of an accident previously evaluated will not be increased.

Thus, operation of KNPP in accordance with the PA [proposed amendment] does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the potential consequences of a reactor vessel failure are so severe, industry and governmental agencies have worked together to ensure that failure will not occur. Application of ASME Code Case N–514, ASME Code Case N–588, and the exemption requested in Attachment 1 ensures that failure of a reactor vessel will not occur. Therefore, a failure of the reactor vessel can still be considered incredible.

The proposed heatup and cooldown limit curves have been constructed by combining the most conservative pressure-temperature limits derived by using material properties of the intermediate forging, closure head flange, and beltline circumferential weld to form a single set of composite curves. Use of the proposed curves, does not modify the reactor coolant system pressure boundary, nor make any physical changes to the LTOP setpoint or design. Proposed Figures TS 3.1–1 and TS 3.1–2 were prepared in accordance with regulatory and code requirements and were derived using conservative material property basis and neutron exposure projections thru 33 EFPY. Therefore, the proposed heatup and cooldown curves and LTOP limits will continue to protect the reactor vessel from failure.

The LTOP system enabling temperature and the proposed Appendix G pressure

temperature limitations were prepared using methods derived from the ASME Boiler and Pressure Vessel Code and the criteria set forth in NRC Regulatory Standard Review Plan 5.3.2. The changes do not cause the initiation of any accident nor create any new credible limiting failure for safety-related systems and components. The changes do not result in any event previously deemed incredible being made credible. As such, it does not create the possibility of an accident different than previously evaluated. The changes do not have any adverse effect on the ability of the safety-related systems to perform their intended safety functions.

The proposed changes do not make physical changes to the plant or create new failure modes. Thus, the PA [proposed amendment] does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed Appendix G pressure temperature limitations and corresponding LTOP enabling temperature were prepared using methods derived from the ASME Boiler and Pressure Vessel Code, including ASME Code Cases N–514 , N–588, and N–629.

Inherent conservatism in the P/T limits resulting from these documents is described in the Safety Evaluation.

Alternative methodologies to the safety margins required by Appendix G to 10 CFR Part 50 have been developed by the ASME Working Group on Operating Plant Criteria. Three of these methodologies are contained in ASME Code Cases N–514, N–588, and N–629.

Code Case N–514 provides criteria to determine pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of the relief valve used for LTOP. Specifically, the ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G; and redefines the enabling temperature at a coolant temperature less than 200 °F or a reactor vessel metal temperature less than RT_{NDT} + 50 °F, whichever is greater. Code Case N–514, "Low Temperature Overpressure Protection," has been approved by the ASME Code Committee but not yet approved for use in Regulatory Guides 1.147, 1.85, or 1.84. The content of this Code Case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. It is expected that the next revision of 10 CFR 50.55a will endorse the 1993 Addenda and Appendix G of Section XI. Code Case N–514 is not in conflict with 10 CFR 50.61 and therefore has been used to establish the LTOP system enabling temperature; the provision for exceeding 110% of the Appendix G limits has not been incorporated in PA [proposed amendment] 160. The NRC previously approved use of Code Case N–514 for determination of the LTOP enabling temperature in Reference 6.

Code Case N–588 provides benefits in terms of calculating pressure-temperature limits by revising the Section XI, Appendix G reference flaw orientation for circumferential welds in reactor vessels. The NRC previously approved use of Code Case N–588 for use at KNPP in references 4 and 5.

In support of this PA [proposed amendment], WPSC used fracture toughness results representing the beltline weld metal that were irradiated to EOL and in excess of EOLE fluence. The fracture toughness results were analyzed as described under Case #6 in WCAP–15075 and ASME Code Case N–629 for determining the EOL and EOLE indexing reference temperature values. Attachment 1 to this letter provides information to support NRC approval to use the weld metal fracture toughness results along with the methodology presented in WCAP–15075 for the KNPP PTS evaluation. The KNPP application of the methodology presented in WCAP–15075, identified as Case #6, incorporates the following additional margins beyond that recommended in ASTM E1921–97:

(a) A delta value of 17 °F is added to T_0 to ensure that the margin in the KNPP application is at least as conservative as the margin associated with the most limiting HSST–02 plate material.

(b) An additional margin of 18 °F has been added to the above 17 °F to be consistent with the ASME Code Case N–629, and align the KNPP lead plant application with current consensus of the technical community regarding the best use of fracture toughness based indexing reference temperature data.

(c) A 2 σ value of 16 °F and 24 °F is added to account for RT_{To} measurement uncertainty for EOL and EOLE, respectively.

(d) A value of (+)35 °F and (−)32 °F accounts for heat uncertainty between the KNPP and Maine Yankee surveillance capsule specimens for EOL and EOLE, respectively.

Fracture toughness testing of irradiated 1P3571 weld metal, performed in accordance with ASTM E1921–97 and application of ASME Code Case N–629 along with the methods in WCAP–15075, indicate that the end of life indexing reference temperature is 234 °F. This fracture toughness generated EOL indexing reference temperature value includes a margin of 34 °F (18 °F + 16 °F). The fracture toughness generated indexing reference temperature value (234 °F) is lower than the ART value (277 °F) predicted by the Charpy V-notch and Drop Weight methodology. Both methodologies predict end of life indexing reference temperature values that are below the pressurized thermal shock screening criteria (300 °F).

Use of the methodology set forth in the ASME Boiler and Pressure Vessel Code, NRC Regulatory Standard Review Plan 5.3.2., WCAP–15075, 10 CFR 50.61, and 10 CFR 50 Appendices G and H ensures that proper limits and safety factors are maintained. Thus, the PA [proposed amendment] does not involve a significant reduction in the margin of safety.

The revised heatup and cooldown limit curves and corresponding LTOP system enabling temperature were prepared using fracture toughness, drop weight and Charpy V-notch data for the beltline weld material; drop weight and Charpy V-notch data for the closure head flange and intermediated forging material; along with practices described herein and methods derived from the ASME Boiler and Pressure Vessel Code and 10 CFR 50.61. The safety factors and margins used in the development of the limit curves and LTOP system enabling temperature meet the criteria set forth by these documents. Application of low leakage core designs decreases the rate of shift in transition temperature from ductile to nonductile behavior. The revised limit curves and corresponding LTOP enabling temperature provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, and low temperature overpressure protection [corresponding to isothermal events during low temperature operations (i.e., ≤200 °F)]. With the preparation of the revised limit curves in accordance with the latest criteria and guidance, this proposed amendment ensures that proper limits and safety factors are maintained.

Thus, the proposed amendment does not involve a significant reduction in a margin of safety. Therefore, the proposed amendment does not represent a significant decrease in the margin of safety. As shown in Attachment 1 [in the proposed amendment], a loss of reactor vessel integrity is still incredible. Furthermore, the LTOP setpoint and enabling temperature will continue to protect the reactor coolant system during low temperature operation.

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.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: Claudia M. Craig.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 7, 2000.

Description of amendment request: The proposed amendment to the Indian Point Nuclear Generating Unit No. 3 (IP3) Technical Specifications (TSs) would reflect a modification planned for refueling outage (RO) 11, scheduled to begin in May of 2001. The modification will automatically close, on a safety injection signal, the existing main feedwater inlet isolation valves (MFIIVs) and the main feedwater low flow bypass inlet isolation valves.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the Indian Point 3 plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92 since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change reflects a planned modification to automatically isolate main feedwater on a safety injection signal using the motor operated Main Feedwater Inlet Isolation Valves (MFIIVs) and MF [main feedwater] low flow bypass inlet isolation valves. These non-safety valves will be incorporated into the IST [inservice testing] program as augmented components and included in the Generic Letter 89–10 program for motor operated valves. The modification will not relocate the safety injection signal from the Main Boiler Feedpump Discharge Valves (MBFPDVs) but closure will no longer be assumed in analyses. The modification is based on current design function for the feedwater isolation following a main steam line break inside containment accomplished by MBFPDVs. The TS changes add a limiting condition for operation, required action statements with completion times and surveillance requirements that are the same as those previously approved for Westinghouse plants in the Standard Technical Specifications found in NUREG–1432. The plant core reload analysis will assume that the modification is complete (this eliminates the continued addition of the feedwater between the MFIIVS and associated bypass valves and the MBFPDVs) and demonstrate that a shutdown margin of 1.3% is acceptable and that no boron concentration needs to be assumed in the safety injection lines. The proposed changes cannot affect the probability of an accident occurring since they reflect a change in plant design consistent with current design which is not an accident initiator. The proposed changes cannot increase the consequences of postulated accidents since they reflect a change in plant design that will mitigate the effects of feedwater to a faulted steam generator for a main steam line break inside containment and restore past analytical assumptions regarding a 1.3% shutdown margin and no boron in the safety injection lines.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change reflects a planned modification to automatically isolate main feedwater on a safety injection signal using the motor operated Main Feedwater Inlet Isolation Valves (MFIIVs) and MF low flow bypass inlet isolation valves. These non-safety valves will be incorporated into the IST program as augmented components and included in the Generic Letter 89–10 program for motor operated valves. The modification will not relocate the safety injection signal from the Main Boiler Feedpump Discharge Valves (MBFPDVs) but closure will no longer be assumed in analyses. The modification is based on current design function for the feedwater isolation following a main steam line break inside containment accomplished by MBFPDVs. The TS changes add a limiting condition for operation, required action statements with completion times and surveillance requirements that are the same as those previously approved for Westinghouse plants in the Standard Technical Specifications found in NUREG–1432. The proposed TS changes do not create the possibility of a new or different type of accident from those previously evaluated since they reflect a design change that will accomplish the same feedwater isolation function as previously done by the MBFPDVs with no change to the manner in which the feedwater system operates.

3. Involve a significant reduction in a margin of safety.

The proposed TS change reflects a planned modification to automatically isolate main feedwater on a safety injection signal using the motor operated Main Feedwater Inlet Isolation Valves (MFIIVs) and MF low flow bypass inlet isolation valves. These non-safety valves will be incorporated into the IST program as augmented components and included in the Generic Letter 89–10 program for motor operated valves. The modification will not relocate the safety injection signal from the Main Boiler Feedpump Discharge Valves (MBFPDVs) but closure will no longer be assumed in analyses. The modification is based on current design function for the feedwater isolation following a main steam line break inside containment accomplished by MBFPDVs. The TS changes add a limiting condition for operation, required action statements with completion times and surveillance requirements that are the same as those previously approved for Westinghouse plants in the Standard Technical Specifications found in NUREG–1432. The plant core reload analysis will assume that the modification is complete (this eliminates the continued addition of the feedwater between the MFIIVS and associated bypass valves and the MBFPDVs) and demonstrate that a shutdown margin of 1.3% is acceptable and that no boron concentration needs to be assumed in the safety injection lines. The proposed TS change cannot involve a significant reduction in the margin of safety since it is based upon a modification that will restore the margin of safety with respect to feedwater addition, shutdown margin and core boration for a main steam line break inside containment to the previously analyzed condition. This assumes that loading of the valves on the emergency diesel generators will not affect the emergency diesel generators margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 7, 2000.

Description of amendment request: The proposed amendment to the Indian Point Nuclear Generating Unit No. 3 (IP3) Technical Specifications (TSs) would extend allowed outage times (AOTs) on a one-time basis, before May 31, 2002, to allow for replacement of the 31 and 32 station batteries while the plant is on line. The proposed amendment also removes an expired footnote regarding repairs to the 32 diesel fuel oil tank.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed License amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed AOT extension does not involve a significant increase in the probability or consequences of an accident previously evaluated. During the replacement of the existing station batteries, a temporary battery will provide the same function as the Exide batteries being removed. Even though this temporary battery will not meet seismic, seismic interaction or security requirements, due to its location on the 53-ft elevation of the Turbine Building, it is qualified as safety related in all other respects. The 125 VDC EDS [electrical distribution system] is normally supplied by the associated 480 VAC bus through a Battery Charger. The essential function of 31, 32 and 33 station battery is to supply DC control power necessary to start and load the associated EDG [emergency diesel generator]. Once the EDGs are on line, the 125 VDC EDS will be supplied via the battery charger. However, the station batteries have been sized to carry shutdown loads for a period of two hours without battery terminal voltage falling below its minimum required voltage following a plant trip that includes a loss of all AC power. This provides additional assurance that the critical DC loads are available in the event of a loss of the battery charger. During the 10-day AOT, when the temporary battery and the associated battery charger are supporting the 125 VDC bus, the ability of that ESF [engineered safety feature] DC power panel to mitigate an event/accident remains unchanged except for its ability to cope with a seismic, seismic interaction or security event. However, the probability of these

types of events concurrent with the 10-day AOT is very small. During these types of events, one ESF DC power panel may be compromised, however IP3 has adequate 125 VDC power available in the form of two other ESF train DC power panels to mitigate all DBAs. The postulated loss of one ESF DC power panel is bounded by the loss of an entire ESF electrical train, a condition which the plant is currently evaluated to withstand. Based upon the above, the overall design, function and operation of the 125 VDC EDS and equipment has not been significantly modified by the proposed changes. The proposed changes do not affect accident initiators or precursors, nor do they alter the design assumptions for the systems or components used to mitigate the consequences of an accident as analyzed in Chapter 14 of the IP3 USFAR [UFSAR] [updated final safety analysis report], except for one of the three trains of DC power. The remaining DC power trains can mitigate a DBA [design-basis accident]. Therefore, the proposed one-time AOT extension TS amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. During the replacement of the existing station batteries, a temporary battery will provide the same function as the batteries being removed. Even though this temporary battery does not meet all design requirements of a seismic, seismic interaction or security event it possesses adequate capacity to fulfill the safety related requirements of supplying necessary power to the associated 125 VDC bus under most conditions. Because the temporary battery will perform like the station battery that is currently installed, and will be connected and used in the same way as a backup power supply to the DC bus, no new electrical or functional failure modes are created. The temporary battery will be located in the turbine building, which is non-seismic and a non-vital area. The temporary battery will not be placed into seismically mounted racks. Thus, a seismic failure of this temporary battery is possible. Since the temporary battery is located in the turbine building the potential for battery failure to initiate an accident is not present. The failure of the temporary battery cannot create a different response from any previously postulated accident. Due to the location of the main turbine-generator in relationship to the temporary battery, it is not likely that a turbine missile would strike the battery. Likewise, an unmitigated Steam Line Break accident outside the VC would be interrupted by successful closure of all MSIVs [main steam isolation valves] thereby leaving the battery and the associated DC bus intact and available. This MSIV closure would occur before any potential steam line break impacting the battery on the Turbine deck ensuring necessary DC power to the MSIVs when needed. Also, any affects of postulated severe weather on the turbine building have been evaluated and do not impede the ability of the remaining DC subsystems to perform their intended safety function. The remaining 125 VDC EDS and its equipment will continue to perform the same function and be operated in the same fashion. The proposed changes do not introduce any new accident initiators or precursors, or any new design assumptions for those systems or components used to mitigate the consequences of an accident. Therefore, the possibility of a new or different kind of accident from any previously evaluated has not been created. Thus, the proposed one-time AOT extension TS amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed License Amendment involve a significant reduction in a margin of safety?

No. During the replacement of the existing station batteries, a temporary safety related battery will perform the same function as the battery being removed. Even though this battery is not seismically mounted, not in a seismically qualified building, nor in a vital area of the plant it is qualified as a safety related battery in all other respects.

This battery is virtually identical to the safety related station battery that is already installed. It possesses adequate capacity to fulfill the requirements of the associated 125 VDC bus. The proposed replacement activity will not prevent the plant from mitigating a DBA during events that result in the loss of the temporary battery. In these cases, the remaining DC power supporting the design mitigation capability will be maintained. Due to the limited duration of the activity, the very low probability of a seismic or other seismic interaction event over this limited AOT period and the planned implementing contingency actions, a significant reduction in the margin of safety will not result. The associated DC bus will always be supplied with both a temporary battery and a battery charger at all times. The inherent design conservatism of the 125 VDC system and its equipment has not been significantly altered; only the degree of redundancy is not fully qualified. The 125 VDC EDS and its equipment will continue to be operated with the same degree of conservatism. Accordingly, there is no significant reduction in the margin of safety.

Therefore, based upon the above evaluation, the Authority has concluded that these changes involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 7, 2000.

Description of amendment request: The proposed amendment to the Indian Point Nuclear Generating Unit No. 3 Technical Specifications would extend the surveillance frequency from 720 hours to 1440 hours for the Fuel Storage Building Emergency Ventilation system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Extending the surveillance frequency from 720 hours to 1440 hours for the Fuel Storage Building Emergency Ventilation (FSBEV) System charcoal and HEPA [High Efficiency Particulate Adsorbers] adsorbers does not involve any modifications to the plant, will not require changes to how the plant is operated nor will it affect the operation of the plant. Filter systems are not initiators of accidents, and therefore extending the filter surveillance frequency will not increase the probability of an accident. The way the filters perform will not be changed by extending the surveillance frequency. In addition, it is reasonable to expect satisfactory filter performance at this extended frequency based on past surveillance results. Hence, there is no change in the assumptions of an accident. Therefore, this change will not increase the consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Extending the surveillance frequency from 720 hours to 1440 hours for the FSBEV charcoal and HEPA adsorbers does not involve any modifications to the plant, will not require changes to how the plant is operated nor will it affect the operation of the plant. Therefore, extending the surveillance frequency will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed license amendment involve a significant reduction in a margin of safety?

Response: The proposed license amendment does not involve a significant reduction in a margin of safety. Extending the surveillance

frequency from 720 hours to 1440 hours for the FSBEV charcoal and HEPA adsorbers does not change the TS required methyl iodine efficiency removal requirement of >90% that ensures a safety factor of at least 2. This change is acceptable because it is reasonable to expect satisfactory filter performance at this extended frequency based on past surveillance results, hence it is reasonable to expect that the additional 720 hours before testing will not result in the safety factor being diminished. Thus, the proposed change would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 26, 2000, as supplemented on October 6, 2000.

Description of amendment request: The proposed change would amend the Salem Nuclear Generating Station (Salem) Unit Nos. 1 and 2 Technical Specifications (TSs) to increase the as-found set point tolerance for the Pressurizer Safety Valves (PSV) from ±1% to ±3%; increase the as-found set point tolerance for the Main Steam Safety Valves (MSSV) from ±1% to ±3%; change the required action for inoperable MSSVs to require a reduction in power based upon the number of inoperable MSSVs, as opposed to the current requirement to reduce the Power Range Neutron Flux High trip setpoint; and remove specifications and references related to plant operation with three Reactor Coolant System loops. The associated TS Bases sections will also be amended to reflect the TS changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Changing the pressurizer and main steam safety relief valve lift setpoint tolerance from ±1% to ±3% does not significantly increase the probability of any accident previously evaluated. The only events initiated by the opening of these safety valves are the accidental depressurization of the Reactor Coolant System and accidental depressurization of the Main Steam System. These events are a result of an inadvertent lifting of these valves and do not depend on the safety valve lift setpoint or tolerance. Therefore, the likelihood that either of these events will occur has not been increased.

[Analyses associated with the limiting overpressurization transients (Loss of External Electrical Load and/or Turbine Trip, and Single Reactor Coolant Pump Locked Rotor) have been performed that demonstrate that increasing the Pressurizer Safety Valve and Main Steam Safety valve lift setpoint tolerance to ±3% would result in primary and secondary side pressure responses less than the acceptance criteria of 110% of the design pressure. Therefore, since the proposed setpoint tolerance increase would not adversely impact current accident analysis assumptions, the proposed change would not result in an increase in consequences of an accident previously evaluated.]

For operation with inoperable main steam safety valves, changing the required action from a reduction of the power range high neutron flux trip setpoint to a reduction of the allowable reactor power level will not increase the consequences of any accident. With inoperable Main Steam Safety Valves, the Loss of External Electrical Load and/or Turbine Trip event becomes limiting in terms of secondary side pressurization. The high flux trip does not provide any mitigation for this event. Other events limiting at power, that require the power range trip for mitigation, assume a safety analysis trip setpoint of 118% (based on a nominal trip setpoint of 109%) regardless of the initial power level. Therefore, the proposed change does not impact any of the accident analysis assumptions.

The current Salem licensing basis for the Spurious Activation of the Safety Injection System credits operator action to unblock a pressurizer Power Operated Relief Valve prior to the water solid pressurizer reaching the safety valve lift setpoint. The analyses that determined the time at which the safety valve would reach its pressure setpoint covered the −3% tolerance. Since this would conservatively result in the earliest opening time, there was no need to consider the positive side of the tolerance. The results of the analyses indicate that the allowable operator action time is sufficient, such that water relief occurs through the Power Operated Relief Valves and not through the Pressurizer Safety Valves. As such the consequences of this event have not changed as a result of the proposed change.

Increasing the Main Steam Safety Valve lift setting tolerance may result in increased secondary side backpressure for the Auxiliary Feedwater Pumps. However, analyses have demonstrated that with the elevated backpressures that could result from increasing the Main Steam Safety Valve setpoint upper tolerance to +3%, the Auxiliary Feedwater Pumps would still provide [greater than the minimum] flow required to mitigate events in which normal feedwater is not available, a Loss of Normal Feedwater and a Loss of Offsite Power to Station Auxiliaries.

In terms of radiological consequences, the current design and licensing basis analyses that include steaming through the Main Steam Safety Valves bound the proposed lift setpoint tolerance change.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposal will result in a change in the allowed Pressurizer Safety Valve and Main Steam Safety Valve lift setpoint tolerance range. No physical changes to these valves or to their nominal lift setpoint is required. These valves are assumed to malfunction only as the initiator for the accidental depressurization of the Reactor Coolant System or Main Steam System. An increased lift setpoint tolerance range does not change the assumption of these depressurization events nor create a new type of event.

Requiring a reduction in reactor thermal power in the event of inoperable Main Steam Safety Valves is consistent with the analysis methodology. Initiation of any Salem UFSAR [Updated Final Safety Analysis Report] analyzed event at a power level less than full power is bounded by those events analyzed at full power, or specifically analyzed at the limiting power level, and does not constitute a new or different kind of accident. Also, no changes are being made to the power range high flux trip setpoint that will make it inconsistent with any analytical assumption.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

Analyses performed demonstrate that the proposed increase in the Pressurizer Safety Valve and Main Steam Safety Valve lift pressure setpoint tolerance from ±1% to ±3% will provide acceptable primary and secondary side pressure responses to the anticipated operational occurrences and design basis accidents. The limiting overpressurization transients, Loss of External Electrical Load and/or Turbine Trip, and Single Reactor Coolant Pump Locked Rotor, stay well within the acceptance criteria of 110% of the design pressure.

For operation with inoperable Main Steam Safety Valves, requiring a reduction in reactor thermal power is consistent with the accident analysis. The current requirement to reduce the power range high neutron flux trip setpoint [does not reduce the] margin of safety since this trip does not provide any mitigation for the limiting secondary system pressurization event, Loss of External Electrical Load and/or Turbine Trip with inoperable Main Steam Safety Valves.

The current licensing basis for the Spurious Activation of the Safety Injection System credits operator action to unblock a pressurizer Power Operated Relief Valve prior to the water solid pressurizer reaching the Pressurizer Safety Valve lift setpoint. As the Pressurizer Safety Valves are not designed for water relief, failure to unblock a Power Operated Relief Valve before reaching the Pressurizer Safety Valve lift setpoint would result in water relief and likely failure of the Pressurizer Safety Valve to reseat. This condition would escalate the Spurious Activation of the Safety Injection System (Condition II event) into a small break Loss Of Coolant Accident (Condition III event). The analyses that determined the time at which primary system pressure would reach the Pressurizer Safety Valve setpoint bound the −3% tolerance. The results of the analyses indicate that the allowable operator action time is sufficient, such that water relief occurs through the Power Operated Relief Valves and not through the Pressurizer Safety Valves. Since the Pressurizer Safety Valve would not fail due to water relief, there is no reduction in the margin of safety for this event.

Increasing the Main Steam Safety Valve lift setting tolerance may result in increased secondary side backpressure for the Auxiliary Feedwater System. However, analyses have demonstrated that under degraded Auxiliary Feedwater Pump performance, and with secondary side backpressure corresponding to 103% of the lowest Main Steam Safety Valve setpoint, the Auxiliary Feedwater System can provide [greater than the minimum] flow required to mitigate those events where normal feedwater is not available, a Loss of Normal Feedwater and a Loss of Offsite Power to Station Auxiliaries.

Therefore the proposed changes to the Technical Specifications do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: October 6, 2000 (PCN–518).

Description of amendment requests: The amendment application proposes to revise the San Onofre Nuclear Generating Station, Units 2 and 3, Technical Specification (TS) 3.7.11, "Control Room Emergency Air Cleanup System (CREACUS)" consistent with generic industry changes recently approved by the U.S. Nuclear Regulatory Commission (NRC) document Technical Specification Task Force (TSTF)–287. The proposed amendments would allow up to 24 hours to restore the Control Room Pressure Boundary (CRPB) to operable status when two CREACUS trains are inoperable due to an inoperable CRPB in MODE 1, 2, 3, or 4. In addition, a Limiting Condition for Operation note would be added to allow intermittent opening of the CRPB under administrative controls without entering the Actions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the facility in accordance with the proposed amendments does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Control Room Area Ventilation System and Control Room boundary are not assumed to be an initiator of any analyzed accident; they are provided to minimize doses to the control room operators during an accident. Therefore, these proposed changes have no impact on the probability of occurrence of any previously analyzed accident.

The proposed changes also have no impact on offsite dose consequences. The control room ventilation system and control room boundary provide protection for control room personnel and do not mitigate radiological effluents released offsite. With the control room boundary inoperable and not pressurized, the accident analyses assume unfiltered air would enter the control room and operator doses would be significantly increased. Conservative accident analysis assumptions do not take credit for available compensatory measures to mitigate operator dose. Compensatory measures include the supply of protective clothing, and self contained breathing apparatus adequate for at least nine persons within the control room envelope.

Additionally, for cases where the control room boundary is opened under administrative control, appropriate administrative measures ensure the boundary can be rapidly restored. Based on the compensatory measures available to the control room operator to minimize dose (to be consistent with the intent of General Design Criterion 19), the administrative controls required to rapidly restore an opened boundary, and considering the low probability of an event occurring in this short time period, the consequences are not considered to be significantly increased. Operators maintain the ability to mitigate a design basis event.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No changes are being made to actual plant hardware which will result in any new accident causal mechanisms. Therefore, no new accident causal mechanisms will be generated.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these barriers will not be degraded by the proposed changes. The Control Room Ventilation System and control room boundary provide a protected environment for the control room operators during analyzed events. The proposed change would allow the boundary to be degraded for a limited period of time. However, administrative controls would be in place to rapidly restore an opened boundary and existing compensatory measures (e.g., protective clothing and self contained breathing apparatus) would be implemented to minimize operator dose. Therefore, it is expected that operators would maintain the ability to mitigate design basis events and none of the fission product barriers would be affected by this change.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: October 6, 2000.

Description of amendment request: The proposed amendment would amend each of the three units' Technical Specifications (TS) to adopt Technical Specifications Task Force (TSTF) change No. 318, Revision 0 (TSTF–318). TSTF–318 provides a 7-day action period and completion time in the event

of inoperability of one of the two low pressure coolant injection (LPCI) pumps in each of the two emergency core cooling system (ECCS) divisions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed new Condition of one LPCI pump in each LPCI injection subsystem being inoperable is more reliable than the current Limiting Condition for Operation which allows 2 LPCI pumps in one ECCS subsystem to be inoperable for 7 days. Also, the LPCI mode of the Residual Heat Removal system is not assumed to be initiator of any analyzed event. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant, add any new equipment or require any existing equipment to be operated in a manner different from the present design. The proposed change will not impose any new or eliminate any existing requirements. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no effect on any safety analyses assumptions. The proposed new Condition for one LPCI pump in each LPCI injection subsystem represents a more reliable configuration than the existing LCO which allows two LPCI pumps in one ECCS subsystem to be inoperable for 7 days. For these reasons, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: June 16, 2000, as supplemented by letter dated September 27, 2000.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.7 and TS Tables 3.7–1, 3.7–2, 3.7–3, and 4.1–1. The proposed changes would: (a) revise the surveillance frequency for Reactor Protection System and Engineered Safety Features Actuation System analog channels from monthly to quarterly; (b) decrease the frequency for most permissives to a refueling interval; (c) increase the time allowed to perform maintenance on an inoperable instrument channel; and (d) revise associated action statements consistent with NUREG–1431.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Virginia Electric and Power Company has reviewed the requirements of 10 CFR 50.92 as they relate to the proposed Reactor Protection System (RPS) and Engineered Safety Features Actuation System (ESFAS) Technical Specification changes for the Surry Units 1 and 2 and determined that a significant hazards consideration is not involved. In support of this conclusion, the following evaluation is provided.

Criterion 1—Operation of Surry Units 1 and 2 in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The determination that the results of the proposed changes remain within acceptable criteria was established in the SER(s) [Safety Evaluation Report(s)] prepared for WCAP–10271, WCAP–10271 Supplement 1, WCAP–10271 Supplement 2, WCAP–10271 Supplement 2, Revision 1 and WCAP–14333 issued by letters dated February 21, 1985, February 22, 1989, April 30, 1998, and July 15, 1998.

Implementation of the proposed changes is expected to result in an increase in total RPS and ESFAS yearly unavailability. The proposed changes have been shown to result in a small increase in the core damage frequency (CDF) due to the combined effects of increased RPS and ESFAS unavailability and reduced inadvertent reactor trips.

The values determined by the WOG [Westinghouse Owners Group] and presented in the WCAP for the increase in CDF were verified by Brookhaven National Laboratory (BNL) as part of an audit and sensitivity analyses for the NRC Staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase is considered acceptable. The analysis performed by the WOG and presented in the WCAP included changes to the surveillance frequencies for the automatic actuation logic and actuation relays and the reactor trip and bypass breakers. The overall increase in the CDF, including the changes to the surveillance frequencies for the automatic actuation logic and actuation relays and the reactor trip and bypass breakers, was approximately 6 percent. However, even with this increase, the overall CDF remains lower than the NRC safety goal of 10 E–4/reactor year.

Changes to surveillance test frequencies for the RPS and ESFAS interlocks do not represent a significant reduction in testing. The currently specified test interval for interlock channels allows the surveillance requirement to be satisfied by verifying that the permissive logic is in its required state using the annunciator status light. The surveillance as currently required only verifies the status of the permissive logic and does not address verification of channel setpoint or operability. The setpoint verification and channel operability is verified after a refueling shutdown. The definition of the channel check includes comparison of the channel status with other channels for the same parameter. The requirement to routinely verify permissive status is a different consideration than the availability of trip or actuation channels which are required to change state on the occurrence of an event and for which the function availability is more dependent on the surveillance interval. Therefore, the change in the interlock surveillance requirement to at least once every 18 months does not represent a significant change in channel surveillance and does not involve a significant increase in unavailability of the RPS and ESFAS.

For the additional relaxations in WCAP–14333, the WOG evaluated the impact of the additional relaxation of allowed outage times and completion times, and action statements on core damage frequency. The change in core damage frequency is 3.1 percent for those plants with two out of three logic schemes that have not implemented the proposed surveillance test interval, allowed outage times, and completion times evaluated in WCAP–10271 and its supplements. This analysis calculates a significantly lower increase in core damage frequency than the WCAP–10271 analysis calculated. This can be attributed to more realistic maintenance intervals used in the current analysis and crediting the AMSAC [ATWS (anticipated transient without scram) mitigating system actuation circuitry] system as an alternative method of initiating the auxiliary feedwater pumps. Therefore, the overall increase in CDF is estimated to be 3.1% for the proposed changes per the generic Westinghouse analysis.

The NRC performed an independent evaluation of the impact on core damage frequency (CDF) and large early release fraction (LERF). The results of the staff's review indicate that the increase in core damage frequency is small (approximately 3.2%) and the large early release fraction would increase by only 4 percent for 2 out of 3 logic schemes that have not

implemented the proposed surveillance test interval, allowed outage times, and completion times evaluated in WCAP–10271 and its supplements. Further, the absolute values for CDF still remain within NRC safety goals:

Therefore, the proposed changes do not result in a significant increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes affects the probability of failure of the RPS and ESFAS but does not alter the manner in which protection is afforded or the manner in which limiting criteria are established.

Criterion 2—The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the RPS or ESFAS provide plant protection. No change is being made which alters the functioning of the RPS or ESFAS (other than in a test mode). Rather the likelihood or probability of the RPS or ESFAS functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident as defined in the Safety Analysis Report.

The proposed changes do not involve hardware changes. Some existing instrumentation is designed to be tested in bypass and current Technical Specifications allow testing in bypass. Testing in bypass is also recognized by IEEE [Institute of Electrical and Electronics Engineers] Standards. Therefore, testing in bypass has been previously approved and implementation of the proposed changes for testing in bypass does not create the possibility of a new or different kind of accident from any previously evaluated. Furthermore, since the other proposed changes do not alter the physical operation or functioning of the RPS or ESFAS, the possibility of a new or different kind of accident from any previously evaluated has not been created.

Criterion 3—The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the safety limits, limiting safety system setpoints or limiting conditions for operation. The RPS and ESFAS analog instrumentation remain operable to mitigate as assumed in the accident analysis. The impact of reduced testing other than as addressed above is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act.

Implementation of the proposed changes is expected to result in an overall improvement in safety by less frequent testing of the RPS and ESFAS analog instruments and will result in less inadvertent reactor trips and actuation of Engineered Safety Features components.

This analysis demonstrates that the proposed amendment to the Surry Units 1 and 2 Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: August 25, 2000, as supplemented September 21, October 14, and October 25, 2000.

Brief description of amendment: The amendment revises the reactor vessel pressure-temperature limits.

Date of issuance: October 31, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 134.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 19, 2000 (65 FR 56598).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 2000.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: July 27, 2000, as supplemented October 5, 2000.

Brief description of amendment: The amendment revises the Safety Limit Minimum Critical Power Ratio.

Date of issuance: November 3, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 135.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 23, 2000 (65 FR 51348).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 2000.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: March 7, as supplemented on April 21, June 14, and September 15, 2000.

Brief description of amendment: The proposed amendment revised the Technical Specifications to revise the surveillance requirements from once per refueling interval for each excess flow check valve (EFCV) to testing a representative sample of EFCVs once per 24 months.

Date of Issuance: October 25, 2000.

Effective date: October 25, 2000 and shall be implemented within 30 days of issuance.

Amendment No.: 216.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* August 23, 2000 (65 FR 51354).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 25, 2000.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: April 7, 2000, as supplemented June 14 and September 11, 2000.

Brief description of amendment: This amendment revises Technical Specification (TS) 3/4.7.6, "Control Room Emergency Filtration System," TS 3/4.7.7, "Reactor Auxiliary Building Emergency Exhaust System," and TS 3/4.9.12, "Fuel Handling Building Emergency Exhaust System." Specifically, these TS have been revised to provide an action when the Control Room Emergency Filtration System or Reactor Auxiliary Building Emergency Exhaust System ventilation boundary is inoperable, and a note that allows an applicable ventilation boundary to be open intermittently under administrative controls. The associated TS Bases are also being changed in accordance with the amendment. In addition, TS 3/4.3.3.1, "Radiation Monitoring for Plant Operations," has been modified to provide consistency between the applicability of the Control Room Emergency Filtration System and the radiation monitors that initiate a control room isolation signal.

Date of issuance: October 30, 2000.

Effective date: October 30, 2000.

Amendment No.: 102.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register****:* May 3, 2000 (65 FR 25762). The supplemental letters dated June 14 and September 11, 2000, contained clarifying information only, did not expand the application beyond the scope of the initial notice, and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: February 21, 2000.

Brief description of amendments: The amendments revised the condensate storage tank (CST) low-level setpoint to prevent entrainment of air in the high pressure coolant injection (HPCI) pump suction line when taking suction from the CST. The amendments also revised the surveillance requirements for the CST level instruments.

Date of issuance: October 31, 2000.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 182 and 177.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 22, 2000 (65 FR 15376).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 31, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: November 23, 1999, as supplemented by letter dated September 6, 2000.

Brief description of amendments: The amendments revised the Technical Specifications 5.5.11—Ventilation Filter Testing Program, which provides the test requirements for charcoal filters, to assure compliance with the requirements of American Society for Testing and Materials D3803–1989.

Date of issuance: November 2, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 196/177.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 22, 2000 (65 FR 15377).

The supplement dated September 6, 2000, provided clarifying information that did not change the scope of the November 23, 1999, application and initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: August 10, 2000.

Brief description of amendment: The amendment revised the Technical Specifications to allow an alternate storage configuration of fuel assemblies adjacent to the walls within Region I of the spent fuel pool.

Date of issuance: October 24, 2000.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 224.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 6, 2000 (65 FR 54086).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of application for amendments: July 7, 2000, as supplemented October 2 and 4, 2000.

Brief description of amendments: The pressure-temperature limits specified in Technical Specification (TS) 3.4.9.1 and Figures 3.4–2, 3.4–3 have been modified, Figure 3.4–4 deleted, and the Cold Overpressure Mitigation System (COMS) requirements have been changed. The COMS is the Westinghouse version of the Low Temperature Overpressure Protection System.

Date of issuance: October 30, 2000.

Effective date: October 30, 2000.

Amendment Nos.: 208 and 202.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 2000 (65 FR 48751). The supplemental information provided on October 2 and 4, 2000, provided clarifying information only and did not affect the proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: September 1, 2000.

Brief description of amendments: The amendments clarify Technical Specification 3/4.4.4, "Pressurizer," to reflect the current power supply to the pressurizer heaters and require two operable trains of pressurizer heaters during Modes 1, 2, and 3. In addition, the amendments revise the Bases for Technical Specification 3/4.4.4 to reflect these changes and clarify the purpose of the pressurizer heaters.

Date of issuance: October 20, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 246 and 227.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 20, 2000 (65 FR 56952).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: April 19, 2000, as supplemented on August 31, 2000.

Description of amendment request: The amendment implements a performance-based Containment Leakage Testing Program in accordance with 10 CFR Part 50, Appendix J, Option B as a substitute for the requirements of 10 CFR Part 50, Appendix J, Option A. The use of this option requires the implementation of a program based on Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program," and modification of the Technical Specifications to reflect this program.

Date of issuance: November 2, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 186.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 23, 2000 (65 FR 51359).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 2000.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket No. 50–275, Diablo Canyon Nuclear Power Plant, Unit No. 1, San Luis Obispo County, California

Date of application for amendment: December 31, 1999, as supplemented by letters dated January 18, July 7, September 22, and 29, and October 12, 2000.

Brief description of amendment: The amendment revises Section 2.C.(1) of Facility Operating License No. DPR–80 to authorize operation of Unit 1 at reactor core power levels not in excess of 3411 megawatts thermal (100 percent rated power). Unit 2 is already authorized to operate at that power level. This amendment also revises several sections within the Improved TS to reflect the increase in reactor power level.

Date of issuance: October 26, 2000.

Effective date: October 26, 2000.

Amendment No.: Unit 1—143.

Facility Operating License No. DPR–80: The amendments revised the Technical Specifications and operating license.

Date of initial notice in ***Federal Register:*** April 19, 2000 (65 FR 21037).

The January 18, July 7, September 22, and 29, and October 12, 2000, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 26, 2000.

No significant hazards consideration comments received: No.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 27, 2000, as supplemented August 16, 2000, and September 29, 2000.

Brief description of amendment: The amendment provides for the applicability of the current safety limit minimum critical power ratio (SLMCPR), TS Section 1.1.A, to cycles beyond Cycle 14. The change also updates the approved version of the topical report in TS Section 6.9.A.4.b.1.

Date of issuance: October 30, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 266.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 23, 2000 (65 FR 51362).

The August 16 and September 29, 2000, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 2000.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket No. 50–364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Date of amendment request: September 8, 2000, as supplemented on October 2, 2000.

Brief Description of amendment: The amendment revises surveillance requirements 3.4.11.1 and 3.4.11.4 to eliminate the requirement to cycle the Unit 2 pressurizer power-operated relief valve block valves during the remainder of operating cycle 14.

Date of issuance: October 25, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: Unit 2—139.

Facility Operating License No. NPF–8: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 10, 2000 (65 FR 60223).

Public comments requested as to proposed no significant hazards consideration: Yes.

The notice provided an opportunity to submit comments on the Commission's

proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by November 9, 2000, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated October 25, 2000.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: November 24, 1999 (TS 99–16).

Brief description of amendments: These amendments revised the Technical Specifications (TSs) to update the industry standard that is used to test the charcoal adsorber efficiency in safety-related ventilation systems.

Date of issuance: November 2, 2000.

Effective date: November 2, 2000.

Amendment Nos.: 263 and 254.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** January 12, 2000 (65 FR 1929). The September 21, 2000, supplement provided clarifying information that did not change the scope of the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 2000.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: September 14, 2000, as supplemented on September 22, 2000.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to clarify the valve isolation signal information in the TS Table 4.7.2 and make an administrative change to the Table main steam isolation valves component identification.

Date of Issuance: October 31, 2000.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 194.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 27, 2000 (65 FR 58111).

The September 22, 2000, supplemental letter was within the scope of the original application and did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 31, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 8th day of November 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–29250 Filed 11–14–00; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in November 2000. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in December 2000.

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, 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:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in November 2000 is 4.93 percent (*i.e.*, 85 percent of the 5.80 percent yield figure for October 2000).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between December 1999 and November 2000.

For premium payment years beginning in:	The assumed interest rate is:
December 1999	5.23
January 2000	5.40
February 2000	5.64
March 2000	5.30
April 2000	5.14
May 2000	4.97
June 2000	5.23
July 2000	5.04
August 2000	4.97
September 2000	4.86
October 2000	4.96
November 2000	4.93

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in December 2000 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of November 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–29230 Filed 11–14–00; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Notification of Meeting

The Railroad Retirement Board hereby gives notice that the Board will meet at 11:00 a.m., November 15, 2000, in the Board Room on the 8th floor of the agency's headquarters building located at 844 N. Rush Street, Chicago, Illinois. The Board, by recorded vote, has determined that agency business requires the scheduling of this meeting with less than one week notice. The subjects to be addressed at this meeting are the Hearings Officer Vacancy and Director of Administration/Chief Enterprise Architect position.

The entire meeting will be closed to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, phone No. 312–751–4920.

Dated: November 9, 2000.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–29310 Filed 11–13–00; 10:28 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27270]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 7, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulated uner the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 4, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or laws that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 4, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

System Energy Resources, Inc. 70–9753

Entergy Corporation ("Entergy"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, Entergy's electric generating subsidiary company, System Energy Resources, Inc. ("System Energy"), 1340 Echelon Parkway, Jackson, Mississippi 39213, and Entergy's operating subsidiary companies, Entergy Arkansas, Inc., 425 West Capitol, Little Rock, Arkansas 72201, Entergy Louisiana, Inc., 4809 Jefferson Highway, Jefferson, Louisiana 70121, Entergy Missippi, Inc., 308 East Pearl Street, Jackson, Mississippi 39201, Entergy New Orleans, Inc., 1600, Perdido Building, New Orleans, LA 70112, have filed an application-declaration under sections (6(a), 7, 9(a), 10, 12(b) and (12(d) of the Public Utility Holding Company Act of 1935 ("Act"), as amended, and rules 44, 45 and 54 under the Act. An initial notice of the filing of the application-declaration was issued on October 4, 2000 (HCAR No. 27240) ("Initial Notice").

The Initial Notice described System Energy's Proposal to engage in certain financing transactions from time to time through December 31, 2005. Among other things, System Energy proposed: (1) To issue and sell one or more series of its first mortgage bonds ("Bonds"), and/or one or more series of its Debentures ("Debentures") in a combined aggregate principal amount of Bonds and Debentures not to exceed $350 million; (2) to provide an insurance policy for the payment of the principal of and/or interest and/or premium on one or more series of Bonds or Debentures; (3) to enter into arrangements for the issuance and sale of tax-exempt revenue bonds in an aggregate principal amount not to exceed $500 million ("Tax-Exempt Bonds"); (4) to provide for a more favorable rating, on the Tax-Exempt Bonds by arranging for letters of credit, an insurance policy, or additional first mortgage bonds up to an aggregate amount not to exceed $565 million; and (5) to enter into arrangements for the issuance of municipal securities in an aggregate principal amount not to exceed $100 million ("Municipal Securities") to be issued in one or more series through a state or local municipal entity on behalf of System Energy.

Applicants now want to provide terms and conditions for the Municipal Securities. Each series of Municipal Securities will be sold at such price, will bear interest at such rate, either fixed or adjustable, and will mature on such date (not earlier than one year nor more than fifty years from the first day of the month of issuance) as will be determined at the time of sale. No series of Municipal Securities will be sold if the fixed interest rate or initial adjustable interest rate thereon would exceed 15% per annum. One or more series of Municipal Securities may include provisions for redemption or retirement prior to maturity, including restrictions on optional redemption for a given number of years.

In order to obtain a more favorable rating and thereby improve the marketability of the Municipal Securities, System Energy may (1) arrange for one or more letters of credit from one or more banks up to an aggregate amount of $115 million, (2) provide an insurance policy for the payment of the principal, premium, if any, interest and purchase obligations in connection with one or more series of Municipal Securities, or (3) issue one or more series of new collateral bonds up to an aggregate amount of $115 million. In addition, System Energy may grant a lien, subordinate to the lien of the Mortgage on certain assets of System Energy.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29113 Filed 11–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Yellowave Corporation, Common Stock, $.03 Par Value) File No. 1–16021

November 7, 2000.

Yellowave Corporation, which is organized under the laws of Nevada ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant

to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.03 par value ("Security"), from listing and registration on the American Stock Exchange ("Amex").

As reported by the Company, the Amex halted trading in the Security on August 23, 2000, pending a review of the facts underlying, and the litigation arising from, a Share Purchase Agreement dated July 5, 2000, between the Company and Newtech Broadwidth Ltd., et al. The Company believed it was acquiring under this Share Purchase Agreement a company that owned valuable high technology which was supported by established licensing agreements. On the basis of this acquisition, the Company applied for, and received, a listing for its Security on the Amex.

The Company subsequently determined, however, that the technology and licensing agreements described above did not exist. As mentioned above, the Company has entered into litigation with various parties for, among other things, their failure to meet certain conditions of the Share Purchase Agreement. A description of these proceedings may be found in the Company's current Report on Form 8–K filed with the Commission on September 26, 2000. Pending the outcome of such litigation, and in the light of the Company's diminished eligibility for listing on the Amex as a result of the Share Purchase Agreement's conditions not having been met, the Company has determined to withdraw its Security voluntarily from listing and registration on the Amex and to use best efforts to arrange for its quotation in the unlisted over-the-counter market.

The Company has stated in its application that it has complied with the rules of the Amex governing the withdrawal of its Security and that its application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Company's continued obligation to file reports with the Commission pursuant to sections 12(g) and 13 of the Act.[3]

Any interested person may, on or before November 30, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–29114 Filed 11–4–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(G) and 15 U.S.C. 78M.

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24733; File No. 812–12104]

New England Life Insurance Company, et al.; Notice of Application

November 8, 2000.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving a substitution of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from section 17(a) of the 1940 Act

Applicants: New England Life Insurance Company ("NELICO"), New England Variable Annuity Separate Account ("Separate Account 1"), New England Variable Life Separate Account ("Separate Account 2"), Metropolitan Life Insurance Company ("MetLife"), The New England Variable Account ("Separate Account 3," and collectively with Separate Account 1 and Separate Account 2, the "Separate Accounts"), the Metropolitan Series Fund, Inc. (the "Metropolitan Series"), and the New England Zenith Fund (the "Zenith Fund"). (NELICO, MetLife and the Separate Accounts are collectively referred to herein as the "Section 26 Applicants." The Section 26 Applicants, the Metropolitan Series, and the Zenith Fund are collectively referred to herein as the "Section 17(b) Applicants.")

SUMMARY OF APPLICATION: The Section 26 Applicants request an order pursuant to section 26(b) of the 1940 Act to permit certain registered unit investment trusts to substitute shares of the Putnam International Stock Portfolio (the "Replacement Portfolio") of the Metropolitan Series for shares of the Morgan Stanley International Magnum Equity Series (the "Substituted Portfolio") of the Zenith Fund currently held by those unit investment trusts. The Section 17(b) Applicants request an order pursuant to section 17(b) of the 1940 Act to permit certain in-kind redemptions and purchases in connection with the substitution.

Filing Date: The application was filed on May 17, 2000, and amended and restated on November 8, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and Serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 30, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Thomas Lenz, Esq. and Marie C. Swift, Esq., New England Life Insurance Company, 501 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Keith A. O'Connell, Senior Counsel, or Lorna J. MacLeod, 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 Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. NELICO is a life insurance company that is domiciled in Massachusetts. Its operations include both life insurance and annuity products as well as financial and retirement services. As of December 31, 1999, NELICO had assets of approximately $7.1 billion. NELICO is authorized to operate as a life insurance company in all states, the District of Columbia, and Puerto Rico. NELICO was originally organized as New England Variable Life Insurance

Company, a stock life insurance company, in Delaware in 1980, and was a wholly owned subsidiary of New England Mutual Life Insurance Company. On August 30, 1996, New England Mutual Life Insurance Company merged with and into MetLife. MetLife became the parent of New England Variable Life Insurance Company, which changed its name to "New England Life Insurance Company," and changed its domicile from the State of Delaware to the Commonwealth of Massachusetts. NELICO is the depositor and sponsor of Separate Account 1 and Separate Account 2.

2. Separate Account 1 is a separate investment account of NELICO and is registered under the 1940 Act as a unit investment trust. Separate Account 1 serves as funding vehicle for certain variable annuity contracts issued by NELICO (collectively, "NELICO VA Contracts"). Separate Account 1 is a separate account as that term is defined in Section 2(a)(37) of the 1940 Act.

3. Separate Account 2 is a separate investment account of NELICO and is registered under the 1940 Act as a unit investment trust. Separate Account 2 services as a funding vehicle for certain variable life insurance contracts issued by NELICO (collectively, "NELICO Life Contracts"). Separate Account 2 is a separate account as that term is defined in Section 2(a)(37) of the 1940 Act.

4. MetLife is a life insurance company that is domiciled in New York, and is a wholly owned subsidiary of MetLife, Inc., a publicly traded company. MetLife is the depositor and sponsor of Separate Account 3.

5. Separate Account 3 is a separate investment account of MetLife and is registered under the 1940 Act as a unit investment trust. Separate Account 3 serves as a funding vehicle for certain variable annuity contracts originally issued by New England Mutual Life Insurance Company, and subsequent to its merger with an into MetLife, by MetLife ("MetLife VA Contracts") (collectively with the NELICO VA Contracts and the NELICO Life Contracts, the "Variable Contracts"). Separate Account 3 is a separate account as that term is defined in Section 2(a)(37) of the 1940 Act.

6. New England Securities Corporation ("NES") serves as principal underwriter and distributor for the Variable Contracts. NES is an indirect wholly owned subsidiary of NELICO. NES is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. NES may enter into selling agreements with other broker-dealers registered under the Securities Exchange Act of 1934 whose representatives are authorized by applicable law to sell the Variable Contracts.

7. NELICO and MetLife propose to substitute shares of the Replacement Portfolio for shares of the Substituted Portfolio in the Separate Accounts (the "Substitution"). NELICO and MetLife have expressly reserved the right to substitute shares of one portfolio for shares of another, including a portfolio of a different investment company. The prospectus for each contract discloses this reservation.

8. The terms of the NELICO VA Contracts, NELICO Life Contracts, and MetLife VA Contracts funded by Separate Account 1, 2 and 3, respectively, permit owners of a contract to transfer contract value under the contracts among the subaccounts during the accumulation period. Separate Accounts 1 and 3 permit owners of a contract to exchange annuity units in any subaccount to any other subaccount during the annuity period. NELICO and MetLife have reserved the right to limit transfers or to impose a charge in connection with a transfer during the accumulation period. For Separate Account 1, NELICO has not yet imposed any such limit or charge. Exchanges of annuity units in any subaccount to any other subaccount after annuitization are limited to one per contract year. For Separate Account 2, on all but one of the NELICO Life Contracts, NELICO does not currently limit or impose a charge on transfers. On one NELICO Life Contract, NELICO currently imposes a charge on transfers in excess of 12 in a policy year. For Separate Account 3, MetLife currently allows 12 free transfers per year during the accumulation period. Additional transfers are subject to a $10 charge per transfer. Exchanges of annuity units in any subaccount to any other subaccount after annuitization are limited to one per contract year.

9. The Zenith Fund is registered as an open-end management investment company under the 1940 Act (File No. 811–3728) and currently offers sixteen separate investment portfolios, one of which is the Substituted Portfolio. The Zenith Fund issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the Securities Act of 1933 ("1933 Act") on Form N–1A (File No. 2–83538). New England Investment Management, Inc. ("NEIM") serves as the investment manager to each portfolio except the Capital Growth Series, which is managed by Capital Growth Management. NEIM is an indirect wholly owned subsidiary of NELICO. NEIM receives an investment advisory fee from each portfolio it manages. NEIM has contracted with subadvisers to make the day-to-day investment decision for all portfolios it manages. Subadvisers are compensated by NEIM, and not by the Zenith Fund. NEIM derives the amounts that it pays the subadvisers from its own investment advisory fees. Morgan Stanley Asset Management ("MSAM") is the subadviser to the Substituted Portfolio.

10. The Metropolitan Series is registered as an open-end management investment company under the 1940 Act (File No. 811–3618) and currently offers 18 separate investment portfolios, one of which is the Replacement Portfolio. The Metropolitan Series issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A (File No. 2–80751). The Replacement Portfolio became available for investment under the Contracts on May 1, 2000. MetLife serves as the investment manager to each portfolio, for which it receives investment advisory fees. MetLife has contracted with subadvisers to make the date-to-day investment decisions for certain portfolios it manages, including the Replacement Portfolio. Subadvisers are compensated by MetLife, and not by the Metropolitan Series. MetLife derives the amounts that it pays the subadvisers from its one investment advisory fees.

11. Putnam Investment Management, Inc. ("Putnam") currently serves as the subadviser for the Replacement Portfolio. All of the outstanding voting and nonvoting securities of Putnam are held of record by Putnam Investments, Inc., which is, in turn, except for a minority interest owned by employees, owned by Marsh & McLennan Companies, Inc., a New York Stock Exchange listed public company whose business is insurance brokerage, investment management, and consulting. From November 9, 1998 until January 24, 2000, Santander Global Advisors, Inc. ("Santander") was the subadviser for the Replacement Portfolio (then known as the Santander International Stock Portfolio). On November 29, 1999, Santander notified the Replacement Portfolio that is was resigning as subadviser as of January 28, 2000, and was being closed by its ultimate majority shareholder. On January 11, 2000, the Board of Directors of the Metropolitan Series (the "Met Series Board") voted to terminate the sub-investment management agreement with Santander relating to the

Replacement Portfolios effective January 24, 2000. The Met Series Board also voted to retain Putnam as the new subadviser for the Replacement Portfolio effective the same date. The shareholders of the Replacement Portfolio approved Putnam as the new subadviser at a special meeting of shareholders on March 31, 2000.

12. The following chart sets out the investment objectives and certain policies of the Substituted Portfolio and the Replacement Portfolios, as stated in their respective prospectuses and statements of additional information.

Substituted portfolio	Replacement portfolios
Morgan Stanley International Magnum Equity Series of Zenith Fund Investment Objective: Long-term capital appreciation through investment primarily in international equity securities. Investment Policies: MSAM invests the Series' assets in a diversified portfolio of equity securities of foreign issuers domiciled in EAFE countries. MSAM may also invest up to 5% of the Series' total assets in non-EAFE countries, including emerging markets. MSAM seeks to achieve superior long-term returns by creating a diversified portfolio of stock that MSAM believes are undervalued. To achieve this goal, MSAM implements a combination of strategic geographic assets allocation and fundamental, value-oriented stock selection implemented by regional experts around the globe.	Putnam International Stock Portfolio of Metropolitan Series Investment Objective: Long-term growth of capital. Investment Policies: The Portfolio normally invests mostly in the common stocks of companies outside the United States. Putnam selects countries and industries it believes are attractive. Putnam then seeks stocks offering opportunity for gain. These may include both growth and value stocks. The Portfolio invests mainly in mid-sized and large companies, although the Portfolio can invest in companies of any size. The Portfolio will usually be invested in issuers located in at least three countries, not including the U.S. Under normal conditions, the Portfolio will not invest more than 15% of its net assets in the equity securities of companies domiciled in "emerging countries," as defined by Morgan Stanley Capital International.

13. The following chart compares the fees payable for advisory and subadvisory services, expressed as an annual percentage of average daily net assets, by the Substituted Portfolio and the Replacement Portfolio.

Substituted portfolio		Replacement portfolio	
Morgan Stanley International Magnum Equity Series		Putnam International Stock Portfolio	
Annual advisory fees	Annual subadvisory fees	Annual advisory fees	Annual subadvisory fees
0.90%	0.75% of the first $30 million 0.60% of the next $40 million 0.45% of the next $30 million 0.40% over $100 million	0.90% of the first $500 million 0.85% of the next $500 million 0.80% over $1 billion	0.65% of the first $150 million 0.55% of the next $150 million 0.45% over $300 million.

14. The following chart compares the total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 1999, expressed as an annual percentage of average daily net assets, of the Substituted Portfolio and the Replacement Portfolio. Neither Portfolio has adopted any plan pursuant to Rule 12b–1 under the 1940 Act.

	Substituted portfolio	Replacement portfolio
	Morgan Stanley International Magnum Equity Series (in percent)	Putnam International Stock Portfolio (in percent)
Management Fees	0.90	0.90
Other Expenses	0.40	0.22
Total Operating Expenses	1.30	1.12
Less Expense Waivers and Reimbursements	(1)	(1)
Net Operating Expenses	1.30	1.12

[1] N/A.

Total operating expenses for the Replacement Portfolio have been adjusted to reflect a higher management fee that shareholders of the Replacement Portfolio approved on March 31, 2000. NEIM has voluntarily agreed to reduce its fees or to bear the operating expenses (other than brokerage costs, interest, taxes, or extraordinary expenses) of the Substituted Portfolio in excess of an annual expense limit of 1.30% of the Series' average daily net assets. This reduction is subject to the obligation of the Series to repay NEIM such expenses in future years, if any, when the Series' total operating expenses fall below this stated expense limit. Such deferred expenses may be charged to the Series in a subsequent year to the extent the charge does not cause the Series' total operating expenses in such subsequent year to exceed the 1.30% expense limit. The Series, however, is not obligated to repay any expense paid by NEIM more

than two years after the end of the fiscal year in which such expense was incurred. NEIM may discontinue this expense limitation arrangement at any time.

15. The following table compares the respective asset levels of the two portfolios as of December 31, 1999, and compares performance data as of June 30, 2000.

Portfolio	Fund Subadviser	Asset levels (as of 12/31/99)	Performance (as of June 30, 2000)
Morgan Stanley International Magnum Equity Series (substituted portfolio).	Morgan Stanley Asset Management	$99,851,167	1 YEAR: 15.5% 3 YEAR: 6.2% 5 YEAR: 7.8% (Nov. 1, 1994)
Putman International Stock Portfolio (replacement portfolio).	Putnam Investment Management, Inc.	$317,831,000	1 YEAR: 11.4% 3 YEAR: 7.1% 5 YEAR: 7.3% (May 1, 1991)

16. Following the Substitution, the Separate Accounts will each have two subaccounts holding shares of the Replacement Portfolio. The Separate Accounts will each combine the two subaccounts holding shares of the Replacement Portfolio by transferring shares on the same date from one of the subaccounts holding shares of the Replacement Portfolio to the other subaccount holding shares of the Replacement Portfolio. The net effect will be to eliminate one of the subaccounts in each Separate Account. The Replacement Portfolio would receive monies or inkind securities from the Substituted Portfolio as a result of the Substitution.

17. NELICO and MetLife will effect the Substitution on or about December 1, 2000 following the issuance of the requested order as follows. As of the effective date of the Substitution ("Effective Date"), shares of the Substituted Portfolio will be redeemed in cash or in-kind by NELCO and MetLife. The proceeds of such redemptions will than be used to purchase shares of the Replacement Portfolio either by cash purchases or in-kind purchases, with each subaccount of the Separate Accounts investing the proceeds of its redemption from the Substituted Portfolio in the Replacement Portfolio.

18. Applicants represent that the in-kind redemptions and purchases will be transacted in a manner consistent with the policies of both the Substituted Portfolio and the Replacement Portfolio, as recited in their registration statements. Putnam will review the securities holdings of the Substituted Portfolio and determine which portfolio holdings of the Substituted Portfolio would be suitable investments for the Replacement Portfolio in the overall context of such Portfolio's investment objectives and policies and consistent with the management of the Replacement Portfolio.

19. Applicants represent that all redemptions of shares of the Substituted Portfolio and purchases of shares of the Replacement Portfolio will be effected in accordance with Rule 22c–1 of the 1940 Act. The Substitution will take place at relative net asset value with no change in the amount of any Variable Contract owner's contract value or death benefit or in the dollar value of his or her investments in any of the subaccounts. Applicants represent that Variable Contract owners will not incur any additional fees or charges as a result of the Substitution, nor will their rights or NELICO's and MetLife's obligations under the Variable Contracts be altered in any way. All expenses incurred in connection with the Substitution, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by NELICO and MetLife. In addition, Applicants represent that the Substitution will not impose any tax liability on Variable Contract owners. The Substitution will not cause the Variable Contract fees and charges currently paid by existing Variable Contract owners to be greater after the Substitution than before the Substitution. Neither NELICO nor MetLife will exercise any right it may have under the Variable Contracts to impose restrictions on transfers under the Variable Contracts for a period of at least thirty days following the Substitution.

20. The Section 26 Applicants represent that the procedures to be implemented are sufficient to assure that each Variable Contract owner's cash values immediately after the Substitution shall be equal to the cash value immediately before the Substitution, and that the Substitution will not affect the value of the interests of those owners of other NELICO and MetLife variable contracts (other than the Variable Contracts) who currently have contract value allocated to any of the portfolios of the Zenith Fund or Metropolitan Series.

21. For each period (not to exceed a fiscal quarter) during the 24 months following the date of the Substitution, NELICO and MetLife will reimburse (on the last business day of any such period) any subaccount available through a Variable Contract and investing in the Replacement Portfolio such that the sum of the Replacement Portfolio operating expenses (taking into account expense waivers and reimbursements) together with subaccount expenses for such period on an annualized basis will not exceed the following limits (which equal, for each Variable Contract, the Substituted Portfolio operating expenses, 1.30%, together with any subaccount expenses for the fiscal year prior to the Substitution) for those Variable Contract owners who were Variable Contract owners on the date of the Substitution. [1]

[1] Subaccount expenses refer to those asset-based expenses that are deducted on a daily basis from subaccount assets, and either reflected in the calculation of the subaccount unit values (for "unitized" Variable Contracts) or deducted as a percentage of a Variable Contract's share of subaccount assets (for "non-unitized" Variable Contracts). Examples of subaccount expenses may include the morality and expense risk charge or administrative charge.

Variable contract	Expense cap (in percent)
NELICO American Growth Series—Version I	2.65
NELICO American Growth Series—Version II	2.70
NELICO American Forerunner Series	2.30
NELICO Zenith Life One	1.75
NELICO Zenith Flexible Life	1.90
NELICO Zenith Variable Whole Life	1.90
NELICO Zenith Survivorship Life	2.05
NELICO Zenith Survivorship Life Plus	1.30
NELICO Zenith Gateway Series	1.30
NELICO Zenith Life	1.65
NELICO Zenith Life Plus	1.90
NELICO Zenith Life Executive 65	1.90
NELICO Zenith Executive Advantage Plus	1.30
NELICO Zenith Executive Advantage 2000	1.30
NELICO Zenith Life Plus II	1.90
MetLife Zenith Accumulator	2.65

In addition, for those Variable Contract owners who owned a Variable Contract for which morality and expense risk charges are not subaccount expenses (*i.e.*, NELICO Zenith Survivorship Life Plus, NELICO American Gateway Series, NELICO Zenith Executive Advantage Plus, or NELICO Zenith Executive Advantage 2000) on the date of the Substitution, NELICO will not increase current mortality and expense risk charges for a period of 24 months following the date of Substitution.

22. Applicants represent that from the date the application is filed with the Commission to the date 30 days after the Effective Date, Variable Contract owners will have the right to make one transfer of contract value from the subaccounts invested in the Substituted Portfolio (before the Substitution) or the Replacement Portfolio (after the Substitution) to any other subaccount without charge and without that transfer counting toward the number permitted under the Variable Contract (regardless of whether during the accumulation period or the annuity period). Each Variable Contract owner has received a prospectus supplement and will, prior to the Effective Date, have received a prospectus for the Replacement Portfolio and a Pre-Substitution Notice (in the form of an additional prospectus supplement) regarding the Substitution.

23. Variable Contract owners were notified of the initial application by means of a supplement to the prospectus for each of the Variable Contracts dated March 17, 2000 that disclosed that the Section 26 Applicants intended to file the application and seek approval for the Substitution.

24. Following the date on which this notice for the order requested by the Section 26 Applicants is published, but before the Effective Date, a notice ("Pre-Substitution Notice"), in the form of an additional supplement to the prospectuses for the Variable Contracts, will be mailed to Variable Contract owners setting forth the scheduled Effective Date and advising Variable Contract owners that contract values attributable to investments in the Substituted Portfolio will be transferred to the Replacement Portfolio, without charge and, when relevant, without counting toward the number of transfers permitted without charge, on the Effective Date. The Pre-Substitution Notice will state that, from the date the application was filed with the Commission through the date 30 days after the substitution, Variable Contract owners may make one transfer of contract value from the subaccount corresponding to the Substituted Portfolio (before the Substitution) or the Replacement Portfolio (after the Substitution) to any other subaccount without charge and without that transfer counting toward the number permitted without charge under the Variable Contract. In addition, within five days after the Substitution, any Variable Contract owners who were affected by the Substitution will sent a written notice informing them that the Substitution was carried out and advising them of their transfer rights ("Post-Substitution Notice").

Applicant's Legal Analysis

1. Section 26(b) of the 1940 Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(b) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the 1940 Act.

2. Section 26(b) was intended to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substitute security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both. The section was designed to forestall the ability of a depositor to present holders of interest in a unit investment trust with situations in which a holder's only choice would be to continue an investment in an unsuitable underlying security, or to elect a costly and, in effect, forced redemption. The Section 26 Applicants assert that the Substitution meets the standards set forth in section 26(b) and that, if implemented, the Substitution would not raise any of the aforementioned concerns that Congress intended to address when the 1940 Act was amended to include this provision.

3. Applicants assert that the replacement of the Substituted Portfolio with the Replacement Portfolio is consistent with the protection of Variable Contract owners and the purposes fairly intended by the policy and provisions of the 1940 Act and, thus, meets the standards necessary to support an order pursuant to section 26(b) of the 1940 Act. Applicants also assert that the investment objectives and policies of the Replacement Portfolio are sufficiently similar to those of the Substituted Portfolio so that Variable Contract owners will have reasonable continuity in investment and risk expectations. In addition, Applicants assert that the types of investment advisory and administrative services provided to the Replacement Portfolio are comparable to the types of investment advisory and administrative services provided to the Substituted Portfolio.

4. Applicants state that the Substitution is part of efforts by NELICO

and MetLife to make their Variable Contracts more efficient to administer and oversee and, thus, more cost-efficient and attractive to customers. The Applicants assert that replacing the Substituted Portfolio with the Replacement Portfolio (in essence, combining Variable Contract owner assets attributable to an international investment option into one mutual fund) is appropriate and in the best interests of Variable Contract owners. Applicants assert that the proposed Substitution will provide Variable Contract owners with (i) an underlying portfolio having lower expense ratios with the expectation that, after the Substitution, the ratios will remain lower, (ii) a portfolio subadvised by Putnam, which has achieved competitive historical portfolio performance in other international funds and is experienced in managing international funds, and (iii) a portfolio with good prospects for growth.

5. Section 17(a)(1) and (a)(2) of the 1940 Act generally prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, from selling any security or other property to such registered investment company and from purchasing any security or other property from such registered investment company. NELICO and MetLife anticipate that, to the extent Putnam determines at that time that portfolio holdings of the Substituted Portfolio would be suitable investments for the Replacement Portfolio in the overall context of such portfolios's investment objectives and policies and consistent with its management of the Replacement Portfolio, the Substitution will be done by redeeming shares of the Substituted Portfolio in-kind rather than in cash and then using those assets to purchase shares of the Replacement Portfolio. Redemptions and purchases in-kind involve the purchase of property from a registered investment company and the sale of property to a registered investment company and the sale of property to a registered investment company by NELICO and MetLife, each an affiliated person of those investment companies. The Substitution, therefore, may be deemed to involve one or more purchases or sales of securities or property between affiliates. The Section 17(b) Applicants request that the Commission issue an order pursuant to section 17(b) of the 1940 Act exempting the Substitution from the provisions of section 17(a) to the extent necessary to permit the Substitution effected, in part, by means of in-kind redemptions and purchases of shares, and also by means of in-kind transactions.

6. Section 17(b) of the Act authorizes the Commission may, upon application, exempt a proposed transaction from the prohibitions of Section 17(a) if the evidence establishes that:

(i) 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;

(ii) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the 1940 Act; and

(iii) The proposed transaction is consistent with the general purposes of the 1940 Act.

7. NELICO and MetLife assert that the terms under which the in-kind redemptions and purchases will be affected are reasonable and fair and do not involve overreaching on the part of any person. Applicants state that the use of in-kind redemptions of such subaccounts is intended to reduce costs and thereby benefit Variable Contract owners. The transactions will not cause Variable Contract owner interests to be diluted. The proposed transactions will take place at relative net asset value in conformity with the requirements of Section 22(c) of the 1940 Act and Rule 22c–1 thereunder with no change in the amount of any Variable Contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Separate Accounts.

8. Applicants represent that the in-kind redemptions and purchases will be transacted in a manner consistent with the policies of both the Substituted Portfolio and the Replacement Portfolio, as recited in their registration statements. Putnam will review the securities holdings of the Substituted Portfolio and determine which portfolio holdings of the Substituted Portfolio would be suitable investments for the Replacement Portfolio in the overall context of such Portfolio's investment objectives and policies and consistent with the management of the Replacement Portfolio.

9. Applicants assert that the Substitution, as described herein, is consistent with the general purposes of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent. Securities to be paid out as redemption proceeds and subsequently contributed to the Replacement Portfolio to effect the contemplated in-kind purchases of shares will be valued based on the normal valuation procedures of the redeeming Substituted Portfolio and purchasing Replacement Portfolio.

Applicants' Conditions

For purposes of the approval sought pursuant to Section 26(b) of the 1940 Act, the Substitution described in this amendment and restated application will not be completed, unless all of the following conditions are met.

1. The Commission shall have issued an order (i) approving the Substitution under Section 26(b) of the 1940 Act, and (ii) exempting any in-kind redemptions and purchases from the provisions of section 17(a) of the 1940 Act as necessary to carry out the transactions described in this amended and restated application.

2. Each Variable Contract owner will have been sent (i) a copy of the effective prospectus relating to the Replacement Portfolio and any necessary amendments to the prospectuses relating to the Variable Contracts, (ii) as soon as reasonably possible after the notice for the order has been published and prior to the Effective Date, a Pre-Substitution Notice describing the terms of the Substitution and the rights of the Variable Contract owners in connection with the Substitution, and (iii) if affected by the Substitution, a Post-Substitution Notice within five days after the Substitution informing them that the Substitution was carried out and advising them of their transfer rights.

3. NELICO and MetLife shall have satisfied themselves that (i) the Variable Contracts allow the substitution of portfolios in the manner contemplated by the Substitution and related transactions described in the application, (ii) the transactions can be consummated as described in the amended and restated application under applicable insurance laws, and (iii) that any applicable regulatory requirements in each jurisdiction where the Variable Contracts are qualified for sale, have been complied with to the extent necessary to complete the transaction.

Conclusion

Applicants assert that, for the reasons stated above, the requested order approving the Substitution and exempting in-kind redemptions should be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43516; File No. SR–Amex–95–45]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange LLC Relating to the Maximum Size of Option Orders That May Be Executed Automatically

November 3, 2000.

I. Introduction

On October 25, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change amending its rules regarding the automatic execution of options orders to increase the maximum number of contracts that may be designated for automatic execution from fifty contracts to seventy-five contracts. Notice of the proposal was published in the **Federal Register** on June 21, 2000.[3] The Commission received no comments on the proposal. On November 1, 2000, the Exchange submitted Amendment No. 1 to the proposal.[4] On November 3, 2000, the Exchange submitted Amendment No. 2 to the proposal.[5] This order approves the proposal and grants accelerated approval of Amendment Nos. 1 and 2.

II. Description of the Proposal

The Exchange's AUTO–EX system automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the order is entered into the Amex Order File ("AOF"). Generally, public customer market and marketable limit orders for up to fifty options contracts may be automatically executed through the Exchange's AUTO–EX system.[6] Recently, AOF, which handles limit orders routed to the specialist's book as well as those orders routed to AUTO–EX, was increased to allow for the entry of orders of up to 250 option contracts.[7] Because AUTO–EX is only allowed to execute equity option orders and index orders of up to fifty contracts, any market and marketable limit orders for between fifty and 250 option contracts are generally routed by the AOF to the specialist's book.

The Exchange proposes to increase the maximum AUTO–EX order size eligibility for equity and index option contracts orders from fifty contracts to seventy-five contracts.[8] The proposed increase in permissible order size will be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate.

The Exchange represents that it has sufficient systems capacity to accommodate implementation of the proposed increase in permissible order size and that AUTO–EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other non-emergency situations for certain options classes. The Exchange believes that automatic executions of orders for up to seventy-five contracts will enhance its overall operational efficiency and give the Exchange better means of competing with other options exchanges for order flow.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act.[9] Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national securities system; and protect investors and the public interest.[10]

While increasing the maximum order size limit from fifty contracts to seventy-five contracts for AUTO–EX eligibility by itself does not raise concerns under the Act,[11] the Commission believes that this increase raises collateral issues that the Amex will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for the Exchange's automatic execution system. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed onto the AUTO–EX system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through AUTO–EX, the greater the risk market makers must be willing to accept. The Commission does not believe that, because Amex

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42931 (June 13, 2000), 65 FR 38615 (June 21, 2000).

[4] *See* letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission dated October 31, 2000 ("Amendment No. 1"). In Amendment No. 1, the Amex proposes to codify its rules regarding the AUTO–EX parameters for option contracts under Amex Rule 933, Commentary .02.

[5] *See* letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Amex to Nancy Sanow, Assistant Director, Division of Market Regulation Commission dated November 2, 2000 ("Amendment No. 2"). In Amendment No. 2, the Amex corrects the language in Amex Rule 933, Commentary .02 to state that the eligible orders for options on the Institutional, Japan and S&P MidCap 400 Indices must be for "fewer than 100 contracts" for series subject to AUTO–EX.

[6] *See* Securities Exchange Act Release No. 42094 (November 3, 1999), 64 FR 61675 (November 12, 1999). Although the maximum permissible number of cotracts in an option order executable through AUTO–EX is generally fifty contracts, there are three exceptions that allow ninety-nine contract orders; the Institutional, Japan and S&P MidCap 400 Indexes.

[7] *See* Securities Exchange Act Release No. 42128 (November 10, 1999), 64 FR 63836 (November 22, 1999).

[8] The Exchange is codifying its rules, under Amex Rule 933, Commentary .02, regarding the maximum option order size eligibility for its AUTO–EX system. *See* Amendment No. 1, *supra* note 4. Order size maximum levels for the Institutional, Japan, and S&P MidCap 400 Indexes would remain at ninety-nine contracts under this proposal. *See* Amendment No. 2, *supra* note 5.

[9] The Commission has considered the proposed rule's impact of efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] The Commission notes that it is concurrently approving similar proposals filed by the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Stock Exchange, Inc. ("PCX") and the Philadelphia Stock Exchange, Inc. ("Phlx"). *See* Securities Exchange Act Release No. 43517 (November 3, 2000) (SR–CBOE–99–51); Securities Exchange Act Release No. 43518 (November 3, 2000) (SR–PCX–00–32); and Securities Exchange Act Release No. 41515 (November 3, 2000) (SR–Phlx–99–32).

governors and senior floor officials determine to approve orders as large as seventy-five contracts as eligible for AUTO–EX, those officials or any other Amex officials or Amex committee should disengage AUTO–EX more frequently by, for example, declaring a "fast" market. Disengaging AUTO–EX can negatively affect investors by making it slower and less efficient to execute their option orders. It is the Commission's view that the Exchange, when increasing the maximum size orders that can be sent through AUTO–EX, should not disadvantage all customers—the vast majority of which enter orders for less than seventy-five contracts—by making the AUTO–EX system less reliable.

Finally, the Commission finds good cause for approving Amendment Nos. 1 and 2 prior to the 30th day after notice of the Amendment is published in the **Federal Register** pursuant to section 19(b)(2) of the Act.[12] Amendment No. 1 codifies the proposed increase in the AUTO–EX parameters from fifty contracts to seventy-five option contracts. Amendment No. 2 corrects the rule language in Amex Rule 933, Commentary .02. The Commission finds that accelerated approval of Amendment Nos. 1 and 2 is appropriate in order to allow the Amex to increase its AUTO–EX eligibility limits so that it may better compete with the other option exchanges.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether they are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–99–45 and should be submitted by December 6, 2000.

[12] 15 U.S.C. 78s(b)(2).

Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5).[13]

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–99–45) is approved, and Amendment Nos. 1 and 2 are approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43525 File No. SR–BSE–98–11]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to an Amendment to the Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Competing Specialist Initiative

November 7, 2000.

I. Introduction

On November 23, 1998, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the procedures by which a regular specialist may object to competition in a stock.

The proposed rule change was published for comment in the **Federal Register** on January 12, 1999.[3] The Commission received no comments on the proposal. The Exchange filed amendments on March 26, 1999[4] and April 13, 2000.[5] The Exchange filed a third amendment to the proposed rule change on August 25, 2000, which superseded the earlier amendments.[6] This order approves the proposed rule change, and grants accelerated approval to the third amendment to the proposed rule change.

II. Description

The Exchange's Competing Specialist Initiative permits multiple specialists to make a market in individual securities traded on the BSE. The Exchange has proposed a rule change to modify the process that governs objections to competition in a security.

The Procedures for Competing Specialists, which are set forth in chapter XV, section 18 of the Exchange's Rules, currently provide that a regular specialist in a security may object to any application by another specialist to act as a competing specialist in that security. The Exchange's Market Performance Committee will consider the regular specialist's objections as one factor in reviewing applications to act as a competing specialist in a security. The Market Performance Committee may not deny applications based solely on such an objection, but only in circumstances wherein the stock at issue requires special treatment such that an entering competitor could jeopardize the fair and orderly market maintained by the regular specialist.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40883 (January 5, 1999), 64 FR 1839 (January 12, 1999).

[4] *See* Letter from Karen Aluise, Vice President, BSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 25, 1999, with attachments ("Amendment No. 1"). Amendment No. 1 proposed to eliminate the right to appeal rulings by the Market Performance Committee regarding applications to serve as a competing specialist.

[5] *See* Letter from William Cummings, Manager of Legal and Regulatory Affairs, BSE, to Nancy Sanow, Senior Special Counsel, Division, Commission, dated April 12, 2000, with attachments ("Amendment No. 2"). Amendment No. 2 superseded Amendment No. 1. Amendment No. 2 generally sought to revert the proposed rule change back to a form that was similar to the version that the BSE originally proposed, but which differed from the BSE's original proposal in a few ways: by clarifying that an applicant competing specialist could appear before the Market Performance Committee to respond to issues raised by the regular specialist regarding competition, by omitting language which provided that competition could begin during an appeal of a Market Performance Committee ruling in favor of competition, and by making other changes regarding the appeal process.

[6] *See* Letter from John Boese, Assistant Vice President, BSE, to Nancy Sanow, Assistant Director, Division, Commission dated August 24, 2000, with attachments ("Amendment No. 3"). Amendment No. 3, which superseded Amendment No. 2, clarified that competition could begin pending the outcome of an appeal of a pro-competition ruling by the Market Performance Committee, which is consistent with the rule change as it was originally proposed by the BSE.

[7] *See* Securities Exchange Act Release No. 37045 (March 29, 1996), 61 FR 15318 (April 5, 1996) (order permanently approving Competing Specialist Initiative).

As presently written, section 18(2) requires the regular specialist to object in writing within 48 hours of notice of another specialist's application to compete in a stock. This section also states that the Market Performance Committee's decision may be appealed to the Executive Committee of the Exchange. Moreover, decisions of the Executive Committee may be appealed to the Board of Governors of the Exchange.[8] Competition may not begin during the appeal process.[9]

The Exchange is proposing to amend its existing rules that govern a regular specialist's ability to object to another specialist's application to serve as a competing specialist in a security. As amended, the proposal would divide section 18(2) into four parts (a to d). Proposed section 18(2)(a) would continue to require that a regular specialist file its objection within 48 hours after receiving notice of the request to compete, and would now require that the specialist submit the objection on a form designated by the Exchange.

Proposed section 18(2)(b) would require that when a specialist objects to competition, the specialist set forth the reasons in writing and deliver them to the Exchange within 24 hours of the filing of the objection.

Proposed section 18(2)(c) would provide that a Market Performance Committee meeting will be scheduled to review the reasons for objection and to determine whether competition could jeopardize the regular specialist's ability to maintain a fair and orderly market in the issue. That section adds that the regular specialist would be permitted to appear before that committee to discuss the reasons for objection, and that the applicant competing specialist would also be permitted to appear before that committee to respond to any issues raised. That section further states that after the committee renders its decision, either party may appeal the decision to the Exchange's Executive Committee, and, if necessary, to the Exchange's Board of Governors. A footnote to proposed section 18(2)(c) further would provide that the appeal must be submitted to the Exchange within 10 days notice of the Market Performance Committee's or the Executive Committee's final decision.

Proposed section 18(2)(d) would provide that if the Market Performance Committee rules in favor of competition, competition will commence pending the outcome of any appeal process.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission believes that the proposal is consistent with the section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is appropriate because it permits the Exchange to evaluate applications to serve as a competing specialist in a security more efficiently. In particular, the Commission believes that proposed chapter XV, sections 18(2)(a), (b) and (c)—which would require the regular specialist to submit objections using an Exchange-designated form and set forth the reasons for objection in writing within 24 hours of the objection, and which would permit the regular specialist and applicant competing specialist to discuss those reasons at a Market Performance Committee meeting scheduled to review the reasons for the objection—would streamline the process for evaluating a regular specialist's objections while paying due regard to the interests of the regular specialist and applicant competing specialist. The Commission also believes that proposed Section 18(2)(d), which would provide that competition will commence during the appeal process, provides a reasonable means of reconciling the interests of the Exchange, the regular specialist, and the applicant competing specialist.

The Commission finds good cause for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 3, which supplanted two earlier proposed amendments, most significantly modified the Exchange's original language by clarifying that an applicant competing specialist has the right to appear before the Market Performance Committee to respond to issues raised by the regular specialist. The Commission finds that clarifying this right will better enable the committee to make fully informed decisions and will promote the adequate representation of applicant competing specialists. Amendment No. 3 also modified the rule change as it was originally proposed by specifying that appeals of decisions by the Market Performance Committee would go first to the Executive Committee and then, if necessary, to the Board of Governors (in contrast to the original version of the proposed rule change, which would have provided that appeals go directly to the Board of Governors), and by making technical changes to the structure and language of the proposed rule change. The Commission finds that modifying the appeal process is consistent with the Exchange's right to set forth rules governing its own administration, and that the technical changes to the rule language do not change the substance of the proposed rule change. Based on the above, the Commission believes that good cause exists, consistent with sections 6(b)(5) and 19(b)(2)[12] of the Act, to accelerate approval of Amendment No. 3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–98–11 and should be submitted by December 6, 2000.

V. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–BSE–98–11,

[8] *See* BSE Constitution, Art. II, Section 6, which provides that certain persons affected by a decision of a committee acting under powers delegated by the Board of Governors may require that the Board review the decision.

[9] The Exchange's existing procedures for handling objections to competition were clarified during a conversation between Karen Aluise, Vice President, BSE, and Joshua Kans, Attorney, Division, Commission, December 2, 1998.

[10] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

including Amendment No. 3, in approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29180 Filed 11–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43517; File No. SR–CBOE–99–51]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to the Maximum Size of Option Orders Eligible for Automatic Execution

November 3, 2000.

I. Introduction

On September 1, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change amending its rules regarding the automatic execution of options orders to increase the maximum number of contracts eligible to be executed on the Exchange's Retail Automatic Execution System ("RAES") from fifty contracts to seventy-five contracts. Notice of the proposal was published in the **Federal Register** on June 21, 2000.[3] The Commission received no comments on the proposal. On October 3, 2000, the Exchange submitted Amendment No. 1 to the proposal.[4] This order approves the proposal and grants accelerated approval of Amendment No. 1.

II. Description of the Proposal

RAES automatically executes public customer market and marketable limit orders that fall within designated order size parameters. Generally, the maximum size of public customer market and marketable limit orders eligible for automatic execution through the RAES is fifty contracts.[5] The Exchange proposes to increase from fifty contracts to seventy-five contracts the maximum size of orders for equity options and certain classes of index options that are eligible to be executed through RAES.[6] In addition, the Exchange seeks to make certain complementary changes to the Exchange's firm quote rule and Interpretation .03 thereunder.[7]

The Exchange notes that increasing the maximum size of orders eligible for execution through RAES to seventy-five contracts will not permit orders up to this size to be entered into RAES unless, for a particular options class, the appropriate Floor Procedure Committee ("FPC") of the Exchange has determined, in its discretion, not to restrict the size of eligible orders in that options class.[8] In addition, the Exchange represents that increasing automatic execution levels should provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange represents that RAES affords prompt and efficient executions at the CBOE displayed price or, in most cases, at the National Best Bid or Offer ("NBBO") if the NBBO is better than the CBOE's displayed bid or offer.[9]

The Exchange notes that its rules contain several safeguards to ensure the proper handling of RAES orders, even as the maximum order size is increased. First, the Commission has approved the implementation of variable RAES on the CBOE.[10] Variable RAES allows market makers to specify the maximum size of orders that they are willing to trade at any one time on RAES; however, this determination is subject to a minimum size that may be established by the appropriate FPC. Variable RAES was proposed to ensure that market makers are willing to continue participating on RAES even as the maximum contract size is increased. The Exchange represents that the appropriate FPC will likely implement Variable RAES in any options class that has a contract limit of seventy-five contracts to ensure that there is adequate market-maker participation in that class.

Second, the Exchange requires Designated Primary Market-Makers ("DPMs") to participate in any automated execution system which may be open in appointed option classes.[11] Further, Interpretation .07 to CBOE Rule 8.7 states that market makers are expected to participate in and support Exchange-sponsored automated programs, including but not limited to, RAES. The Exchange is in the process of assigning a large percentage of its option classes that were formerly traded in market-maker crowds to DPMs.[12]

Third, the Exchange's rules allow for RAES to be suspended when a fast market has been declared in order to maintain a fair and orderly market.[13] CBOE Rule 6.6(b)(vi) provides the Exchange with the flexibility to intervene if it determines that there is inadequate market maker participation or capital requirements. In addition, CBOE Rule 8.16(b) requires a market maker who has logged onto RAES at any time during an expiration month to log onto RAES in that option class whenever he is present in the trading crowd until the next expiration. Further, CBOE Rule 8.16(c) provides that Floor Officials of the appropriate Market Performance Committee may require market makers who are members of the trading crowd to log on to RAES absent reasonable justification or excuse for nonparticipation if there is inadequate participation on RAES. Alternatively, the Floor Officials may allow market makers in other classes of options to log on to RAES in such classes.

Finally, the Exchange notes that its rules provide a minimum net capital requirement regarding DPMs, which is currently set forth in CBOE Rule 8.86. Further, the clearing firms for market makers and DPMs perform risk management functions to ensure that the market makers have sufficient financial resources to cover their positions throughout the day.

In addition to increasing the maximum size for RAES-eligible orders in certain classes of options, the Exchange proposes to amend its firm quote rule, CBOE Rule 8.51. Currently,

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 42930 (June 13, 2000), 65 FR 38618 (June 21, 2000).

[4] *See* letter from Timothy Thompson, Assistant General Counsel, Legal Department, CBOE, to Gordon Fuller, Special Counsel, Division of Market Regulation, Commission, dated September 29, 2000. ("Amendment No. 1").

[5] Options subject to the fifty contract maximum include all classes of equity options, all classes of sector index options and all other classes of index options, except options on the S&P 500 Index, options on the Nasdaq 100 Index, options on the Dow Jones Industrial Average ("DJIA"), options on the High Yield Select Ten, and interest rate options. The RAES eligibility maximum is currently 100 contracts for options on the S&P 500 Index, the Nasdaq 100 Index, the DJIA, the High Yield Select Ten, and interest rate options. *See* Securities Exchange Act Release No. 41821 (September 1, 19999), 64 FR 50313 (September 16, 1999).

[6] The proposed increase to seventy-five contracts will not apply to those classes of index options cited in footnote 5 above.

[7] *See* CBOE Rule 8.51.

[8] *See* CBOE Rule 6.8(e).

[7] *See* CBOE Rule 6.8, Interpretation .02.

[10] *See supra* note 5 (citing to the order implementing Variable RAES on the CBOE).

[11] *See* CBOE Rule 8.85(a)(9).

[12] All equity options have now been assigned to DPMs. Telephone conversation between Timothy Thompson, Director-Regulatory Affairs, CBOE, and Gordon Fuller, Special Counsel, Commission, on March 9, 2000.

[13] *See* CBOE Rule 6.6(b)(vi).

the firm quote requirement may not be less than the RAES contract limit applicable to that class of options. The Exchange proposes to amend CBOE Rule 8.51(a) to provide that if the RAES contract limit is established at a level of higher than fifty contracts, then the firm quote requirement will remain at fifty contracts. The Exchange believes that because, for the most part, the RAES contract limit and the firm quote limit are of comparable levels on the CBOE, a firm representing a customer will always receive firm quote protection to the extent of fifty contracts.[14]

The Exchange also proposes to change Interpretation .03 to CBOE Rule 8.51. Interpretation .03 to CBOE Rule 8.51 currently provides that orders for accounts exempted from the firm quote requirement should not be reflected in the displayed quote when those orders are for less than the firm quote requirement applicable for that class of options and are represented in the crowd by a Floor Broker or DPM.[15] With respect to broad-based index option classes, the Exchange proposes to change this requirement such that orders represented in the crowd by a Floor Broker or DPM for less than the firm quote requirement need not be reflected in the displayed market quote.[16] In addition, with respect to classes other than broad-based index options, orders for less than ten contracts need not be reflected in the displayed quote.[17] Thus, the DPM or another member of the trading crowd may determine to reflect the price of a market-maker or proprietary broker-dealer order in the displayed market quote even if that order is for less than the firm quote requirement for broad-based index options, or if the order is for less than ten contracts for all other options classes.[18] Once the price of such an order is reflected in the displayed market quote, the trading crowd would be subject to the firm quote obligations of CBOE 8.52(a)(2) even though the firm quote limit may be greater than the size of the displayed market-maker or proprietary broker-dealer order. By reflecting the price of that order in the quote, the trading crowd will be obligated to sell (buy) at least the established firm quote limit for that option class at the approved offer (bid) which the crowd determined to display when a buy (sell) order reaches the trading station where the particular option class is located for trading (as long as the improved bid or offer remains displayed), even though the firm quote limit will be greater than the size of the market-maker order or other proprietary broker-dealer order.[19] Furthermore, any RAES order that is entered while that improved price is displayed will be executed at that improved price even if that order is for more contracts than was the size of the displayed market-maker or proprietary broker-dealer order.[20] The CBOE represents that this change should ensure that any broker-dealer order represented in the crowd will be represented in the Exchange's quote and thus may become the basis for a quote at which an order may be executed. The Exchange represents that it will conduct further review to determine whether to include broad-based index option classes under the proposed change in the future.

The Exchange represents that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from the implementation of this proposal. The Exchange believes that automatic execution of orders for up to seventy-five contracts will provide customers with quicker executions for a larger number of orders, by providing automatic rather than manual executions, thereby reducing the amount of orders subject to manual processing.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act.[21] Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national securities system; and protect investors and the public interest.[22]

While increasing the maximum order size limit from fifty contracts to seventy-five contracts for RAES eligibility by itself does not raise concerns under the Act,[23] the Commission believes that this increase raises collateral issues that the CBOE will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for the Exchange's automatic execution system. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed onto the RAES system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through RAES, the greater the risk market makers must be willing to accept. The Commission does not believe that, because the Exchange's appropriate FPC determines to approve orders as large as seventy-five contracts as eligible for RAES, the FPC or any other CBOE committee or officials should disengage RAES more frequently by, for example, declaring a "fast" market. Disengaging RAES can negatively affect investors by making it slower and less efficient to execute their option orders. It is the Commission's view that the Exchange, when increasing the maximum size of orders that can be sent through RAES, should not disadvantage all customers—

[14] For the remainder of the order in excess of fifty contracts, the trading crowd will attempt to fill the order at the same price as the first fifty contracts. Telephone conversation between Timothy Thompson, Assistant General Counsel, Legal Department, CBOE, and Gordon Fuller, Special Counsel, Division of Market Regulation, Commission, on October 30, 2000. An order entered into RAES can trade directly with an order on the Exchange's customer limit order book in those cases where the prevailing market bid or offer is equal to the best bid or offer on the Exchange's book. *See* Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999).

[15] In Amendment No. 1, the Exchange made technical changes to the proposed rule text to conform with recent amendments to Interpretation .03. *See* Securities Exchange Act Release No. 42558 (March 22, 2000), 65 FR 16676 (March 29, 2000).

[16] *See* Amendment No. 1, *supra* note 4.

[17] *Id.*

[18] *Id.*

[19] *See* CBOE Rule 8.51(a)(2).

[20] *See* CBOE Rule 6.8(a)(ii). Of course, pursuant to the terms of Interpretation .02 to Exchange Rule 6.8, the RAES order may instead be filled at the NBBO if the NBBO is no more than the designated number of ticks better than the CBOE best bid or offer, or the order may be rejected for manual handling if the NBBO is more than the designated number of ticks better than the CBOE best bid or offer. The appropriate FPC has determined that the designated number of ticks shall be one tick.

[21] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

[23] The Commission notes that it is concurrently approving similar proposals filed by the American Stock Exchange, LLP ("Amex"), the Pacific Stock Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx"). *See* Securities Exchange Act Release Nos. 43516 (November 3, 2000) (SR–Amex–99–45); 43518 (November 3, 2000) (SR–PCX–00–32); and 43515 (November 3, 2000) (SR–Phlx–99–32).

the vast majority of which enter orders for less than seventy-five contracts—by making the RAES system less reliable.

Finally, the Commission finds good cause for approving Amendment No. 1 prior to the 30th day after notice of the Amendment is published in the **Federal Register** pursuant to section 19(b)(2) of the Act.[24] Amendment No. 1 makes technical changes to the proposed rule text to reflect changes to Interpretation .03 to Rule 8.51 made in the filing of the proposed change. In addition, Amendment No. 1 clarifies that the DPM or another member of the trading crowd may determine to reflect the price of a market maker or other proprietary broker-dealer order in the displayed quote, even if that order is for less than the firm quote requirement (in the case of broad-based index options) or if the order is for less than ten contracts (in the case of all other option contracts.)[25] The Commission believes that the proposal may increase price transparency at the Exchange by expanding the kinds of orders eligible to be reflected in the Exchange's displayed quote. The Commission finds that accelerated approval of Amendment No. 1 is appropriate in order to permit the opportunity for increased transparency for market-maker orders or other proprietary broker-dealer orders.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–51 and should be submitted by December 6, 2000.

[24] 15 U.S.C. 78s(b)(2).

[25] *See* Amendment No. 1, *supra* note 4.

Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5).[26]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–51) is approved, and Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

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[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43514; No. SR–NASD–99–53]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 8 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of Nasdaq Order Display Facility and to Modifications of the Nasdaq Trading Platform

November 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19(b)(4) thereunder,[2] notice is hereby given that on October 23, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 8 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[3] The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on December 6, 1999.[4] On March 16, 2000, the NASD filed Amendment No. 3 to the proposal.[5] On March 30, 2000, Amendment No. 4 was published for comment in the **Federal Register**.[6] On May 16, 2000, the NASD filed Amendment No. 5 to the proposal.[7] On July 6, 2000, the NASD filed Amendment No. 6 to the proposal.[8] On August 7, 2000, the NASD filed Amendment No. 7 to the proposal.[9] On August 15, 2000 Amendment Nos. 5, 6, and 7 were published for comment in the **Federal Register**.[10] The Commission is publishing this notice to solicit comments on Amendment No. 8 from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exhibit 3 to Amendment No. 8 contains a summary of how the NASD intends that the SuperMontage will operate. The summary incorporates and reconciles the original rule proposal and the subsequent proposed amendments, including Amendment No. 8. Exhibit 3 is available for public inspection in the Commission's Public Reference Room.

[4] *See* Securities Exchange Act Release No. 42166 (Nov. 22, 1999), 64 FR 69125.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD, through its subsidiary Nasdaq, is filing substantive and technical amendments to File No. SR–NASD–99–53, which proposes to establish the Nasdaq Order Display Facility ("NODF") and make changes to the Nasdaq National Market System ("NNMS").[11] Because the NASD is proposing alternative approaches to preferenced orders, there are two versions of the proposed rule text reflecting Alternative A and Alternative B. Except for the provisions relating to

[5] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), Commission (March 15, 2000) ("Amendment No. 3"). In Amendment No. 3, the NASD responded to comment letters and submitted substantive, clarifying, and technical amendments to the proposal.

[6] *See* Securities Exchange Act Release No. 42573 (March 23, 2000), 65 FR 16981 ("Amendment No. 4").

[7] *See* Letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division, Commission (May 16, 2000) ("Amendment No. 5").

[8] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division, Commission (July 6, 2000) ("Amendment No. 6").

[9] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division, Commission (August 7, 2000) ("Amendment No. 7").

[10] *See* Securities Exchange Act Release No. 43133 (August 10, 2000), 65 FR 149842 ("August 15, 2000 Notice").

[11] The amended rule language contained in this notice reflects the Commission's approval of SR–NASD–99–11, regarding the estabishment of the Nasdaq National Market System ("NNMS"). See Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) (Order for File No. SR–NASD–99–11 functionally integrating the Small Order Execution System ("SOES") and SelectNet system to become the foundation of the NNMS). In addition, the amended rule language replaces, in the entirety, the rule language contained in the original filing, as well as Amendment Nos. 1 through 7.

preferenced orders, Alternative A and Alternative B are identical.

A. *Proposed Rule Language for File No. NASD–99–53 containing Alternative A.* Proposed additions are *italicized* and proposed deletions are placed in [brackets].

4720. SelectNet Service—Deleted

* * * * *

4611. Registration as a Nasdaq Market Maker

(a)–(e) No Change.

(f) Unless otherwise specified by the Association, each Nasdaq market maker that is registered as a market maker in a Nasdaq[National Market security]-*listed security* shall also at all times be registered as a market maker in the Nasdaq National Market Execution System (NNMS) with respect to that security and be subject to the NNMS Rules as set forth in the Rule 4700 Series. [Participation in the Small Order Execution System (SOES) shall be voluntary for any Nasdaq market maker registered to make a market in a Nasdaq SmallCap security.]

(g) No Change.

* * * * *

4613. Character of Quotations

(a) Two-Sided Quotations

(1) For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain a two-sided quotation[s] *("Principal Quote"), which is attributed to the market maker by a special maker participant identifier ("MMID") and is displayed in the Nasdaq Quotation Montage* [in The Nasdaq Stock Market] *at all times,* subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) A registered market maker in a *Nasdaq-listed* security [listed on The Nasdaq Stock Market] must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation. *Unless otherwise designated, a "normal unit of trading" shall be 100 shares.*

(b) Agency Quote—Amendments Pending Pursuant to SR–NASD–99–09.

(c)–(e) No Change.

IM–4613. Autoquote Policy—No Change

4618. Clearance and Settlement

(a)–(b) No Changes.

(c) All transactions through the *facilities of the* Nasdaq National Market Execution System[, SOES, and SelectNet services] shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

* * * * *

4619. Withdrawal of Quotations and Passive Market Making

(a)–(b) No Change.

(c) Excused withdrawal status may be granted to a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction service, thereby terminating its registration as a market maker in Nasdaq issues. Provided however, that if the Association finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620[, the Rules for the Small Order Execution System, as set forth in the Rule 4750 Series,] and the Rule 4700 Series governing the Nasdaq['s] National Market Execution System.

(d) No Change.

* * * * *

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its *Principal* [quotations] *Quote* from The Nasdaq Stock Market. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from participation as a market maker in a Nasdaq [National Market]-*listed* security in the Nasdaq National Market Execution System shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in Nasdaq-*listed* [National Market and SmallCap] issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

* * * * *

4632. Transaction Reporting

(a)–(d) No Change.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions executed through the Computer Assisted Execution System (CAES), *or* the *facilities of the* Nasdaq National Market Execution System ("NNMS")[, or the SelectNet service];

(2)–(6) No Change.

(f) No Change.

4642. Transaction Reporting

(a)–(d) No Change.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions executed through the Computer Assisted Execution System (CAES)[; the Small Order Execution System (SOES) or the SelectNet service] *or facilities of the Nasdaq National Market Execution System ("NNMS").*

(2)–(5) No Change.

(f) No Change.

* * * * *

4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM (NNMS)

4701. Definitions—*Unless stated otherwise, the terms described below shall have the following meaning:*

[(d)] *(a)* The term "active NNMS securities" shall mean those NNMS eligible securities in which at least one NNMS Market Maker is currently active in NNMS.

[(i)] *(b)* The term "Agency Quote" shall mean the quotation that a registered NNMS Market Maker is permitted to display pursuant to the requirements of NASD Rule 4613(b).

(c) The term "Attributable Quote/Order" shall have the following meaning:

(1) For NNMS Market Makers and NNMS ECNs, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's MMID in the Nasdaq Quotation Montage once such Quote/Order becomes the participant's best attributable bid or offer.

(2) For UTP Exchanges, the best bid and best offer quotation with price and size that is transmitted to Nasdaq by the UTP Exchange, which is displayed next to the UTP Exchange's MMID in the Nasdaq Quotation Montage.

[(h)] *(d)* The term "Automated Confirmation Transaction" service or "ACT" shall mean the automated

system owned and operated by The Nasdaq Stock Market, Inc. which compares trade information entered by ACT Participants and submits "locked-in" trades to clearing.

[(g)] *(e)* The term "automatic refresh size" shall mean the default size to which an NNMS Market Maker's quote will be refreshed pursuant to NASD Rule 4710(b)(2), if the market maker *elects to utilize the Quote Refresh Functionality and* does not designate to Nasdaq an alternative refresh size, *which must be at least one normal unit of trading.* The [maximum order] automatic refresh size default [size] *amount* shall be 1,000 shares.

(f) The term "Directed Order" shall mean an order that is entered into the system by an NNMS participant that is directed to a particular Quoting Market Participant at any price, through the Directed Order process described in Rule 4710(c). This term shall not include the "Preferenced Order" described in subparagraph (aa) of this rule.

(g) The term "Displayed Quote/Order" shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted to Nasdaq by Quoting Market Participants.

(h) The term "Firm Quote Rule" shall mean SEC Rule 11Ac1–1.

(i) The term "Immediate or Cancel" shall mean, for limit orders so designated, that if after entry into the NNMS a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant.

(j) The term "Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes an obligation to respond to such order in a manner consistent with the Firm Quote Rule.

(k) The term "limit order" shall mean an order to buy or sell a stock at a specified price or better.

(l) The term "market order" shall mean an unpriced order to buy or sell a stock at the market's current best price.

(m) The term "marketable limit order" shall mean a limit order to buy that, at the time it is entered into the NNMS, is priced at the current inside offer or higher, or a limit order to sell that, at the time it is entered into the NNMS, is priced at the inside bid or lower.

(n) The term "mixed lot" shall mean an order that is for more than a normal unit of trading but not a multiple thereof.

(o) The term "Non-Attributable Quote/Order" shall mean a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility.

(p) The term "Non-Directed Order" shall mean an order that is entered into the system by an NNMS Participant and is not directed to any particular Quoting Market Participant, and shall also include Preferenced Orders as described in subparagraph (aa) of this rule.

(q) The term "Non-Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes no obligation to respond to such order under the Firm Quote Rule.

[(a)] *(r)* The term "Nasdaq National Market Execution System," [or] "NNMS," *or "system"* shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which enables NNMS Participants to execute transactions in active NNMS authorized securities; to have reports of the transactions automatically forwarded to the National Market Trade Reporting System, if required, for dissemination to the public and the industry, and to "lock in" these trades by sending both sides to the applicable clearing corporation(s) designated by the NNMS Participant(s) for clearance and settlement; and to provide NNMS Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

[(c)] *(s)* The term "NNMS eligible securities" shall mean designated Nasdaq-*listed* [National Market (NNM)] equity securities.

(t) The term "NNMS ECN" shall mean a member of the Association that meets all of the requirements of NASD Rule 4623, and that participates in the NNMS with respect to one or more NNMS eligible securities.

(1) The term "NNMS Auto-Ex ECN" shall mean an NNMS ECN that participates in the automatic-execution functionality of the NNMS system, and accordingly executes Non-Directed Orders via automatic execution for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or offer price.

(2) The term "NNMS Order-Delivery ECN" shall mean an NNMS ECN that participates in the order-delivery functionality of the NNMS system, accepts delivery of Non-Directed Orders that are Liability Orders, and provides an automated execution of Non-Directed Orders (or an automated rejection of such orders if the price is no longer available) for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or offer price.

[(e)] *(u)* The term "NNMS Market Maker" shall mean a member of the Association that is registered as a Nasdaq Market Maker and as a Market Maker for purposes of participation in NNMS with respect to one or more NNMS eligible securities, and is currently active in NNMS and obligated to execute *orders through the automatic-execution functionality of the NNMS system* for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or [ask] *offer* price.

[(b)] *(v)* The term "NNMS Participant" shall mean [either] an NNMS Market Maker, *NNMS ECN, UTP Exchange,* or NNMS Order Entry Firm registered as such with the Association for participation in NNMS.

[(f)] *(w)* The term "NNMS Order Entry Firm" shall mean a member of the Association who is registered as an Order Entry Firm for purposes of participation in NNMS which permits the firm to enter orders [of limited size] for execution against NNMS Market Makers.

(x) The term "Nasdaq Quotation Montage" shall mean the portion of the Nasdaq WorkStation presentation that displays for a particular stock two columns (one for bid, one for offer), under which is listed in price/time priority the MMIDs for each NNMS Market Maker, NNMS ECN, and UTP Exchange registered in the stock and the corresponding quote (price and size) next to the related MMID.

(y) The term "Nasdaq Quoting Market Participant" shall include only the following: (1) NNMS Market Makers; or (2) NNMS ECNs.

(z) The term "odd-lot order" shall mean an order that is for less than a normal unit of trading.

(aa) The term "Preferenced Order" shall mean an order that is entered into the Non-Directed Order Process and is designated to be delivered to or executed against a particular Quoting Market Participant's Attributable Quote/Order when such Preferenced Order is the next in line to be executed or delivered. Preferenced Orders shall be executed subject to the conditions set out in Rule 4710(b).

(bb) The term "Quote/Order" shall mean a single quotation or shall mean an order or multiple orders at the same price submitted to Nasdaq by a Nasdaq Quoting Market Participant that is displayed in the form of a single quotation. Unless specifically referring to a UTP Exchange's Agency Quote/Order (as set out in Rule 4710(f)(2)(b)), when this term is used in connection

with a UTP Exchange, it shall mean the best bid and/or the best offer quotation transmitted to Nasdaq by the UTP Exchange.

(cc) The term "Quoting Market Participant" shall include any of the following: (1) NNMS Market Makers; (2) NNMS ECNs; and (3) UTP Exchange Specialists.

(dd) The term "Reserve Size" shall mean the system-provided functionality that permits a Nasdaq Quoting Market Participant to display in its Displayed Quote/Order part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part after the displayed part is executed.

(ee) The term "Nasdaq Order Display Facility" shall mean the portion of the Nasdaq WorkStation presentation that displays, without attribution to a particular Quoting Market Participant's MMID, the three best price levels in Nasdaq on both the bid and offer side of the market and the aggregate size of Attributable and Non-Attributable Quotes/Orders at each price level.

(ff) The term "UTP Exchange" shall mean any registered national securities exchange that elects to participate in the NNMS and that has unlisted trading privileges in Nasdaq National Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").

4705. NNMS Participant Registration

(a) Participation in NNMS as an NNMS Market Maker requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Market Maker's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;

(3) registration as a market maker in The Nasdaq Stock Market pursuant to the Rule 4600 Series and compliance with all applicable rules and operating procedures of the Association and the Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Market Maker to prevent the *improper use or access to Nasdaq systems, including* unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(b) Pursuant to Rule 4611(f), participation as an NNMS Market Maker is required for any Nasdaq market maker registered to make a market in an NNMS security.

(c) Participation in NNMS as an NNMS Order Entry Firm requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Order Entry Firm's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;

(3) compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Order Entry Firm to prevent the *improper use or access to Nasdaq systems, including* unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Order Entry Firm or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(d) Participation in NNMS as an NNMS ECN requires current registration as an NASD member and shall be conditioned upon the following:

(1) the execution of an NNMS Participant application agreement with the Association;

(2) compliance with all requirements in NASD Rule 4623 and all other applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(3) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS-compared trades may be settled;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS ECN to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each trade that is executed through the facilities of the NNMS, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

[(d)]*(e)* The registration required hereunder will apply solely to the qualification of an NNMS Participant to participate in NNMS. Such registration shall not be conditioned upon registration in any particular eligible or active NNMS securities.

[(e)]*(f)* Each NNMS Participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

(g) The Association and its subsidiaries shall not be liable for any losses, damages, or other claims arising out of the NNMS or its use. Any losses, damages, or other claims, related to a failure of the NNMS to deliver, display, transmit, execute, compare, submit for clearance and settlement, or otherwise process an order, Quote/Order, message, or other data entered into, or created by, the NNMS shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the NNMS.

4706. Order Entry Parameters

(a) Non-Directed Orders —

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) An NNMS Participant may enter a Non-Directed Order into the NNMS in order to access the best bid/best offer as displayed in Nasdaq; provided however, that an NNMS Participant may enter a Preferenced Order through the Non-Directed Order process to access a particular Quoting Market Participant without regard to the best bid/best offer as displayed in Nasdaq.

(B) A Non-Directed Order must be a market or marketable limit order, must be a round lot or a mixed lot, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and if entered by a Quoting Market Participant

may be designated as Immediate or Cancel.

(C) The system will not process a Non-Directed Order to sell short if the execution of such order would violate NASD Rule 3350.

(D) Non-Directed Orders will be processed as described in Rule 4710.

(E) The NNMS shall not accept Non-Directed Orders that are All-or-None, or have a minimum size of execution.

(2) Entry of Non-Directed Orders by NNMS Order Entry Firms—In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by NNMS Order-Entry Firms:

(A) All Non-Directed orders shall be designated as Immediate or Cancel. As such, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) A Non-Directed Order that is a limit order may be entered prior to the market's open. Such orders will be held in queue, and if not marketable on the market's open, will be returned to the entering participant.

(b) Directed Orders—A participant may enter a Directed Order into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of entry must be designated as:

(A) an "All-or-None" order ("AON") that is at least one normal unit of trading (e.g. 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or

(B) a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(2) A Directed Order may have a time in force of 1 to 99 minutes.

(3) Directed Orders shall be processed pursuant to Rule 4710(c).

(c) Entry of Agency and Principal Orders—NNMS Participants are permitted to enter into the NNMS both agency and principal orders for delivery and execution processing.

(d) Order Size—Any round or mixed lot order up to 999,999 shares may be entered into the NNMS for normal execution processing. Odd-lot orders, and the odd-lot portion of a mixed lot, are subject to a separate execution process, as described in Rule 4710(e).

(e) Open Quotes—The NNMS will only deliver an order or an execution to a Quoting Market Participant if that participant has an open quote.

(f) Odd-Lot Orders—The system will accept odd-lot orders for processing through a separate facility. Odd-lot orders must be Non-Directed Orders, and may be market, marketable limit or limit orders. The system shall accept odd-lot orders at a rate no faster than one order per/second from any single participant. Odd-lot orders, and the odd-lot portion of a mixed lot order, shall be processed as described in Rule 4710(e).

4707. Entry and Display of Quotes/Orders

(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/Orders into the NNMS subject to the following requirements and conditions:

(1) Nasdaq Quoting Market Participants shall be permitted to transmit to the NNMS multiple Principal and Agency Quotes/Orders at a single as well as multiple price levels. Such Quote/Order shall indicate whether it is an "Attributable Quote/Order" or "Non-Attributable Quote/Order," and the amount of Reserve Size (if applicable).

(2) Upon entry of a Quote/Order into the system, the NNMS shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule 4710(b). For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-stamp for the original quantity of the quote and assign a separate time-stamp to that size increase.

(3) Consistent with Rule 4613, an NNMS Market Maker is obligated to maintain a two-sided Attributable Quote/Order (other than an Agency Quote) at all times, for at least one normal unit of trading.

(4) Nasdaq Quoting Market Participants may continue to transmit to the NNMS only their best bid and best offer Attributable Quotes/Orders. Notwithstanding NASD Rule 4613 and subparagraph (a)(1) of this rule, nothing in these rules shall require a Nasdaq Quoting Market Participant to transmit to the NNMS multiple Quotes/Orders.

(b) Display of Quotes/Orders in Nasdaq—The NNMS will display a Nasdaq Quoting Market Participant's Quotes/Orders as follows:

(1) Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's best priced Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID, and also will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Attributable Quote/Order falls within the best three price levels in Nasdaq on either side of the market. Upon execution or cancellation of the Nasdaq Quoting Market Participant's best-priced Attributable Quote/Order on a particular side of the market, the NNMS will automatically display the participant's next best Attributable Quote/Order on that side of the market.

(2) Non-Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's Non-Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Non-Attributable Quote/Order falls within the best three price levels in Nasdaq on either side of the market. A Non-Attributable Order will not be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID. Non-Attributable Quotes/Orders that are the best priced Non-Attributable bids or offers in the system will be displayed in the Nasdaq Quotation Montage under an anonymous MMID, which shall represent and reflect the aggregate size of all Non-Attributable Quotes/Orders in Nasdaq at that price level. Upon execution or cancellation of a Nasdaq Quoting Market Participant's Non-Attributable Quote/Order, the NNMS will automatically display a Non-Attributable Quote/Order in the Nasdaq Order Display Facility (consistent with the parameters described above) if it falls within the best three price levels in Nasdaq on either side of the market.

(c) Reserve Size—Reserve Size shall not be displayed in Nasdaq, but shall be electronically accessible as described in Rule 4710(b).

(d) Summary Scan—The "Summary Scan" functionality. which is a query-only non-dynamic functionality, displays without attribution to Quoting Market Participants' MMIDs the

aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) below the three price levels displayed in the Nasdaq Order Display Facility.

(e) NQDS Prime—"NQDS Prime" is a separate data feed that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to Quoting Market Participants' MMIDs all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are disseminated in the Nasdaq Order Display Facility.

4710. Participant Obligations in NNMS

(a) Registration—Upon the effectiveness of registration as a NNMS Market Maker, NNMS ECN, or NNMS Order Entry Firm, the NNMS Participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) [Market Makers] *Non-Directed Orders*

(1) [An NNMS Market Maker] *General Provisions—A Quoting Market Participant* in an NNMS Security shall be subject to the following requirements *for Non-Directed Orders:*

(A) *Obligations* For each NNM*S* security in which it is registered [as an NNMS Market Maker, the market maker], *a Quoting Market Participant* must *accept and* execute individual *Non-Directed* Orders against its quotation including its Agency Quote (if applicable), in an amount equal to or smaller than the combination of the Displayed [quotation] *Quote/Order* and Reserve Size *(if applicable)* of such [quotation(s)] *Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq* [For purposes of this rule, the term "reserved size" shall mean that a NNMS Market Maker or a customer thereof wishes to display publicly part of the full size of its order or interest with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed. To utilize the reserve size function, a minimum of 1,000 shares must initially be displayed in the market maker's quote (including the Agency Quote), and the quotation must be refreshed to 1,000 shares consistent with subparagraph (b)(2)(A) of this rule.] *Quoting Market Participants shall participate in the NNMS as follows:*

(i) NNMS Market Makers and NNMS Auto-Ex ECNs shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute such order in a manner consistent with the Firm Quote Rule.

(iii) UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)–(iii) of this rule), and shall deliver an execution to Quoting Market Participants that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system; provided however, that the system always shall deliver an order (in lieu of an execution) to the Quoting Market Participant next in queue when the participant that entered the Non-Directed Order into the system is a UTP Exchange that does not provide automatic execution against its Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. Non-Directed Orders entered into the NNMS system shall be *delivered to or* automatically executed against *Quoting Market Participants'* Displayed [quotations] *Quotes/Orders* and Reserve Size, including Agency Quotes (if applicable), in *strict* price/time priority, *as described in the algorithm contained in subparagraph (b)(B)(i) of this rule* [For quotes at the same price, the system will yield priority to all displayed quotations over reserve size, so that the system will execute against Displayed quotations in time priority and then against reserve size in time priority]. *Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule.*

(i) Default Execution Algorithm—Price/Time—The system will default to a strict price/time priority within Nasdaq, and will attempt to access interest in the system in the following priority and order:

(a) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs, and Non-Attributable Agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in time priority between such participants' Quotes/Orders.

(b) Reserve Size of Nasdaq Quoting Market Participants, in time priority between such participants' Quotes/Orders; and

(c) Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(ii) Price/Time Priority Considering Quote-Access Fees—If this options is chosen, the system will attempt to access interest in the system in the following priority and order:

(a) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, and Non-Attributable Agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), as well as Quotes/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order indicates that the price improvement offered by the specific Quote/Order is equal to or exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quotes/Orders;

(b) Displayed Quotes/Orders of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participants' Quotes/Orders;

(c) Reserve Size of NNMS Market Makers and NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, as well as Reserve Size of Quotes/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order has indicated that the price improvement offered by the specific Quote/Order is equal to or exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quotes/Orders;

(d) Reserve Size of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority

between such participants' Quotes/Orders; and

(e) Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(iii) Price/Size Priority—If this option is chosen, Non-Directed Orders shall be execute in price/size/time priority against:

(a) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs, and Non-Attributable Agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in price/size/time priority between such participants' Quotes/Orders:

(b) the Reserve Size of Nasdaq Quoting Market Participants, in price/size/time priority between such participants' Quotes/Orders, which size priority shall be based on the size of the Displayed Quote/Order, and not on the amount held in Reserve Size; and

(c) Principal Quotes/Orders of UTP Exchanges, in price/size/time priority between such participants' Quotes/Orders.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq.

(b) If an NNMS Market Participant enters a Preferenced Order, the order shall be executed against (or delivered in an amount equal to) both the Displayed Quote/Order and Reserve Size at the displayed price of the Quoting Market Participant to which the order is being directed, without regard to whether the Quoting Market Participant is at the best bid/best offer, with any unexecuted portion being returned to the entering NNMS Market Participant.

(C) *Decrementation Procedures*—The size of a [displayed quotation] *Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage* will be decremented upon the *delivery of a Liability Order or the delivery of an* execution of a[n NNMS] *Non-Directed* [o]Order or Preferenced Order in an amount equal to [or greater than one normal unit of trading] *the system-delivered order or execution;* provided, however, that [the execution of] *if* an NNMS order that is a mixed lot, *the system will only deliver a Liability Order or an execution for the number of round lots contained in the mixed lot order, and* will only decrement [a displayed quotation's] *the* size of a *Displayed Quote/Order* by the number of shares represented by the number of round lots contained in the mixed lot order. *The odd-lot portion of the mixed lot will be executed at the same price against the NNMS Market Maker next in the odd lot rotation, as described in subparagraph (e) of this rule.*

(i) If an NNMS Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmission of another Attributable Quote/Order to Nasdaq, the system will zero out the side of the quote that is exhausted. If both the bid and offer are decremented to zero without transmission of a revised Attributable Quote/Order, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within 30 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue. The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(iii) If an NNMS ECN's Quote/Order has been zeroed out or if the ECN has been placed into excused withdrawal as described in subparagraphs (b)(1)(C)(i) and (ii) of this rule, the system will continue to access the ECN's Non-Attributable Quotes/Orders that are in the NNMS, as described in Rule 4707 and subparagraph (b) of this rule.

(iv) If an NNMS ECN regularly fails to meet a 5-second response time (as measured by the ECN's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ECN's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the NNMS ECN certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market.

(D) *Interval Delay*—After the NNMS system has executed *all Displayed Quotes/Orders and Reserve Size interest at a price level* [an order against a market maker's displayed quote and reserve size (if applicable), that market maker shall not be required to execute another order at its bid or offer in the same security until a predetermined time period has elapsed from the time the order was executed, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be modified upon Commission approval and appropriate notification to NNMS participants.], *the following will occur:*

(i) If the NNMS system cannot execute in full all shares of a Non-Directed Order against the Displayed Quotes/Orders and Reserve Size interest at the initial price level and at price two minimum trading increments away, the system will pause for 5 seconds before accessing the interest at the next price level in the system; provided, however, that once the Non-Directed Order can be filled in full within two price levels, there will be no interval delay between price levels and the system will execute the remainder of order in full; or

(ii) If the Non-Directed Orders is specially designated by the entering market participant as a "sweep order," the system will execute against all Displayed Quotes/Orders and Reserve Size at the initial price level and the two price levels being displayed in the Nasdaq Order Display Facility without pausing between the displayed price levels. Thereafter, the system will pause 5 seconds before moving to the next price level, until the Non-Directed Order is executed in full.

(iii) The interval delay described in this subparagraph may be modified upon Commission approval and appropriate notification to NNMS Participants.

(E) All entries in NNMS shall be made in accordance with the requirements set forth in the NNMS User Guide, as published from time to time by Nasdaq.

(2) Refresh Functionality

(A) Reserve Size Refresh—Once *a Nasdaq Quoting Market Participant's* [an NNMS Market Maker's displayed quotation] *Displayed Quote/Order* size on either side of the market in the security has been decremented to zero due to NNMS [executions] *processing* Nasdaq will refresh the [market maker's] displayed size out of Reserve Size to a size-level designated by the *Nasdaq Quoting Market Participant* [NNMS

Market Maker], or in the absence of such size-level designation, to the automatic refresh size. [If the market maker is using the reserve size function for its proprietary quote or Agency Quote the NNMS Market Maker must refresh to a minimum of 1,000 shares, consistent with subparagraph (b)(1)(A) of this rule]. *To utilize the Reserve Size functionality, a minimum of 1,000 shares must initially be displayed in the Nasdaq Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 1,000 shares. This functionality will not be available for use by UTP Exchanges.*

(B) [Auto q]*Quote Refresh (''QR'')*—Once an NNMS Market Maker's Displayed *Quote/Order* [quotation] size and Reserve Size on either side of the market in the security has been decremented to zero due to NNMS executions, the NNMS Market Maker may elect to have The Nasdaq Stock Market refresh the market maker's quotation as follows:

(i) Nasdaq will refresh the market maker's quotation price on the bid or offer side of the market, whichever is decremented to zero, by a[n] *price* interval designated by the NNMS Market Maker; and

(ii) Nasdaq will refresh the market maker's displayed size to a level designated by the NNMS Market Maker, or in the absence of such size level designation, to the automatic refresh size. [A Market Maker's Agency Quotation shall not be subject to the functionality described in this subparagraph.]

(iii) This functionality shall produce an Attributable Quote/Order. In addition, if an NNMS Market Maker is utilizing the QR functionality but has an Attributable Quote/Order in the system that is priced at or better than the quote that would be created by the QR, the NNMS will display the Attributable Quote/Order, not the QR-produced quote.

(iv) An NNMS Market Maker's Agency Quote shall not be subject to the functionality described in this subparagraph, nor shall this functionality be available to Quoting Market Participants other than NNMS Market Makers.

(3) *Entry of Locking/Crossing Quotes/Orders* [Except as otherwise provided in subparagraph (b)(10) of this rule, at any time a locked or crossed market, as defined in Rule 4613(e), exists for an NNMS security, a market maker with a quotation for that security (including an Agency Quote) that is causing the locked or crossed market may have orders representing shares equal to the size of the bid or offer that is locked or crossed executed by the NNMS system against the market maker's quote (including an Agency Quote) at the quoted price if that price is the best price. During locked or crossed markets, the NNMS system will execute orders against those market makers that are locked or crossed in predetermined time intervals. This period of time initially shall be established as five (5) seconds, but may be modified upon approval by the Commission and appropriate notification to NNMS participants.] *The system shall process locking/crossing Quotes/Orders as follows:*

(A) Locked/Crossed Quotes/Orders During Market Hours—If during market hours, a Quoting Market Participant enters into the NNMS a Quote/Order that will lock/cross the market (as defined in NASD Rule 4613(e)), the system will not display the Quote/Order as a quote in Nasdaq; instead the system will treat the Quote/Order as a marketable limit order and enter it into the system as a Non-Directed Order for processing (consistent with subparagraph (b) of this rule) as follows:

(i) For locked-market situations, the order will be routed to the Quoting Market Participant next in queue who would be locked, and the order will be executed (or delivered for execution) at the lock price;

(ii) For crossed-market situations, the order will be entered into the system and routed to the next Quoting Market Participants in queue who would be crossed, and the order will be executed (or delivered for execution) at the price of the Displayed Quote/Order that would have been crossed.

Once the lock/cross is cleared, if the participant's order is not completely filled, the system will reformat the order and display it in Nasdaq (consistent with the parameters of the Quote/Order) as a Quote/Order on behalf of the entering Quoting Market Participant.

(B) Locked/Crossed Quotes/Orders at the Open—If the market is locked or crossed at 9:30 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the oldest bid(offer) against the oldest offer(bid) against which it is marketable at the price of the oldest Quote/Order. Nasdaq then will begin processing Non-Directed Orders as described in subparagraph (b) of this rule.

[(4) For each NNM security in which a market maker is registered, the market maker may enter orders into the NNMS for its proprietary account as well as on an agency or riskless principal basis.]

[(5)] *(4)* An NNMS Market Maker may terminate its obligation by keyboard withdrawal (or its equivalent) from NNMS at any time. However, the market maker has the specific obligation to monitor its status in NNMS to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the market maker.

[(6)] *(5)* [An NNMS Market Maker will be suspended from NNMS if its bid or offer has been decremented to zero due to NNMS executions and will be permitted a standard grace period, the duration of which will be established and published by the Association, within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. An NNMS Market Maker that fails to reenter a two-sided quotation within the allotted time will be deemed to have withdrawn as a market maker (''Timed Out of the Box''). Except as provided below in this subparagraph and in subparagraph (b)(7) of this rule, an NNMS Market Maker that withdraws in an NNM security may not re-register as a market maker in that security for twenty (20) business days.] *If an NNMS Market Maker's Attributable Quote/Order is reduced to zero on one side of the market due to NNMS executions, the NNMS will close the Market Maker's quote in the NNMS with respect to both sides of its market, and the NNMS Market Maker will be permitted a grace period of three minutes within which to take action to restore its Attributable Quote/Order, if the market maker has not authorized use of the QR functionality or does not otherwise have an Attributable Quote/Order on both sides of the market in the system. An NNMS Market Maker that fails to transmit an Attributable Quote/Order in a security within the allotted time will have its quotation restored by the system at the lowest bid price and the highest offer price in that security. Except as provided in subparagraph (b)(6) of this rule, an NNMS Market Maker that withdraws from a security may not re-register in the system as a market maker in that security for twenty (20) business days. The requirements of this subparagraph shall not apply to a market maker's Agency Quote.*

[(A) Notwithstanding the above, a market maker can be reinstated if:

(i) the market maker makes a request for reinstatement to Nasdaq Market Operations as soon as practicable under the circumstances, but within at least one hour of having been Timed Out of the Box, and immediately thereafter provides written notification of the reinstatement request;

(ii) it was a Primary Market Maker at the time it was Timed Out of the Box;

(iii) the market maker's firm would not exceed the following reinstatement limitations:

a. for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than four (4) reinstatements per year;

b. for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year;

c. for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than twelve (12) reinstatements per year; and

(iv) the designated Nasdaq officer makes a determination that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market. In making this determination, the designated Nasdaq officer will consider, among other things:

a. whether the market conditions in the issue included unusual volatility or other unusual activity, and/or the market conditions in other issues in which the market maker made a market at the time the firm was Timed Out of the Box;

b. the frequency with which the firm has been Timed Out of the Box in the past;

c. procedures the firm has adopted to avoid being inadvertently Timed Out of the Box; and

d. the length of time before the market maker sought reinstatement.

(B) If a market maker has exhausted the reinstatement limitations in subparagraph (b)(6)(A)(iii) above, the designated Nasdaq officer may grant a reinstatement request if he or she finds that such reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determines that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where:

(i) a member firm experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system) or involving an automated system operated by Nasdaq;

(ii) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten days after the offering is complete; or

(iii) absent the reinstatement, the number of market makers in a particular issue is equal to two (2) or less or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter, except that if a market maker has a regular pattern of being frequently Timed Out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.]

[(7)] *(6)* Notwithstanding the provisions of subparagraph [(6)] *(5)* above:

(A) an NNMS Market Maker that obtains an excused withdrawal pursuant to Rule 4619 prior to withdrawing from NNMS may reenter NNMS according to the conditions of its withdrawal; and

(B) a NNMS Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and NNMS for NNMS securities, may reenter NNMS after a clearing arrangement has been reestablished and the market maker has compiled with ACT participant requirements. Provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

[(8)] *(7)* The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their removal from NNMS pursuant to subparagraph[s] (b)(*5*)[(6) or (b)(7)] of this rule.

[(9)] *(8)* In the event that a malfunction in the [NNMS Market Maker's] *Quoting Market Participant's* equipment occurs, rendering [on-line] communications with NNMS inoperable, the [NNMS Market Maker] *Quoting Market Participant* is obligated to immediately contact Nasdaq Market Operations by telephone to request withdrawal from NNMS *and a closed-quote status*, and *if the Quoting Market Participants is an NNMS Market Maker* an excused withdrawal from Nasdaq[. Such request must be made] pursuant to Rule 4619. If withdrawal is granted, Nasdaq Market Operations personnel will enter the withdrawal notification into NNMS from a supervisory terminal *and shall close the quote*. Such manual intervention, however, will take a certain period of time for completion and, *unless otherwise permitted by the Association pursuant to its authority under Rule 11890*, the [NNMS Market Maker] *Quoting Market Participants* will continue to be obligated for any transaction executed prior to the effectiveness of [his] *the* withdrawal *and closed-quote status*.

[(10) In the event that there are no NNMS Market Makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into NNMS will be held in queue until executable, or until 90 seconds has elapsed, after which such orders will be rejected and returned to their respective order entry firms.]

(c) Directed Order Processing—A participant may enter a Directed Order into the NNMS to access a specific Quote/Order in the Nasdaq Quotation Montage and to begin the negotiation process with a particular Quoting Market Participant. The system will deliver an order (not an execution) to the Quoting Market Participant designated as the recipient of the order. Upon delivery, the Quoting Market Participant shall owe no liability under the Firm Quote Rule to that order, unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders (as described in Rule 4706(b)). Additionally, upon delivery, the system will not decrement the receiving Quoting Market Participant's Quote/Order. This provision shall not apply to Preferenced Orders.

[(c)] *(d)* NNMS Order Entry Firms

All entries in NNMS shall be made in accordance with the procedures and requirements set forth in the NNMS User Guide. Orders may be entered in NNMS by the NNMS Order Entry Firm through either its Nasdaq terminal or computer interface. The system will transmit to the firm on the terminal screen and printer, if requested, or through the computer interface, as applicable, an execution report generated immediately following the execution.

[(d) Order Entry Parameters

(1) NNMS will only accept market and marketable limit orders for execution and will not accept market or marketable limit orders designated as All-or-None ("AON") orders; provided, however, that NNMS will not accept any limit orders, marketable or unmarketable, prior to 9:30 a.m., Eastern Time. For purposes of this subparagraph, an AON order is an order for an amount of securities equal to the size of the order and no less.

(2) Additionally, the NNMS will only accept orders that are unpreferenced, thereby resulting in execution in rotation against NNMS Market Makers, and will not accept preferenced orders.

(3) NNMS will not accept orders that exceed 9,900 shares, and no participant in the NNMS system shall enter an

order into the system that exceeds 9,900.]

[(e) Electronic Communication Networks

An Electronic Communications Networks, as defined in SEC Rule 11Ac1–1(a)(8), may participate in the NNMS System if it complies with NASD Rule 4623 and executes with the Association a Nasdaq Workstation Subscriber Agreement, as amended, for ECNs.]

(e) Odd-Lot Processing

(1) Participation in Odd-Lot Process—All NNMS Market Makers may participate in the Odd-Lot Process for each security in which the market maker is registered.

(2) Execution Process

(A) Odd-lot orders will be executed against an NNMS Market Maker only if it has an odd-lot exposure limit in an amount that would fill the odd-lot order. A NNMS Market Maker may, on a security-by-security basis, set an odd-lot exposure limit from 0 to 999,999 shares.

(B) An odd-lot order shall be executed automatically against the next available NNMS Market Maker when the odd-lot order becomes executable (i.e., when the best price in Nasdaq moves to the price of the odd-lot limit order). Such odd-lot orders will execute at the best price available in the market, in rotation against NNMS Market Makers who have an exposure limit that would fill the odd-lot order.

(C) For odd lots that are part of a mixed lot, once the round-lot portion is executed, the odd-lot portion will be executed at the round-lot price against the next NNMS Market Maker in rotation (as described in subparagraph (e)(2)(b) of this rule) even if the round-lot price is no longer the best price in Nasdaq.

(D) Odd-lot executions will decrement the odd-lot exposure limit of an NNMS Market Maker but will not decrement the size of NNMS Market Maker's Displayed Quote/Order.

(E) After the NNMS system has executed an odd lot against an NNMS Market Maker, the system will not deliver another odd-lot order against the same market maker until a predetermined time period has elapsed from the time the last execution was delivered, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be increased upon Commission approval and appropriate notification to NNMS Participants or may be decreased to an amount less than five seconds by the NNMS Market Maker.

(f) UTP Exchanges

Participation in the NNMS by UTP Exchanges is voluntary. If a UTP Exchange elects to participate in the system, Nasdaq shall endeavor to provide fair and equivalent access to the Nasdaq market for UTP Exchanges, as a UTP Exchange provides to its market for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. The following provisions shall apply to UTP Exchanges that choose to participate in the NNMS:

(1) Order Entry—UTP Exchanges that elect to participate in the system shall be permitted to enter Directed and Non-Directed Orders into the system subject to the conditions and requirements of Rules 4706. Directed and Non-Directed Orders entered by UTP Exchanges shall be processed (unless otherwise specified) as described in subparagraphs (b) and (c) of this rule.

(2) Display of UTP Exchange Quotes/Orders in Nasdaq

(A) UTP Exchange Principal Orders/Quotes—UTP Exchanges that elect to participate in the system shall be permitted to transmit to the NNMS a single bid Quote/Order and a single offer Quote/Order. Upon transmission of the Quote/Order to Nasdaq, the system shall time stamp the Quote/Order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders. The NNMS shall display the best bid and best offer Quote/Order transmitted to Nasdaq by a UTP Exchange in the Nasdaq Quotation Montage under the MMID for the UTP Exchange, and shall also display such Quote/Order in the Nasdaq Order Display Facility as part of the aggregate trading interest when the UTP Exchange's best bid/best offer Quote/Order falls within the best three price levels in Nasdaq on either side of the market.

(B) UTP Exchange Agency Quotes/Orders

(i) A UTP Exchange that elect to participate in the system may transmit to the NNMS Quotes/Orders at a single as well as multiple price levels that meet the following requirements: are not for the benefit of a broker and/or dealer that is with respect to the UTP Exchange a registered or designated market maker, dealer or specialist in the security at issue; and are designated as Non-Attributable Quotes/Orders ("UTP Agency Order/Quote").

(ii) Upon transmission of a UTP Agency Quote/Order to Nasdaq, the system shall time stamp the order, which time stamp shall determine the ranking of these Quote/Order for purposes of processing Non-Directed Orders, as described in subparagraph (b) of this rule. A UTP Agency Quote/Order shall not be displayed in the Nasdaq Quotation Montage under the MMID for the UTP Exchange. Rather, UTP Agency Quotes/Orders shall be reflected in the Nasdaq Order Display Facility and Nasdaq Quotation Montage in the same manner in which Non-Attributable Quotes/Orders from Nasdaq Quoting Market Participants are reflected in Nasdaq, as described in Rule 4707(b)(2).

(3) Non-Directed Order Processing

(a) UTP Exchanges that elect to participate in the system and that agree to provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept an execution of an order up to the size of the UTP Exchange's displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule.

(b) UTP Exchanges that elect to participate in the system but that do not provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept the delivery of an order up to the size of the UTP Exchange's Displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule. If such a UTP Exchange declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Quote/Order that is at a price inferior to the previous price, or if such a UTP Exchange fails to respond in any manner within 30 seconds of order delivery, the NNMS will send the order (or remaining portion thereof) back into the system for delivery to the next Quoting Market Participant in queue. The system will then move the side of such UTP Exchange's Quote/Order to which the declined or partially-filled order was delivered, to the lowest bid or highest offer price in Nasdaq, at a size of 100 shares.

(4) Directed Order Processing—UTP Exchanges that elect to participate in the system shall participate in the Directed Order processing as described in subparagraph (c) of this rule.

(5) Decrementation—UTP Exchanges shall be subject to the decrementation procedures described in subparagraph (b) of this rule.

(6) *Scope of Rules " Nothing in these rules shall apply to UTP Exchanges that elect not to participate in the system.*

4711–4714—No Change

4718. Termination of System Service

The Association or its subsidiaries may, upon notice, terminate system service to a participant in the event that a participant fails to abide by any of the rules or operating procedures of the System or any other relevant rule or requirement, or fails to pay promptly for services rendered.

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4750. SMALLCAP SMALL ORDER EXECUTION SYSTEM (SOES)

4751–4757—Deleted

B. *Proposed Rule Language for File No. NASD–99–53 containing Alternative B* Proposed additions are in *italics* and proposed deletions are placed in [brackets].

4720. SelectNet Service—Deleted

* * * * *

4611. Registration as a Nasdaq Market Maker

(a)–(e) No Change.

(f) Unless otherwise specified by the Association, each Nasdaq market maker that is registered as a market maker in a Nasdaq[National Market security]-*listed security* shall also at all times be registered as a market maker in the Nasdaq National Market Execution System (NNMS) with respect to that security and be subject to the NNMS Rules as set forth in the Rule 4700 Series. [Participation in the Small Order Execution System (SOES) shall be voluntary for any Nasdaq market maker registered to make a market in a Nasdaq SmallCap security.]

* * * * *

(g) No Change.

4613. Character of Quotations

(a) Two-Sided Quotations

(1) For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain *a* two-sided quotation[s] *("Principal Quote"), which is attributed to the market maker by a special maker participant identifier ("MMID") and is displayed in the Nasdaq Quotation Montage* [in The Nasdaq Stock Market] *at all times,* subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) A registered market maker in a *Nasdaq-listed* security [listed on The Nasdaq Stock Market] must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation. *Unless otherwise designated, a "normal unit of trading" shall be 100 shares.*

(b) Agency Quote—Amendments Pending Pursuant to SR–NASD–99–09.

(c)–(e) No Change.

IM–4613. Autoquote Policy—No Change

4618. Clearance and Settlement

(a)–(b) No Changes.

(c) All transactions through the *facilities of the* Nasdaq National Market Execution System[, SOES, and SelectNet services] shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

* * * * *

4619. Withdrawal of Quotations and Passive Market Making

(a)–(b) No Change.

(c) Excused withdrawal status may be granted to a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction service, thereby terminating its registration as a market maker in Nasdaq issues. Provided however, that if the Association finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620[, the Rules for the Small Order Execution System, as set forth in the Rule 4750 Series,] and the Rule 4700 Series governing the Nasdaq['s] National Market Execution System.

(d) No Change.

* * * * *

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its *Principal* [quotations] *Quote* from The Nasdaq Stock Market. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from participation as a market maker in a Nasdaq [National Market]-*listed* security in the Nasdaq National Market Execution System shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in Nasdaq-*listed* [National Market and SmallCap] issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

* * * * *

4632. Transaction Reporting

(a)–(d) No Change.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions executed through the Computer Assisted Execution System (CAES), *or* the *facilities of the* Nasdaq National Market Execution System ("NNMS")[, or the SelectNet service];

(2)–(6) No Change.

(f) No Change.

4642. Transaction Reporting

(a)–(d) No Change.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions executed through the Computer Assisted Execution System (CAES)[; the Small Order Execution System (SOES) or the SelectNet service] *or facilities of the Nasdaq National Market Execution System ("NNMS").*

(2)–(5) No Change.

(f) No Change.

* * * * *

4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM (NNMS)

4701. Definitions—*Unless stated otherwise, the terms described below shall have the following meaning:*

[(d)] *(a)* The term "active NNMS securities" shall mean those NNMS eligible securities in which at least one NNMS Market Maker is currently active in NNMS.

[(i)] *(b)* The term "Agency Quote" shall mean the quotation that a registered NNMS Market Maker is permitted to display pursuant to the requirements of NASD Rule 4613(b).

(c) The term "Attributable Quote/Order" shall have the following meaning:

(1) For NNMS Market Makers and NNMS ECNs, a bid or offer Quote/Order that is designated for display (price and

size) next to the participant's MMID in the Nasdaq Quotation Montage once such Quote/Order becomes the participant's best attributable bid or offer.

(2) For UTP Exchanges, the best bid and best offer quotation with price and size that is transmitted to Nasdaq by the UTP Exchange, which is displayed next to the UTP Exchange's MMID in the Nasdaq Quotation Montage.

[(h)] *(d)* The term "Automated Confirmation Transaction" service or "ACT" shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which compares trade information entered by ACT Participants and submits "locked-in" trades to clearing.

[(g)] *(e)* The term "automatic refresh size" shall mean the default size to which an NNMS Market Maker's quote will be refreshed pursuant to NASD Rule 4710(b)(2), if the market maker *elects to utilize the Quote Refresh Functionality and* does not designate to Nasdaq an alternative refresh size, *which must be at least one normal unit of trading.* The [maximum order] automatic refresh size default [size] *amount* shall be 1,000 shares.

(f) The term "Directed Order" shall mean an order that is entered into the system by an NNMS participant that is directed to a particular Quoting Market Participant at any price, through the Directed Order process described in Rule 4710(c). This term shall not include the "Preferenced Order" described in subparagraph (aa) of this rule.

(g) The term "Displayed Quote/Order" shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted to Nasdaq by Quoting Market Participants.

(h) The term "Firm Quote Rule" shall mean SEC Rule 11Ac1–1.

(i) The term "Immediate or Cancel" shall mean, for limit orders so designated, that if after entry into the NNMS a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant.

(j) The term "Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes an obligation to respond to such order in a manner consistent with the Firm Quote Rule.

(k) The term "limit order" shall mean an order to buy or sell a stock at a specified price or better.

(l) The term "market order" shall mean an unpriced order to buy or sell a stock at the market's current best price.

(m) The term "marketable limit order" shall mean a limit order to buy that, at the time it is entered into the NNMS, is priced at the current inside offer or higher, or a limit order to sell that, at the time it is entered into the NNMS, is priced at the inside bid or lower.

(n) The term "mixed lot" shall mean an order that is for more than a normal unit of trading but not a multiple thereof.

(o) The term "Non-Attributable Quote/Order" shall mean a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility.

(p) The term "Non-Directed Order" shall mean an order that is entered into the system by an NNMS Participant and is not directed to any particular Quoting Market Participant, and shall also include Preferenced Orders as described in subparagraph (aa) of this rule.

(q) The term "Non-Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes no obligation to respond to such order under the Firm Quote Rule.

[(a)] *(r)* The term "Nasdaq National Market Execution System," [or] "NNMS," *or "system"* shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which enables NNMS Participants to execute transactions in active NNMS authorized securities; to have reports of the transactions automatically forwarded to the National Market Trade Reporting System, if required, for dissemination to the public and the industry, and to "lock in" these trades by sending both sides to the applicable clearing corporation(s) designated by the NNMS Participant(s) for clearance and settlement; and to provide NNMS Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

[(c)] *(s)* The term "NNMS eligible securities" shall mean designated Nasdaq-*listed* [National Market (NNM)] equity securities.

(t) The term "NNMS ECN" shall mean a member of the Association that meets all of the requirements of NASD Rule 4623, and that participates in the NNMS with respect to one or more NNMS eligible securities.

(1) The term "NNMS Auto-Ex ECN" shall mean an NNMS ECN that participates in the automatic-execution functionality of the NNMS system, and accordingly executes Non-Directed Orders via automatic execution for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or offer price.

(2) The term "NNMS Order-Delivery ECN" shall mean an NNMS ECN that participates in the order-delivery functionality of the NNMS system, accepts delivery of Non-Directed Orders that are Liability Orders, and provides an automated execution of Non-Directed Orders (or an automated rejection of such orders if the price is no longer available) for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or offer price.

[(e)] *(u)* The term "NNMS Market Maker" shall mean a member of the Association that is registered as a Nasdaq Market Maker and as a Market Maker for purposes of participation in NNMS with respect to one or more NNMS eligible securities, and is currently active in NNMS and obligated to execute orders *through the automatic-execution functionality of the NNMS system* for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or [ask] *offer* price.

[(b)] *(v)* The term "NNMS Participant" shall mean [either] an NNMS Market Maker, *NNMS ECN, UTP Exchange,* or NNMS Order Entry Firm registered as such with the Association for participation in NNMS.

[(f)] *(w)* The term "NNMS Order Entry Firm" shall mean a member of the Association who is registered as an Order Entry Firm for purposes of participation in NNMS which permits the firm to enter orders [of limited size] for execution against NNMS Market Makers.

(x) The term "Nasdaq Quotation Montage" shall mean the portion of the Nasdaq WorkStation presentation that displays for a particular stock two columns (one for bid, one for offer), under which is listed in price/time priority the MMIDs for each NNMS Market Maker, NNMS ECN, and UTP Exchange registered in the stock and the corresponding quote (price and size) next to the related MMID.

(y) The term "Nasdaq Quoting Market Participant" shall include only the following: (1) NNMS Market Makers; or (2) NNMS ECNs.

(z) The term "odd-lot order" shall mean an order that is for less than a normal unit of trading.

(aa) The term "Preferenced Order" shall mean an order that is entered into the Non-Directed Order Process and is designated to be delivered to or executed against a particular Quoting Market Participant's Attributable Quote/Order if the Quoting Market Participant is at the best bid/best offer when the

Preferenced Order is the next in line to be executed or delivered. Preferenced Orders shall be executed subject to the conditions set out in Rule 4710(b).

(bb) The term "Quote/Order" shall mean a single quotation or shall mean an order or multiple orders at the same price submitted to Nasdaq by a Nasdaq Quoting Market Participant that is displayed in the form of a single quotation. Unless specifically referring to a UTP Exchange's Agency Quote/Order (as set out in Rule 4710(f)(2)(b)), when this term is used in connection with a UTP Exchange, it shall mean the best bid and/or the best offer quotation transmitted to Nasdaq by the UTP Exchange.

(cc) The term "Quoting Market Participant" shall include any of the following: (1) NNMS Market Makers; (2) NNMS ECNs; and (3) UTP Exchange Specialists.

(dd) The term "Reserve Size" shall mean the system-provided functionality that permits a Nasdaq Quoting Market Participant to display in its Displayed Quote/Order part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part after the displayed part is executed.

(ee) The term "Nasdaq Order Display Facility" shall mean the portion of the Nasdaq WorkStation presentation that displays, without attribution to a particular Quoting Market Participant's MMID, the three best price levels in Nasdaq on both the bid and offer side of the market and the aggregate size of Attributable and Non-Attributable Quotes/Orders at each price level.

(ff) The term "UTP Exchange" shall mean any registered national securities exchange that elects to participate in the NNMS and that has unlisted trading privileges in Nasdaq National Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").

4705. NNMS Participant Registration

(a) Participation in NNMS as an NNMS Market Maker requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Market Maker's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;

(3) registration as a market maker in The Nasdaq Stock Market pursuant to the Rule 4600 Series and compliance with all applicable rules and operating procedures of the Association and the Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Market Maker to prevent the *improper use or access to Nasdaq systems*, including unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(b) Pursuant to Rule 4611(f), participation as an NNMS Market Maker is required for any Nasdaq market maker registered to make a market in an NNMS security.

(c) Participation in NNMS as an NNMS Order Entry Firm requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Order Entry Firm's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;

(3) compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Order Entry Firm to prevent the *improper use or access to Nasdaq systems, including* unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Order Entry Firm or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(d) Participation in NNMS as an NNMS ECN requires current registration as an NASD member and shall be conditioned upon the following:

(1) the execution of an NNMS Participant application agreement with the Association;

(2) compliance with all requirements in NASD Rule 4623 and all other applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(3) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS-compared trades may be settled;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS ECN to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each trade that is executed through the facilities of the NNMS, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

[(d)] *(e)* The registration required hereunder will apply solely to the qualification of an NNMS Participant to participate in NNMS. Such registration shall not be conditioned upon registration in any particular eligible or active NNMS securities.

[(e)] *(f)* Each NNMS Participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

(g) The Association and its subsidiaries shall not be liable for any losses, damages, or other claims arising out of the NNMS or its use. Any losses, damages, or other claims, related to a failure of the NNMS to deliver, display, transmit, execute, compare, submit for clearance and settlement, or otherwise process an order, Quote/Order, message, or other data entered into, or created by, the NNMS shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the NNMS.

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) An NNMS Participant may enter into the NNMS a Non-Directed Order in order to access the best bid/best offer as displayed in Nasdaq.

(B) A Non-Directed Order must be a market or marketable limit order, must be a round lot or a mixed lot, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and if entered by a Quoting Market Participant may be designated as Immediate or Cancel.

(C) The system will not process a Non-Directed Order to sell short if the execution of such order would violate NASD Rule 3350.

(D) Non-Directed Orders will be processed as described in Rule 4710.

(E) The NNMS shall not accept Non-Directed Orders that are All-or-None, or have a minimum size of execution.

(2) Entry of Non-Directed Orders by NNMS Order Entry Firms " In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by NNMS Order-Entry Firms:

(A) All Non-Directed orders shall be designated as Immediate or Cancel. As such, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) A Non-Directed Order that is a limit order may be entered prior to the market's open. Such orders will be held in queue, and if not marketable on the market's open, will be returned to the entering participant.

(b) Directed Orders A participant may enter a Directed Order into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of entry must be designated as:

(A) an "All-or-None" order ("AON") that is at least one normal unit of trading (e.g. 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or

(B) a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(2) A Directed Order may have a time in force of 1 to 99 minutes.

(3) Directed Orders shall be processed pursuant to Rule 4710(c).

(c) Entry of Agency and Principal Orders—NNMS Participants are permitted to enter into the NNMS both agency and principal orders for delivery and execution processing.

(d) Order Size—Any round or mixed lot order up to 999,999 shares may be entered into the NNMS for normal execution processing. Odd-lot orders, and the odd-lot portion of a mixed lot, are subject to a separate execution process, as described in Rule 4710(e).

(e) Open Quotes—The NNMS will only deliver an order or an execution to a Quoting Market Participant if that participant has an open quote.

(f) Odd-Lot Orders—The system will accept odd-lot orders for processing through a separate facility. Odd-lot orders must be Non-Directed Orders, and may be market, marketable limit or limit orders. The system shall accept odd-lot orders at a rate no faster than one order per/second from any single participant. Odd-lot orders, and the odd-lot portion of a mixed lot order, shall be processed as described in Rule 4710(e).

4707. Entry and Display of Quotes/Orders

(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/Orders into the NNMS subject to the following requirements and conditions:

(1) Nasdaq Quoting Market Participants shall be permitted to transmit to the NNMS multiple Principal and Agency Quotes/Orders at a single as well as multiple price levels. Such Quote/Order shall indicate whether it is an "Attributable Quote/Order" or "Non-Attributable Quote/Order," and the amount of Reserve Size (if applicable).

(2) Upon entry of a Quote/Order into the system, the NNMS shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule 4710(b). For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-stamp for the original quantity of the quote and assign a separate time-stamp to that size increase.

(3) Consistent with Rule 4613, an NNMS Market Maker is obligated to maintain a two-sided Attributable Quote/Order (other that an Agency Quote) at all times, for at least one normal unit of trading.

(4) Nasdaq Quoting Market Participants may continue to transmit to the NNMS only their best bid and best offer Attributable Quotes/Orders. Notwithstanding NASD Rule 4613 and subparagraph (a)(1) of this rule, nothing in these rules shall require a Nasdaq Quoting Market Participant to transmit to the NNMS multiple Quotes/Orders.

(b) Display of Quotes/Orders in Nasdaq—The NNMS will display a Nasdaq Quoting Market Participant's Quotes/Orders as follows:

(1) Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's best priced Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID, and also will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Attributable Quote/Order falls within the best three price levels in Nasdaq on either side of the market. Upon execution or cancellation of the Nasdaq Quoting Market Participant's best-priced Attributable Quote/Order on a particular side of the market, the NNMS will automatically display the participant's next best Attributable Quote/Order on that side of the market.

(2) Non-Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's Non-Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Non-Attributable Quote/Order falls within the best three price levels in Nasdaq on either side of the market. A Non-Attributable Order will not be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID. Non-Attributable Quotes/Orders that are the best priced Non-Attributable bids or offers in the system will be displayed in the Nasdaq Quotation Montage under an anonymous MMID, which shall represent and reflect the aggregate size of all Non-Attributable Quotes/Orders in Nasdaq at that price level. Upon execution or cancellation of a Nasdaq Quoting Market Participant's Non-Attributable Quote/Order, the NNMS will automatically display a Non-Attributable Quote/Order in the Nasdaq Order Display Facility (consistent with the parameters described above) if it falls within the best three price levels in Nasdaq on either side of the market.

(c) Reserve Size—Reserve Size shall not be displayed in Nasdaq, but shall be electronically accessible as described in Rule 4710(b).

(d) Summary Scan—The "Summary Scan" functionality, which is a query-only non-dynamic functionality, displays without attribution to Quoting Market Participants' MMIDs the aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) below the three price levels displayed in the Nasdaq Order Display Facility.

(e) NQDS Prime—"NQDS Prime" is a separate data feed that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to Quoting Market Participants' MMIDs all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are disseminated in the Nasdaq Order Display Facility.

4710. Participant Obligations in NNMS

(a) Registration—Upon the effectiveness of registration as a NNMS Market Maker, NNMS ECN, or NNMS Order Entry Firm, the NNMS Participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) [Market Makers] *Non-Directed Orders*

(1) [An NNMS Market Maker] *General Provisions—A Quoting Market Participant* in an NNMS Security shall be subject to the following requirements *for Non-Directed Orders:*

(A) *Obligations*—For each NNM*S* security in which it is registered [as an NNMS Market Maker, the market maker], *a Quoting Market Participant* must *accept and* execute individual *Non-Directed* Orders against its quotation including its Agency Quote (if applicable), in an amount equal to or smaller than the combination of the Displayed [quotation] *Quote/Order* and Reserve Size *(if applicable)* of such [quotation(s)] *Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq.* [For purposes of this rule, the term "reserved size" shall mean that a NNMS Market Maker or a customer thereof wishes to display publicly part of the full size of its order or interest with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed. To utilize the reserve size function, a minimum of 1,000 shares must initially be displayed in the market maker's quote (including the Agency Quote), and the quotation must be refreshed to 1,000 shares consistent with subparagraph (b)(2)(A) of this rule.] *Quoting Market Participants shall participate in the NNMS as follows:*

(i) NNMS Market Makers and NNMS Auto-Ex ECNs shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute such order in a manner consistent with the Firm Quote Rule.

(iii) UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B) (i)–(iii) of this rule), and shall deliver an execution to Quoting Market Participants that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system; provided however, that the system always shall deliver an order (in lieu of an execution) to the Quoting Market Participant next in queue when the participant that entered the Non-Directed Order into the system is a UTP Exchange that does not provide automatic execution against its Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. Non-Directed Orders entered into the NNMS system shall be *delivered to or* automatically executed against *Quoting Market Participants'* Displayed [quotations] *Quotes/Orders* and Reserve Size, including Agency Quotes (if applicable), in *strict* price/time priority, *as described in the algorithm contained in subparagraph (b)(B)(i) of this rule* [For quotes at the same price, the system will yield priority to all displayed quotations over reserve size, so that the system will execute against Displayed quotations in time priority and then against reserve size in time priority]. *Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule.*

(i) Default Execution Algorithm—Price/Time—The system will default to a strict price/time priority within Nasdaq, and will attempt to access interest in the system in the following priority and order:

(a) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs, and Non-Attributable Agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in time priority between such participants' Quotes/Orders.

(b) Reserve Size of Nasdaq Quoting Market Participants, in time priority between such participants' Quotes/Orders; and

(c) Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(ii) Price/Time Priority Considering Quote-Access Fees—If this options is chosen, the system will attempt to access interest in the system in the following priority and order:

(a) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, and Non-Attributable Agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), as well as Quotes/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order indicates that the price improvement offered by the specific Quote/Order is equal to or exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quotes/Orders;

(b) Displayed Quotes/Orders of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participants' Quotes/Orders;

(c) Reserve Size of NNMS Market Makers and NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, as well as Reserve Size of Quotes/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order has indicated that the price improvement offered by the

specific Quote/Order is equal to or exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quotes/Orders;

(d) Reserve Size of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participants' Quotes/Orders; and

(e) Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(iii) Price/Size Priority—If this option is chosen, Non-Directed Orders shall be executed in price/size/time priority against:

(a) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs, and Non-Attributable Agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in price/size/time priority between such participants' Quotes/Orders:

(b) the Reserve Size of Nasdaq Quoting Market Participants, in price/size/time priority between such participants' Quotes/Orders, which size priority shall be based on the size of the Displayed Quote/Order, and not on the amount held in Reserve Size; and

(c) Principal Quotes/Orders of UTP Exchanges, in price/size/time priority between such participants' Quotes/Orders.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq.

(b) If an NNMS Market Participant enters a Preferenced Order, the order shall be executed against (or delivered in an amount equal to) both the Displayed Quote/Order and Reserve Size of the Quoting Market Participant to which the order is being directed, if that Quoting Market Participant is at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed). Any unexecuted portion of a Preferenced Order shall be returned to the entering NNMS Market Participant. If the Quoting Market Participant is not at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed), the Preferenced Order shall be returned to the entering NNMS Market Participant.

(C) *Decrementation Procedures*—The size of a [displayed quotation] *Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage* will be decremented upon the *delivery of a Liability Order or the delivery of an* execution of a[n NNMS] *Non-Directed* [o]Order or Preferenced Order in an amount equal to [or greater than one normal unit of trading] *the system-delivered order or execution;* provided, however, that [the execution of] *if* an NNMS order that is a mixed lot, *the system will only deliver a Liability Order or an execution for the number of round lots contained in the mixed lot order, and* will only decrement [a displayed quotation's] *the* size of a *Displayed Quote/Order* by the number of shares represented by the number of round lots contained in the mixed lot order. *The odd-lot portion of the mixed lot will be executed at the same price against the NNMS Market Maker next in the odd lot rotation, as described in subparagraph (e) of this rule.*

(i) If an NNMS Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmission of another Attributable Quote/Order to Nasdaq, the system will zero out the side of the quote that is exhausted. If both the bid and offer are decremented to zero without transmission of a revised Attributable Quote/Order, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within 30 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue. The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(iii) If an NNMS ECN's Quote/Order has been zeroed out or if the ECN has been placed into excused withdrawal as described in subparagraphs (b)(1)(C)(i) and (ii) of this rule, the system will continue to access the ECN's Non-Attributable Quotes/Orders that are in the NNMS, as described in Rule 4707 and subparagraph (b) of this rule.

(iv) If an NNMS ECN regularly fails to meet a 5-second response time (as measured by the ECN's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ECN's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the NNMS ECN certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market.

(D) *Interval Delay*—After the NNMS system has executed *all Displayed Quotes/Orders and Reserve Size interest at a price level* [an order against a market maker's displayed quote and reserve size (if applicable), that market maker shall not be required to execute another order at its bid or offer in the same security until a predetermined time period has elapsed from the time the order was executed, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be modified upon Commission approval and appropriate notification to NNMS participants.], *the following will occur:*

(i) If the NNMS system cannot execute in full all shares of a Non-Directed Order against the Displayed Quotes/Orders and Reserve Size interest at the initial price level and at price two minimum trading increments away, the system will pause for 5 seconds before accessing the interest at the next price level in the system; provided, however, that once the Non-Directed Order can be filled in full within two price levels, there will be no interval delay between price levels and the system will execute the remainder of order in full; or

(ii) If the Non-Directed Orders is specially designated by the entering market participant as a "sweep order," the system will execute against all Displayed Quotes/Orders and Reserve Size at the initial price level and the two price levels being displayed in the Nasdaq Order Display Facility without pausing between the displayed price levels. Thereafter, the system will pause 5 seconds before moving to the next price level, until the Non-Directed Order is executed in full.

(iii) The interval delay described in this subparagraph may be modified upon Commission approval and appropriate notification to NNMS Participants.

(E) All entries in NNMS shall be made in accordance with the requirements set

forth in the NNMS User Guide, as published from time to time by Nasdaq.

(2) Refresh Functionality

(A) Reserve Size Refresh—Once *a Nasdaq Quoting Market Participant's* [an NNMS Market Maker's displayed quotation] *Displayed Quote/Order* size on either side of the market in the security has been decremented to zero due to NNMS [executions] *processing* Nasdaq will refresh the [market maker's] displayed size out of Reserve Size to a size-level designated by the *Nasdaq Quoting Market Participant* [NNMS Market Maker], or in the absence of such size-level designation, to the automatic refresh size. [If the market maker is using the reserve size function for its proprietary quote or Agency Quote the NNMS Market Maker must refresh to a minimum of 1,000 shares, consistent with subparagraph (b)(1)(A) of this rule]. *To utilize the Reserve Size functionality, a minimum of 1,000 shares must initially be displayed in the Nasdaq Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 1,000 shares. This functionality will not be available for use by UTP Exchanges.*

(B) [Auto q]Quote Refresh (*"QR"*)—Once an NNMS Market Maker's Displayed *Quote/Order* [quotation] size and Reserve Size on either side of the market in the security has been decremented to zero due to NNMS executions, the NNMS Market Maker may elect to have The Nasdaq Stock Market refresh the market maker's quotation as follows:

(i) Nasdaq will refresh the market maker's quotation price on the bid or offer side of the market, whichever is decremented to zero, by a[n] *price* interval designated by the NNMS Market Maker; and

(ii) Nasdaq will refresh the market maker's displayed size to a level designated by the NNMS Market Maker, or in the absence of such size level designation, to the automatic refresh size. [A Market Maker's Agency Quotation shall not be subject to the functionality described in this subparagraph.]

(iii) This functionality shall produce an Attributable Quote/Order. In addition, if an NNMS Market Maker is utilizing the QR functionality but has an Attributable Quote/Order in the system that is priced at or better than the quote that would be created by the QR, the NNMS will display the Attributable Quote/Order, not the QR-produced quote.

(iv) An NNMS Market Maker's Agency Quote shall not be subject to the functionality described in this subparagraph, nor shall this functionality be available to Quoting Market Participants other than NNMS Market Makers.

(3) *Entry of Locking/Crossing Quotes/Orders* [Except as otherwise provided in subparagraph (b)(10) of this rule, at any time a locked or crossed market, as defined in Rule 4613(e), exists for an NNMS security, a market maker with a quotation for that security (including an Agency Quote) that is causing the locked or crossed market may have orders representing shares equal to the size of the bid or offer that is locked or crossed executed by the NNMS system against the market maker's quote (including an Agency Quote) at the quoted price if that price is the best price. During locked or crossed markets, the NNMS system will execute orders against those market makers that are locked or crossed in predetermined time intervals. This period of time initially shall be established as five (5) seconds, but may be modified upon approval by the Commission and appropriate notification to NNMS participants.] *The system shall process locking/crossing Quotes/Orders as follows:*

(A) Locked/Crossed Quotes/Orders During Market Hours—If during market hours, a Quoting Market Participant enters into the NNMS a Quote/Order that will lock/cross the market (as defined in NASD Rule 4613(e)), the system will not display the Quote/Order as a quote in Nasdaq; instead the system will treat the Quote/Order as a marketable limit order and enter it into the system as a Non-Directed Order for processing (consistent with subparagraph (b) of this rule) as follows:

(i) For locked-market situations, the order will be routed to the Quoting Market Participant next in queue who would be locked, and the order will be executed (or delivered for execution) at the lock price;

(ii) For crossed-market situations, the order will be entered into the system and routed to the next Quoting Market Participants in queue who would be crossed, and the order will be executed (or delivered for execution) at the price of the Displayed Quote/Order that would have been crossed.

Once the lock/cross is cleared, if the participant's order is not completely filled, the system will reformat the order and display it in Nasdaq (consistent with the parameters of the Quote/Order) as a Quote/Order on behalf of the entering Quoting Market Participant.

(B) Locked/Crossed Quotes/Orders at the Open—If the market is locked or crossed at 9:30 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the oldest bid(offer) against the oldest offer(bid) against which it is marketable at the price of the oldest Quote/Order. Nasdaq then will begin processing Non-Directed Orders as described in subparagraph (b) of this rule.

[(4) For each NNM security in which a market maker is registered, the market maker may enter orders into the NNMS for its proprietary account as well as on an agency or riskless principal basis.]

[(5)] *(4)* An NNMS Market Maker may terminate its obligation by keyboard withdrawal (or its equivalent) from NNMS at any time. However, the market maker has the specific obligation to monitor its status in NNMS to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the market maker.

[(6)] *(5)* [An NNMS Market Maker will be suspended from NNMS if its bid or offer has been decremented to zero due to NNMS executions and will be permitted a standard grace period, the duration of which will be established and published by the Association, within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. An NNMS Market Maker that fails to reenter a two-sided quotation within the allotted time will be deemed to have withdrawn as a market maker ("Timed Out of the Box"). Except as provided below in this subparagraph and in subparagraph (b)(7) of this rule, an NNMS Market Maker that withdraws in an NNM security may not re-register as a market maker in that security for twenty (20) business days.] *If an NNMS Market Maker's Attributable Quote/Order is reduced to zero on one side of the market due to NNMS executions, the NNMS will close the Market Maker's quote in the NNMS with respect to both sides of its market, and the NNMS Market Maker will be permitted a grace period of three minutes within which to take action to restore its Attributable Quote/Order, if the market maker has not authorized use of the QR functionality or does not otherwise have an Attributable Quote/Order on both sides of the market in the system. An NNMS Market Maker that fails to transmit an Attributable Quote/Order in a security within the allotted time will have its quotation restored by the system at the lowest bid price and the highest offer price in that security. Except as provided in subparagraph (b)(6) of this rule, an NNMS Market Maker that withdraws from a security may not re-register in the system as a market maker in that security for twenty (20) business days. The requirements of*

this subparagraph shall not apply to a market maker's Agency Quote.

[(A) Notwithstanding the above, a market maker can be reinstated if:

(i) the market maker makes a request for reinstatement to Nasdaq Market Operations as soon as practicable under the circumstances, but within at least one hour of having been Timed Out of the Box, and immediately thereafter provides written notification of the reinstatement request;

(ii) it was a Primary Market Maker at the time it was Timed Out of the Box;

(iii) the market maker's firm would not exceed the following reinstatement limitations:

a. for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than four (4) reinstatements per year;

b. for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year;

c. for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than twelve (12) reinstatements per year; and

(iv) the designated Nasdaq officer makes a determination that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market. In making this determination, the designated Nasdaq officer will consider, among other things:

a. whether the market conditions in the issue included unusual volatility or other unusual activity, and/or the market conditions in other issues in which the market maker made a market at the time the firm was Timed Out of the Box;

b. the frequency with which the firm has been Timed Out of the Box in the past;

c. procedures the firm has adopted to avoid being inadvertently Timed Out of the Box; and

d. the length of time before the market maker sought reinstatement.

(B) If a market maker has exhausted the reinstatement limitations in subparagraph (b)(6)(A)(iii) above, the designated Nasdaq officer may grant a reinstatement request if he or she finds that such reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determines that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where:

(i) a member firm experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system) or involving an automated system operated by Nasdaq;

(ii) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten days after the offering is complete; or

(iii) absent the reinstatement, the number of market makers in a particular issue is equal to two (2) or less or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter, except that if a market maker has a regular pattern of being frequently Timed Out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.]

[(7)] *(6)* Notwithstanding the provisions of subparagraph [(6)] *(5)* above:

(A) an NNMS Market Maker that obtains an excused withdrawal pursuant to Rule 4619 prior to withdrawing from NNMS may reenter NNMS according to the conditions of its withdrawal; and

(B) a NNMS Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and NNMS for NNM*S* securities, may reenter NNMS after a clearing arrangement has been reestablished and the market maker has compiled with ACT participant requirements. Provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

[(8)] *(7)* The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their removal from NNMS pursuant to subparagraph[s] (b)*(5)*[(6) or (b)(7)] of this rule.

[(9)] *(8)* In the event that a malfunction in the [NNMS Market Maker's] *Quoting Market Participant's* equipment occurs, rendering [on-line] communications with NNMS inoperable, the [NNMS Market Maker] *Quoting Market Participant* is obligated to immediately contact Nasdaq Market Operations by telephone to request withdrawal from NNMS *and a closed-quote status*, and *if the Quoting Market Participants is an NNMS Market Maker* an excused withdrawal from Nasdaq[. Such request must be made] pursuant to Rule 4619. If withdrawal is granted, Nasdaq Market Operations personnel will enter the withdrawal notification into NNMS from a supervisory terminal and shall close the quote. Such manual intervention, however, will take a certain period of time for completion and, *unless otherwise permitted by the Association pursuant to its authority under Rule 11890,* the [NNMS Market Maker] *Quoting Market Participants* will continue to be obligated for any transaction executed prior to the effectiveness of [his] *the* withdrawal and *closed-quote status.*

[(10) In the event that there are no NNMS Market Makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into NNMS will be held in queue until executable, or until 90 seconds has elapsed, after which such orders will be rejected and returned to their respective order entry firms.]

(c) Directed Order Processing—A participant may enter a Directed Order into the NNMS to access a specific Quote/Order in the Nasdaq Quotation Montage and to begin the negotiation process with a particular Quoting Market Participant. The system will deliver an order (not an execution) to the Quoting Market Participant designated as the recipient of the order. Upon delivery, the Quoting Market Participant shall owe no liability under the Firm Quote Rule to that order, unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders (as described in Rule 4706(b)). Additionally, upon delivery, the system will not decrement the receiving Quoting Market Participant's Quote/Order. This provision shall not apply to Preferenced Orders.

[(c)] *(d)* NNMS Order Entry Firms

All entries in NNMS shall be made in accordance with the procedures and requirements set forth in the NNMS User Guide. Orders may be entered in NNMS by the NNMS Order Entry Firm through either its Nasdaq terminal or computer interface. The system will transmit to the firm on the terminal screen and printer, if requested, or through the computer interface, as applicable, an execution report generated immediately following the execution.

[(d) Order Entry Parameters

(1) NNMS will only accept market and marketable limit orders for execution and will not accept market or

marketable limit orders designated as All-or-None ("AON") orders; provided, however, that NNMS will not accept any limit orders, marketable or unmarketable, prior to 9:30 a.m., Eastern Time. For purposes of this subparagraph, an AON order is an order for an amount of securities equal to the size of the order and no less.

(2) Additionally, the NNMS will only accept orders that are unpreferenced, thereby resulting in execution in rotation against NNMS Market Makers, and will not accept preferenced orders.

(3) NNMS will not accept orders that exceed 9,900 shares, and no participant in the NNMS system shall enter an order into the system that exceeds 9,900.]

[(e) Electronic Communication Networks

An Electronic Communications Networks, as defined in SEC Rule 11Ac1–1(a)(8), may participate in the NNMS System if it complies with NASD Rule 4623 and executes with the Association a Nasdaq Workstation Subscriber Agreement, as amended, for ECNs.]

(e) Odd-Lot Processing

(1) Participation in Odd-Lot Process—All NNMS Market Makers may participate in the Odd-Lot Process for each security in which the market maker is registered.

(2) Execution Process

(A) Odd-lot orders will be executed against an NNMS Market Maker only if it has an odd-lot exposure limit in an amount that would fill the odd-lot order. A NNMS Market Maker may, on a security-by-security basis, set an odd-lot exposure limit from 0 to 999,999 shares.

(B) An odd-lot order shall be executed automatically against the next available NNMS Market Maker when the odd-lot order becomes executable (i.e., when the best price in Nasdaq moves to the price of the odd-lot limit order). Such odd-lot orders will execute at the best price available in the market, in rotation against NNMS Market Makers who have an exposure limit that would fill the odd-lot order.

(C) For odd lots that are part of a mixed lot, once the round-lot portion is executed, the odd-lot portion will be executed at the round-lot price against the next NNMS Market Maker in rotation (as described in subparagraph (e)(2)(b) of this rule) even if the round-lot price is no longer the best price in Nasdaq.

(D) Odd-lot executions will decrement the odd-lot exposure limit of an NNMS Market Maker but will not decrement the size of NNMS Market Maker's Displayed Quote/Order.

(E) After the NNMS system has executed an odd lot against an NNMS Market Maker, the system will not deliver another odd-lot order against the same market maker until a predetermined time period has elapsed from the time the last execution was delivered, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be increased upon Commission approval and appropriate notification to NNMS Participants or may be decreased to an amount less than five seconds by the NNMS Market Maker.

(f) UTP Exchanges

Participation in the NNMS by UTP Exchanges is voluntary. If a UTP Exchange elects to participate in the system, Nasdaq shall endeavor to provide fair and equivalent access to the Nasdaq market for UTP Exchanges, as a UTP Exchange provides to its market for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. The following provisions shall apply to UTP Exchanges that choose to participate in the NNMS:

(1) Order Entry—UTP Exchanges that elect to participate in the system shall be permitted to enter Directed and Non-Directed Orders into the system subject to the conditions and requirements of Rules 4706. Directed and Non-Directed Orders entered by UTP Exchanges shall be processed (unless otherwise specified) as described subparagraphs (b) and (c) of this rule.

(2) Display of UTP Exchange Quotes/Orders in Nasdaq

(A) UTP Exchange Principal Orders/Quotes—UTP Exchanges that elect to participate in the system shall be permitted to transmit to the NNMS a single bid Quote/Order and a single offer Quote/Order. Upon transmission of the Quote/Order to Nasdaq, the system shall time stamp the Quote/Order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders. The NNMS shall display the best bid and best offer Quote/Order transmitted to Nasdaq by a UTP Exchange in the Nasdaq Quotation Montage under the MMID for the UTP Exchange, and shall also display such Quote/Order in the Nasdaq Order Display Facility as part of the aggregate trading interest when the UTP Exchange's best bid/best offer Quote/Order falls within the best three price levels in Nasdaq on either side of the market.

(B) UTP Exchange Agency Quotes/Orders

(i) A UTP Exchange that elect to participate in the system may transmit to the NNMS Quotes/Orders at a single as well as multiple price levels that meet the following requirements: are not for the benefit of a broker and/or dealer that is with respect to the UTP Exchange a registered or designated market maker, dealer or specialist in the security at issue; and are designated as Non-Attributable Quotes/Orders ("UTP Agency Order/Quote").

(ii) Upon transmission of a UTP Agency Quote/Order to Nasdaq, the system shall time stamp the order, which time stamp shall determine the ranking of these Quote/Order for purposes of processing Non-Directed Orders, as described in subparagraph (b) of this rule. A UTP Agency Quote/Order shall not be displayed in the Nasdaq Quotation Montage under the MMID for the UTP Exchange. Rather, UTP Agency Quotes/Orders shall be reflected in the Nasdaq Order Display Facility and Nasdaq Quotation Montage in the same manner in which Non-Attributable Quotes/Orders from Nasdaq Quoting Market Participants are reflected in Nasdaq, as described in Rule 4707(b)(2).

(3) Non-Directed Order Processing

(a) UTP Exchanges that elect to participate in the system and that agree to provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept an execution of an order up to the size of the UTP Exchange's displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule.

(b) UTP Exchanges that elect to participate in the system but that do not provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept the delivery of an order up to the size of the UTP Exchange's Displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule. If such a UTP Exchange declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Quote/Order that is at a price inferior to the previous price, or if such a UTP Exchange fails to respond in any manner within 30 seconds of order delivery, the NNMS will send the order (or remaining portion thereof) back into the system for delivery to the next Quoting Market Participant in queue. The system will then move the side of such UTP Exchange's Quote/Order to which the declined or partially-filled order was delivered, to the lowest bid or highest offer price in Nasdaq, at a size of 100 shares.

(4) Directed Order Processing—UTP Exchanges that elect to participate in the system shall participate in the Directed Order processing as described in subparagraph (c) of this rule.

(5) Decrementation—UTP Exchanges shall be subject to the decrementation procedures described in subparagraph (b) of this rule.

(6) Scope of Rules—Nothing in these rules shall apply to UTP Exchanges that elect not to participate in the system.

4711–4714—No Change.

4718. Termination of System Service

The Association or its subsidiaries may, upon notice, terminate system service to a participant in the event that a participant fails to abide by any of the rules or operating procedures of the System or any other relevant rule or requirement, or fails to pay promptly for services rendered.

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4750. SMALLCAP SMALL ORDER EXECUTION SYSTEM (SOES)

4751–4757—Deleted.

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 NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As stated in the original filing, some of the primary goals of the Nasdaq Order Display Facility (also known as the "SuperMontage") are to expand the amount of market information available to the investing public, and to make that trading interest more accessible. The SuperMontage seeks to reduce market fragmentation and address the informational and competitive disparities that exist in the NASD's current market structure. As an open and competitive market, the NASD is committed to creating a trading environment where diverse pools of liquidity can be viewed and accessed on fair and equal terms.[12] To achieve this goal, Nasdaq has crafted a system that fairly balances the needs and business models of all market participants. In response to comments received on Amendment No. 7, the NASD proposes the following changes and modifications to the SuperMontage. The NASD believes that the proposed amendments will further enhance the information available to market participants, and provide greater choice for market participants.

a. Non-Directed Order Processing. 1. *History.* As originally proposed, the SuperMontage would execute non-directed orders in general price/time priority.[13] In response to concerns raised by SEC staff relating to best execution, the NASD proposed to change the Order Execution Algorithm to account for ECNs fees in Amendment No. 4.[14] Specifically, in Amendment No. 4, The NASD proposed that within a price level, a non-directed order would be executed against ECNs, market makers, UTP Exchange agency interest, in strict time priority, unless an ECN charged separate quote-access fee ("charging ECNs"). Pursuant to Amendment No.4, charging-ECNs would be executed after market makers, ECNs that do not charge a quote-access fee ("non-charging ECNs"), and agency interest of UTP Exchanges. The logic behind Amendment No. 4 was that an ECN's fee represents an increase in trading costs and thus the quote of the access-fee charging ECN represents an inferior price when compared to same-priced quotes of market participants that do not charge a fee.

In response to Amendment No. 4, some commenters claimed that charging ECNs should not be prioritized in the aforementioned manner because this was generally unfair. In response to these comments, the Commission suggested that ECNs could address the quote-access fee issue by reflecting the access fee in their public quote. As a result, in Amendment No. 6, the NASD proposed to give ECNs that include the separate quote-access fee in their quote equal priority to same-priced orders representing market makers, non-charging ECNs, and the agency interest of UTP Exchanges assuming the related legal, technology, and policy issues were resolved. In response to Amendment No. 6, however, some ECNs claimed that including the fee in the quote would not completely resolve their concerns, in part, because ECNs may offer price improvement above the quote as a result of rounding. Accordingly, in Amendment No. 7, the NASD proposed to give charging ECNs the ability to indicate on an order-by-order basis whether the price improvement offered by the order exceeded the quote-access fee charged. Pursuant to Amendment No. 7, if the price improvement exceeded the quote-access fee, Nasdaq would rank that order, for execution purposes, with the same-priced orders of market makers, non-charging ECNs, and non-attributable agency interest of UTP Exchanges. In Amendment No. 8, the NASD clarifies that if the price improvement is equal to or exceeds the separate quote-access fee, Nasdaq would rank that quote/order with equally priced quotes/orders from Nasdaq Quoting Market Participants that do not charge a separate quote access fee. Some commenters to Amendment Nos. 6 and 7 still were not satisfied with the proposed two solutions regarding ECN quote-access fees.

2. *Proposed Changes to Non-Directed Order Process.* The NASD understands that factors other than cost or quote-access fees may be important to a market participant in making investment decisions. Further, the NASD believes that market participants should be given a choice in determining how to best execute their customer or proprietary orders. With this in mind, and in response to the comments to Amendment No. 7, the NASD proposes to amend the Order Execution Algorithm for non-directed orders. The NASD proposes a more flexible approach—one that should empower market participants to make an informed choice about how best to interact with the market. The goal of this aspect of Amendment No. 8 is to give market participants more choice and flexibility as to how their customer and proprietary orders should be processed. While best execution concerns drove the changes to the Order Execution Algorithm in previous amendments, the NASD realizes that a "one-size-fits-all" approach may not meet every market participant's needs in all situations. While some commenters continue to advocate a single Order Execution Algorithm where strict price/

[12] For example, Nasdaq is committed to the creation of SuperMontage fee structure that does not discriminate between Nasdaq market participants that interact with the system on an order-delivery versus an automatic execution basis. Nasdaq shall also endeavor to avoid systemic biases, including biases that result from differential fees or incentives between quotes and orders, whether they are directed, non-directed, or preferenced.

[13] Generally, a non-direct order is an order that is not designated to be sent to a particular market or ECN.

[14] We note that Commission staff and at least one commentator raised concerns about ECN fees and best execution. *See e.g.*, ITG Letter.

time priority is the rule, the NASD is initially concerned that this type of algorithm might impose a needlessly rigid structure similar to a central limit order book ("CLOB"). To be sure, the SuperMontage is not a CLOB. Additionally, a strict price/time priority (without choice) would force the public investor to pay ECN quote-access fees, thus squashing the voice of the investor and competition. The NASD believes that market participants and investors would be best served, and in fact empowered, by a market model that gives participants a choice of how their orders are to be processed. The NASD believes that choice is key.

To be more specific, the NASD proposes to give the SuperMontage participants that enter non-directed orders three options as to how their order would interact with the quotes/orders in Nasdaq. Specifically, orders could be executed on: (1) Strict price/time priority; (2) price/size/time priority; and (3) price/time priority that accounts for ECN quote-access fees. Pursuant to Amendment No. 8, the SuperMontage would be programmed to a default Order Execution Algorithm based on strict price/time priority within Nasdaq. Thus, unless a market participant overrode the default algorithm by selecting one of the alternative algorithms (with specific instructions), non-directed orders would be executed as follows: (1) Displayed quotes/order of market makers, ECNs, and non-attributable agency interest of UTP Exchanges, in time priority between such interest; (2) reserve size of market makers and ECNs in time priority between such interest; and (3) principal quotes of UTP Exchanges, in time priority between such interest.

As a second option, a market participant would be able to indicate that their orders be executed on a price/size/time basis. Under the second option, non-directed orders at a particular price level would execute against displayed quotes and then reserve size based on the size of the displayed quote, and then time if there is a tie in size. Reserve size would be executed based on the size of the related displayed quote, not the total amount held in reserve. Under this option, orders would be processed as followed: (1) Displayed quotes/orders of market makers, ECNs, and agency interest of UTP Exchanges in price/size/time priority between such interest; (2) reserve size of market makers and ECNs, in price/size/time priority of such interest, with size priority based on the size of the related displayed quote/order; and (3) principal quotes of UTP Exchanges, in price/size/time priority between such interest.

As a third choice, a market participant would be able to indicate that their order should be executed in a manner that accounts for an ECN's separate quote-access fee. This algorithm is similar to the algorithm proposed in Amendment No. 7. If a market participant selects this option, non-directed orders would be executed as follows: (1) Displayed quotes/orders of market makers, ECNs that do not charge a separate quote-access fee, and non-attributable agency interest of UTP Exchanges, as well as quotes/orders of ECNs that charges a separate quote-access fee where the ECN indicates that the price improvement offered by the quote/order *is equal to or exceeds* the quote-access fee, in time priority between such interest; (2) displayed quotes/orders of ECNs that charge a separate quote-access fee to non-subscribers; (3) reserve size of market makers and ECNs that do not charge a separate quote-access fee to non-subscribers, as well as reserve size of quotes/orders from ECNs that charge a separate quote-access fee to non-subscribers where the ECN entering such quote/order has indicated that the price improvement offered is equal to or exceeds the quote-access fee, in time priority between such interest; (4) reserve size of ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such interest; and (5) principal interest of UTP Exchanges, in time priority between such interest.

With all three algorithms, the system would make an exception for non-directed orders entered by a market maker or an ECN ("Nasdaq Quoting Market Participant") when that Nasdaq Quoting Market Participant is also at the inside market. In that case, the system will match off the non-directed order to buy/sell against a Nasdaq Quoting Market Participant's inside quote/order to sell/buy, in lieu of sending it to the participant next in the queue. Additionally, there would be an exception for "Preferenced Orders" described below.

b. *Directed Orders.* The NASD intends to retain the changes to the directed order process that were proposed in Amendment No. 7. By way of review, some commenters to the original proposal claimed that the directed order [15] process was an ineffective way to access liquidity held in a specific market maker or ECN. This was because, as originally proposed, all directed orders were required to be designated as non-liability or negotiation orders. Originally, the purpose of this requirement was to limit the potential for dual liability that results from having two (non-linked) points for delivering Liability Orders against the same market maker quote.[16] In Amendment No. 7, the NASD proposes to change the directed order process, so that ECNs and market makers can elect to receive Liability Orders against their quote through the directed order process.[17] As proposed in Amendment No. 7, a market maker or ECN could choose to receive against its quote a directed order that is also a Liability Order, or could also choose to accept only non-Liability directed orders. If a Nasdaq Quoting Market Participant or a UTP Exchange chooses to accept Liability Orders, the NASD will append an indicator to the MMID, showing that the Nasdaq Quoting Market Participant or UTP Exchange is available to receive directed Liability Orders.

c. *Preferenced Orders.* The NASD proposes to create a new class of order called a "preferenced order." The NASD is proposing two possible approaches to preferenced orders: Alternative A—Preferenced Orders with No Price Restrictions ("Alternative A"); and Alternative B—Preferenced Orders with Price Restrictions ("Alternative B"). The NASD requests that commenters express their views as to which approach they believe is most appropriate. Commenters should note that the NASD is not proposing that the SuperMontage include both Alternative A and Alternative B approaches to preference orders. Rather, the NASD proposes that the system, include one of the alternatives—either Alternative A *or* Alternative B.

1. *General Processing of Preferenced Orders Under Both Alternatives.*

[15] Directed orders are orders that are delivered to a single market participant that is designated by the sender of the order. Directed orders are always delivered for response (accept or decline), as opposed to an automatic execution *via* Nasdaq system against the receiving market participant's quote. Directed orders are processed independent of the non-directed order queue.

[16] As stated previously, the original purpose of requiring directed orders to be non-liability orders was to eliminate the dual liability that currently exists in Nasdaq. As previously proposed, a directed order was required to be designated as: (1) All-or-None and be at least 100 shares greater than the size of the displayed quote/order of the market participant to which the order is directed; or (2) a Minimum Acceptable Quantity order ("MAQ") with an MAQ value of at least 100 shares greater than the displayed amount of the quote/order of the participant to which the order is directed. Because of these conditions, when presented to a market participant's quote a directed order would impose no obligation under the SEC and NASD's firm quote rules.

[17] Both ECNs and market makers would continue to receive liability orders *via* the non-directed order process.

Preferenced orders would be processed as follows for both Alternative A and Alternative B.

A preferenced order would be entered into the non-directed order process, and would be considered a liability order. Preferenced orders would be processed in the same "queue" as non-directed orders. Additionally, like non-directed orders, a preferenced order would be delivered as an order to a market participant that does not participate in the automatic execution functionality of the system, or as an execution against market participants that choose to accept automatic executions. The market participant entering the preferenced order must designate by a market participant identification symbol ("MMID") the quoting market participant against which the order is to be executed or delivered. When a preferenced order is next to be executed within the non-directed order queue, the SuperMontage would execute against (or deliver an order in an amount up to or equal to) both the displayed quote/order and reserve size of the quoting market participant to which the order is being preferenced ("preferenced quoting market participant"). Any unexecuted portion could be returned to the entering market participant.

2. *Alternative A—Preferenced Orders With No Price Restrictions.* Under Alternative A, there would be no price restriction for preferenced orders. That is, when a preferenced order is next to be executed within the non-directed order queue, the preferenced order would execute (or deliver for execution) at the preferenced quoting market participant's price, regardless of whether the quoting market participant is at the best bid/best offer ("BBO"). The execution would occur at the preferenced quoting market participant's quoted price. Thus, under Alternative A, preferenced orders could be executed at the BBO or outside the BBO.

The purpose of the Alternative A-type preferenced order is to maintain a function within the SuperMontage similar to that which currently exists in Nasdaq. That is, today market participants often use the SelectNet service (*i.e.*, order delivery) to preference orders to market makers or ECNs who are quoting at the BBO or away from the BBO. Market participants sometime preference away from the BBO in an attempt to "sweep the street" or access liquidity at or near the inside market. A market maker that is "working" an institutional order may also send a preferenced SelectNet message to a market maker or ECN who is quoting away from the inside. This may occur if the market maker believes the "preferenced" market participant has greater size to offer, and thus will result in a more efficient execution for the institutional customer. The NASD wishes to emphasize, however, that even if the SuperMontage ultimately provides the Alternative A type of preference order, as is the case today, market participants would be required to comply with their duty of best execution. Such a function would in no way obviate a market participant's best execution obligations.

3. *Alternative B—Preferenced orders with price restrictions.* Under Alternative B, there would be price restrictions for preferenced orders. That is, if a preferenced order was next to be executed within the non-directed order queue, the preferenced order would be executed (or delivered for execution) against the preferenced quoting market participant to which the order is being directed *only if the quoting market participant is at the BBO (up to the displayed and reserve size).* If the quoting market participant to which the order is being directed is not at the BBO when the preferenced order is next to be delivered or executed, the preferenced order will be returned to the entering participant. Thus, under this approach, preferenced orders only would be executed at the BBO, and only if the preferenced quoting market participant is quoting at the BBO at the time of order delivery (or execution).

Once again, recognizing that there may be differing views as to whether market participants should be permitted to have preferenced orders executed away from the BBO or only at the BBO price, the NASD specifically requests that commenter submit their views on the alternative approaches described above.

4. *Comparison of directed orders and preferenced orders.* The directed order and preferenced order features provide different options for order processing. The directed order process will operate much like SelectNet operates in the current environment. Directed orders will be delivered to a single market participant that is designated by MMID by the sender of the order. Directed orders are always delivered for response (*e.g.*, accept or decline), as opposed to an automatic execution *via* the Nasdaq system against the receiving market participant's quote. Directed orders will not decrement a quote. As noted above, preferenced orders would function almost exactly like non-directed orders, in that they would be processed in time sequence, would be delivered to a quote/order or would automatically execute against a quote/order of a market participant, and would decrement the size of a quote/order. Unlike "regular-way" non-directed orders, however, preferenced orders would not be processed pursuant to one of the three Order Execution Algorithms described above.

d. *Increased Dissemination of Quotation Information.* In order to bring more transparency to the market and give market participants greater information in making order-routing decisions, the NASD has determined to expand its dissemination of quotation information to the investing public. To accomplish this goal, the NASD would create and make available a new vendor data feed called "NQDS Prime." NQDS Prime would provide, on a real-time basis, all individual attributable quote/order information at the three best price levels displayed in the SuperMontage (*i.e.*, Order Display Facility). By using NQDS Prime, vendors will be able to integrate this expanded quote and order information with SuperMontage data and distribute it in a consolidated format that would eliminate any purported informational advantage accruing to the SuperMontage system from the retention of this information.[18] In the future, should the NASD determine to display more than three dynamically displayed price levels in the SuperMontage, an equal expansion of price level information through NQDS Prime would be provided. With this additional information, market participants would have the choice of using Nasdaq's facility to access liquidity or would be able to use non-Nasdaq systems (such as proprietary links) to access liquidity where it resides. Again, the goal is to give market participants and investors choice and the tools to make efficient and informed trading decisions.

The NASD proposes to make this information available through a dedicated data feed. To recoup the technology costs associated with the provision of expanded individual attributable quote and order information, the NASD would assess a separate, additional vendor data fee for quote and order information away from the inside. (The fee for NQDS Prime data feed would be filed separately with

[18] Nasdaq has determined to take a similar approach to SuperMontage reserve size. SuperMontage's rules regarding reserve size apply equally to market makers and ECNs and the system will execute reserve share amounts based on these objective rules. Nasdaq will not use information about the source and scope of a reserve size quote to influence reserve size execution priority within SuperMontage system, or provide optimized reserve size executions based on information residing solely in SuperMontage.

the Commission for public comment.) On an ongoing basis, the NASD would evaluate the demand for away-from-the-inside market data and reserve the right (after consultation with the Commission) to cease the distribution of such information if such distribution does not generate sufficient revenue to cover the cost of assembling and distributing the NQDS Prime product. If the costs of NQDS Prime are covered, the NASD commits to continue to provide the product regardless of the total number of subscribers.

e. *Identity of Parties Entering Orders.* The NASD is committed to assisting market participants in their efforts to manage operational and credit risk that they perceive as potentially arising from their participation in the SuperMontage. In that vein, the NASD wishes to clarify that the SuperMontage would preserve the ability of recipients of orders to determine the identity of the sender of such orders. The NASD would affix the MMID of the sender, to all delivered directed orders (both liability and non-liability), non-directed orders, and preferenced orders. Identification of these orders would allow market participants to decline to trade with participants that are genuinely perceived to pose general credit risks (consistent with SEC guidance and interpretation of its firm quote rule and this issue).

As with Nasdaq's current automatic execution system (SOES), the SuperMontage would generate an immediate execution report, for preferenced or non-directed Orders, that identifies the parties to the trade. Such a report would be generated if a non-directed order was executed against an attributable order or a non-attributable order (*i.e.*, orders that are aggregated under the SIZE MMID).

f. *Preservation of Time Priority for Size Increases to Quotes/Orders.* The NASD also proposes to modify the SuperMontage to protect the time priority of a market participant that changes its displayed trading interest by increasing its displayed size. As currently proposed, if a market participant chooses to give Nasdaq a quote instead of order detail, the market participant would lose time priority (*i.e.*, a new time stamp would be established) when the market participant adds size to its quote. (A decrease in size would not result in change in time priority.) For example, assume a Nasdaq Quoting Market Participant is displaying 5,000 shares at the best price and is first in time as between two other market participants at the same price. If the Nasdaq Quoting Market Participant subsequently receives a second customer limit order for an additional 2,000 shares, and updates its quote to reflect the additional shares, the participant would lose its original time priority. Such an outcome has the unintended consequence of disadvantaging market participants that update their quotes to display additional size to the market. This outcome is inconsistent with one of the important goals of the SuperMontage—encouraging market participants to display greater sized quotes.

The NASD proposes to amend the SuperMontage to ensure that a market participant will not lose time priority if it updates its displayed trading interest to show greater size. This change in priority rules would apply equally to market makers and ECNs. As proposed, quote entries would receive a time stamp from the system which would be used in determining their ranking in the execution algorithm relative to other quotes/orders at that price level. If a size increment is received for an existing quote at a given price, the system will maintain the original time stamp for the original quantity and separately assign a separate timestamp for the augmentation, thus protecting the time priority of the originally-entered quantity. Additional size increments will be treated similarly. Thus a single quote at a single price level could be tracked in individually-prioritized components corresponding to the original quantity entered at that price plus size increments sent separately. Subsequent decreases in size will be deducted from individually-stamped components in reverse time priority (*i.e.*, the last entered size component will be exhausted first). Once a market participant's displayed size is diminished to zero, however, the market participant no longer retains time priority, even though it may be using the Quote Refresh function to automatically refresh its displayed size.

g. *Order Delivery and Responsiveness Time Frames.* Some market participants have objected to the proposal to retrieve a delivered non-directed order and zero out an ECN's quote if an ECN does not respond (in any manner) within 7 seconds to orders delivered to them by the system. Some commenters asserted that this standard was too short. They also claimed that this approach did not distinguish between system performances of Nasdaq versus an ECN's internal systems, and thus could result in an ECN's quote being improperly zeroed out for system issues outside of the ECN's control.

In response to these concerns, the NASD proposes to alter its approach to monitoring ECN responsiveness. First, the NASD will amend its SuperMontage rules to establish a 30 second (as opposed to seven seconds) maximum time period for an ECN to respond to any given order. That is, if an ECN fails to respond within 30 seconds of the time a particular order is dispatched from the Nasdaq system to the ECN, Nasdaq will "zero out" the affected side of the unresponsive ECN's quote until the ECN transmits a revised attributable quote/order.

Second, the NASD proposes to establish a shorter uniform turn-around time for a maximum of five seconds. The purpose of this change is to establish a general standard (as opposed to an order-by-order standard) that measures whether an ECN is providing an automated response in a time period that ensures market quality. Thus, the NASD proposes to monitor an ECN's order turnaround time based on information received from the ECN's Nasdaq Service Delivery Platform ("SDP"). (Each subscriber to the Nasdaq Workstation II has an SDP that connects to the Nasdaq Enterprise Wide Network II via a T1 line. SDPs exist at the very outer edge of Nasdaq's network and link directly to the systems of ECNs and other market participants. Orders cannot reach the SDP until they have traveled the full length of Nasdaq's network and are also the point at which an ECN's order response first returns to the Nasdaq system.) Nasdaq will use SDPs linked to ECNs to assign a time-stamp for when an order is delivered to the ECN. Nasdaq will also capture the time-stamp via the SDP of when the ECN sends a response (*e.g.*, accept, decline, or partially execute) to the delivered order. Nasdaq will then calculate and monitor, on a real-time basis, the difference between the two time-stamps and determine whether the ECN is meeting the 5-second maximum order-response standard. On an ongoing basis, Nasdaq will monitor ECN response times and provide individual ECNs their own order responsiveness time statistics. (This information will not be made public.)

In the event that an ECN regularly fails to meet the five-second response time over a period of orders, Nasdaq will place that ECN's quote in a closed-quote state. The NASD believes that this measure is necessary in order to maintain a fair and orderly market and to ensure prompt, reliable, and non-discriminatory access to the best prices in its market. The closed-quote state will be lifted when the ECN can certify that it can meet the five-second response time requirement.

By measuring SDP time, this approach measures an ECN's responsiveness based on the performance of systems it controls, and in effect factors out Nasdaq system time. The NASD believes that this new approach to measuring and evaluating ECN performance responds to ECN desires that their systems be judged individually and that their quotes not be inappropriately or prematurely precluded from receiving orders through the SuperMontage. At the same time, the proposal provides Nasdaq with a uniform, electronic method to ensure that investor orders are not repeatedly sent to market participants that cannot timely process them.

h. *Unexecuted Marketable Limit Order Processing.* Under the current SuperMontage Proposal, marketable limit orders entered into the system that become unmarketable prior to execution are held in queue within the SuperMontage for a period of 90 seconds. The purpose of this feature of the proposal was to provide an additional opportunity for an execution to take place should another market participant subsequently enter a quote that would allow the limit order to execute. In response to concerns about the uncertainty that the retention of such orders may engender, the NASD proposes to modify the SuperMontage so that all marketable limit orders entered by order-entry firms shall be designated as "immediate or cancel" orders. Accordingly, if a marketable limit order becomes non-marketable after entry into the system, Nasdaq will return the order (or the unexecuted portion thereof) to the entering party.

i. *UTP Exchanges.* The NASD also proposes certain clarifying amendments to the proposal regarding UTP Exchanges. At the outset, the rules specifically state that participation in the SuperMontage is completely voluntary. The proposed rules relating to UTP Exchanges would only apply if the UTP Exchange agrees to participate in the system. In addition, the NASD has amended the definition of agency orders. As proposed in Amendment No. 4, a UTP Exchange that chooses to participate in the system could provide Nasdaq with agency orders at multiple price levels. Such orders would receive equal priority in our price/time execution algorithms with orders of market makers and ECNs that do not charge a quote access fee. In Amendment No. 4, the NASD defined "agency order" as an order that is for the benefit of the account of a natural person and that is not for the benefit of a broker and/or dealer. The intent of the latter provision was to distinguish orders that are for the account of a broker/dealer that is registered with or designated by their UTP Exchange as a specialist, market maker or dealer in the underlying security. The NASD understands that certain market centers receive orders that are for the account of institutions or broker/dealers that are not registered with the UTP Exchange as a specialist, market maker, or dealer in the security. The NASD believes these orders should also be included within the meaning of agency orders, for purposes of the SuperMontage rules. Accordingly, the NASD proposes to define an agency order as "an order that is not for the benefit of a broker/dealer that is, with respect to the UTP Exchange, a registered market maker, dealer or specialist in the security at issue."

2. Statutory Basis

The NASD believes that the proposed amendments are consistent with the provisions of sections 15A(b)(6) of the Act,[19] as well as sections 11A(a)(1)(C) and 11A(a)(1)(D) of the Act.[20] Section 15A(b)(6) of the Act [21] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1)(C) of the Act states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and order markets to assure (1) economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.[22] Section 11A(a)(1)(D) states that Congress finds that the linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.[23]

The NASD believes that the proposed rule changes to the Order Execution Algorithm, the addition of new order types (*i.e.*, preferenced orders and directed orders that impose firm-quote liability), and the NQDS Prime feed are consistent with section 15A(b)(6),[24] as they promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. These added features would give market participants greater flexibility in determining how their orders will be executed. The additional information provided by NQDS Prime would give market participants greater information about where liquidity is concentrated, and thus is consistent with section 11A,[25] as well as section 15A(b)(6).[26] NQDS Prime, combined with the changes to the order execution algorithm and the expansion of order types and preferencing capabilities, will give market participants greater flexibility in making order-routing decisions. In turn, market participants should be better able to manage their customer and proprietary orders, which is consistent with sections 11A(a)(1)(C) and 11A(a)(1)(D).[27]

The NASD also believes that the changes regarding order-delivery response times for ECNs, and unexecuted marketable limit orders, and the identity of sent (executed) orders, promote just and equitable principles of trade, facilitate transactions in securities, perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Thus, the NASD believes these parts of the proposal are consistent with section 15(b)(6) of the Act.[28]

The NASD believes that the proposed amendments represent a pro-competitive development that offers increased price competition, flexibility, and choice to investors and to market participants that will spur further competition and innovation among

[19] 15 U.S.C. 78*o*–3(b)(6).
[20] 15 U.S.C. 78k–1(a)(1)(C), (a)(1)(D).
[21] 15 U.S.C. 78*o*–3(b)(6).
[22] 15 U.S.C. 78k–1(a)(1)(C).
[23] 15 U.S.C. 78k–1(a)(1)(D).
[24] 15 U.S.C. 78*o*–3(b)(6).
[25] 15 U.S.C. 78k–1.
[26] 15 U.S.C. 78*o*–3(b)(6).
[27] 15 U.S.C. 78k–1(a)(1)(C) and (a)(1)(D).
[28] 15 U.S.C. 78*o*–3(b)(6).

market centers and market participants. The NASD believes that the SuperMontage enhances competition by creating a central forum in which buying and selling interest from a broad array of market centers and market participants will be given the opportunity to interact. The resulting enhancement in price discovery and competition, together with the increase in transparency, are competitive goals espoused by section 11A(a)(1)(C) of the Act.[29] In addition, by bringing together quotes and orders from diverse sources, the SuperMontage furthers the development of the national market system and is consistent with section 11A(a)(1)(D) of the Act.[30]

The NASD also believes that the SuperMontage should promote competition by increasing the investor's choices on how to interact with the market. These choices occur at several levels: from whether to submit preferenced, directed, or non-directed orders, to choosing any of three algorithms for the execution of non-directed orders. The ability to choose between the alternative algorithms for automatic execution of non-directed orders should allow investors and market participants to elect how to interact with Nasdaq and participating market centers based on criteria that is important to the system's order-entry participant. Giving the investor the choice of selecting his or her criteria for interaction with the market represents not only a significant means of investor protection, but also is consistent with the goal of section 11A(a)(1)(C)(ii) of the Act to ensure fair competition.[31]

Choice and flexibility in the SuperMontage also characterize Nasdaq's interaction with market participants. Although participation in the SuperMontage should benefit a market participant in various ways such as enabling market participants to satisfy their obligations under Exchange Act Rules 11Ac1–1 and 11Ac1–4[32] ("Order Handling Rules") in a simple and efficient manner, participation in the SuperMontage is entirely voluntary. A market participant such as an ECN may elect not to participate at all, and could choose to satisfy its obligations under the Order Handling Rules through a number of other means, including by sending its best bid and offer to other market centers, such as the Chicago Stock Exchange or the Cincinnati Stock Exchange, and in the future, the Pacific Exchange as well as others. Indeed, it is completely voluntary as to whether a UTP Exchange wishes to participate in the SuperMontage.

If a market maker or ECN elects to participate in the SuperMontage, it will continue to have the option of limiting its participation to only satisfy its duties under the Order Handling Rules. Thus, for example, an ECN or market maker may elect only to send its best bid and offer to the SuperMontage, and withhold the remainder of its order book from display on the SuperMontage.

The NASD believes that the voluntariness of participation in the SuperMontage means that competing market centers and market participants will retain the ability to develop alternative means of establishing links between market centers. Thus, the market for creating a "market for market centers," like the SuperMontage, remains fully contestable. Consequently, the SuperMontage not only preserves, but furthers the incentives for Nasdaq's competitors to undertake technological and structural innovation.

Some commenters have argued that the SuperMontage discriminates unfairly against UTP Exchanges because the algorithms governing the execution of non-directed orders place principal quotes from UTP Exchanges at the end of the execution priority even if they enjoy time priority compared to similarly priced quotes from market makers and ECNs. The NASD believes that this ordering is consistent with the requirements of the Act and with the Commission's past approach to this issue. First, the non-attributable agency interest of UTP Exchanges receives the same priority enjoyed in all three algorithms by similarly priced quotes from market makers and ECNs. Thus, only principal quotes from UTP Exchanges are placed at the end of the execution queue.

Second, the NASD believes that the SuperMontage's treatment of principal interest from UTP Exchanges is consistent with the fair competition requirement of Section 11A(1)(a)(C)(ii) of the Act.[33] In this regard, the NASD believes that it would be inappropriate and inconsistent with the fair competition mandate of the Act for Nasdaq to provide UTP Exchange specialists with the ability to enjoy parity with Nasdaq Quoting Market Participants in the SuperMontage when UTP Exchanges generally require a sweep of their own floor before orders may access the quotes of a competing market center. Even so, the NASD has stated that it is willing to provide automated executions against its market (*i.e.*, access that is equivalent to that which is offered to NASD members) if the relevant exchange is willing to provide automated execution against its quotes. In the same vein, if an exchange is willing to provide order delivery to its quotes, the NASD will provide order delivery against Nasdaq quotes. The NASD believes its willingness to provide such equivalent and reciprocal access is unprecedented, and should foster competition and greater market efficiency, in furtherance of the goals of the Act.

Some commenters have also questioned the SuperMontage's pro-competitiveness by suggesting that its Order Execution Algorithm for non-directed orders discriminates against ECNs that charge non-subscribers fees for accessing their quotes. The NASD maintains that the previously proposed algorithm was not unfairly discriminatory. Nevertheless, as stated above, consistent with the NASD's philosophy of, and commitment to, maintaining and promoting a fair and open structure for all market participants, and consistent with the NASD's efforts to increase investor choice, the proposed amendments offer the pro-competitive solution of offering several different algorithms for the investor to choose from. As described above, one of these algorithms places quotes from access fee-charging ECNs on time priority with quotes from market participants, non-fee-charging ECNs, and the non-attributable interest of UTP Exchanges. Thus, investors now have the opportunity to interact with the SuperMontage based on whether ECN access fees are significant to them. The NASD believes that the availability of order execution alternatives is an important means of furthering both the Act's mandate of investor protection, fair competition, and enabling the achievement of best execution, and of its requirement of assuring fair competition.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[29] 15 U.S.C. 78k–1(a)(1)(C).

[30] 15 U.S.C. 78k–1(a)(1)(D).

[31] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[32] *See* 17 CFR 240.11Ac1–1 and 240.11Ac1–4.

[33] 15 U.S.C. 78k–1(a)(1)(C)(ii).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Commission Discussion

The Commission notes that, by separate letter, the NASD has agreed to provide an alternative quotation and transaction reporting facility for NASD members that effect transactions in the over-the-counter market but that choose not to participate in the SuperMontage.[34] Specifically, the NASD has committed to provide a quotation reporting facility that meets the Association's statutory obligations under the Act, and to operate a transaction reporting facility pursuant to an effective transaction reporting plan filed in accordance with the Exchange Act Rule 11Aa3–1.[35] The facility would be designed to allow NASD members to meet their obligations under the SEC's Order Handling Rules and Regulation ATS as well as any transaction reporting obligations imposed by the NASD rules. This facility would provide an electronic linkage to the Nasdaq marketplace and would be operational contemporaneously with SuperMontage.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 8, including whether Amendment No. 8 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to Amendment No. 8 to File No. NASD–99–53 and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29020 Filed 11–14–00; 8:45 am]

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[34] Letter from Frank G. Zarb, Chairman and Chief Executive Officer, NASD to Arthur Levitt, Chairman, Commission, dated October 30, 2000.

[35] 17 CFR 11Aa3–1.

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43526 File No. SR–PCX–00–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to Equity Housekeeping Amendments

November 7, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 24, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange"), on behalf of its wholly-owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On November 2, 2000, the PCX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 to the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 1, 2000 ("Amendment No. 1"). In Amendment No. 1, the PCX made a correction to Rule 6.3 by adding the word "must" which had inadvertently been left out. The PCX also clarified that the removal of the phrase "or other appropriately designated forms" from Rule 6.3 was not approved by Securities Exchange Act Release No. 41083 (February 22, 1999), 64 FR 10052 (March 1, 1999) (SR–PCX–98–52). The phrase is being removed because Equity Trading Permit ("ETP") Holders, Equity ASAP Holders, and ETF Firms are only required to submit SEC Form X–17A–5.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make various housekeeping and technical changes to certain previously approved PCX rules by making minor conforming changes to the existing language in order to incorporate those changes into the PCXE rules. The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make the following changes below to incorporate previously approved changes to the rules of the PCX into the PCXE rules.[4] Specifically, the Exchange is proposing to apply the PCX rule language to ETP Holders, Equity ASAP Holders, and ETP Firms by incorporating such rule language into the PCXE rules.[5]

a. *PCXE Rule 2—Equity Trading Permits. Mandatory Decimal Price Testing*—The Exchange proposes to add PCXE Rule 2.25, based upon PCX Rule 1.15(b).[6] Minor conforming changes

[4] The rules of the PCX that governed the equities trading business of the Exchange were amended and renumbered when the PCXE was created. *See* Securities Exchange Act Release No. 42759 (May 5, 2000), 65 FR 30654 (May 12, 2000). Thus, the PCX rules that govern the equities business are now referred to as PCXE rules.

[5] Language was changed mainly to refer to "ETP Holders, Equity ASAP Holders, and ETP Firms" (in the PCXE rules) instead of "members or member organizations" (in the PCX rules), and to refer to the "Corporation" (in the PCXE rules) instead of "Exchange" (in the PCX rules).

[6] *See* Securities Exchange Act Release No. 42998 (June 30, 2000), 65 FR 42412 (July 10, 2000).

have been made to existing language of the PCX Rule in order to incorporate it into the PCXE rules.

b. *PCXE Rule 7—Equities Trading—Off-Board Trading Restrictions. Cabinet Dealings*—The Exchange proposes to amend PCXE Rule 7.20(a), formerly PCX Rule 5.5(b), to eliminate the sentence "Securities placed in the CABINET System, until removed, may be traded off the Corporation without compliance with Rule 7.49(b)." The SEC previously approved the removal of this sentence from PCX Rule 5.5(b).[7] The Exchange proposes to eliminate the sentence in order reflect this change in PCXE Rule 7.20(a). *Over the Counter Execution of Equity Securities Transactions*—The Exchange proposes to eliminate PCXE Rule 7.49(a)–(e), formerly PCX Rules 5.43, 5.44, 5.46, 5.48, and 5.49.[8]

c. *PCXE Rule 7—Equity Trading—Trading Differentials. Trading Differentials*—The Exchange proposes to amend PCXE Rule 7.10(a), formerly PCX Rule 5.3(b), by adding Commentary .04.[9] The Exchange also proposes to add the words "Nasdaq-100 Shares" to Commentary .03.[10]

PCX Equities, Inc. Application of the OptiMark System—The Exchange proposes to amend PCXE Rule 7.71(a), formerly PCX Rule 15.1, by adding the phrase "provided, however, that Orders may be generated from central processing of the profiles designated for the midpoint pricing service by the OptiMark System in conformance with the trading differential in Rule 7.10(a), Commentary .04." [11]

d. *PCXE Rule 9—Conducting Business with the Public. Advertisements, Market Letters and Sales Literature Relating to Options*—The Exchange proposes to amend the language in paragraphs (E)–(G) of Commentary .03 to PCXE Rule 9.28(e), adapted from PCX Rule 9.28.[12]

3. *PCXE Rule 5—Listings. Financial Reports and Related Notices (EDGAR Rule Filing)*—The Exchange proposes to amend PCXE Rule 5.3(i)(1)(i), formerly PCX Rule 3.3(t)(1)(i), by adding Commentary .04.[13]

f. *PCXE Rule 7—Equity Trading—Intermarket Trading System Plan. Definitions*—The Exchange proposes to amend PCXE Rule 7.66, formerly PCX Rule 5.20, by adding a provision that seeks to define the term "PCX Coordinating Specialist," and by adding Commentary .04.[14]

g. *PCXE Rule 8—Trading of Certain Equity Derivatives. Nasdaq-100 Index*—The Exchange proposes to add PCXE Rule 8.100(g) and Commentary .03, formerly PCX Rule 8.300(g) and Commentary .03, relating to the trading of Nasdaq-100 Index shares.[15]

h. *Equity Floor Procedure Advice 2–C. Reporting of Transactions*—The Exchange proposes to amend Equity Floor Procedure Advice 2–C by removing one of the exceptions provided for reporting of transactions from PCXE Rule 7.37(a).[16]

i. *PCXE Rule 6—Business Conduct. Prevention of the Misuse of Material, Nonpublic Information*—The Exchange proposes to amend PCXE Rule 6.3, adapted from PCX Rule 2.6(e), to add the phrase "for whom the Corporation is the Designated Examining Authority ("DEA")," to add Commentary .02, and to eliminate Commentary .04.[17] The Exchange also proposes to remove certain unnecessary language.[18]

j. *PCXE Rule 5—Listing. General Provisions and Definitions*—The Exchange proposes to add PCXE Rule 5.1(b)(15), formerly PCX Rule 3.1(b)(15).[19]

Investment Company Units—The Exchange is proposing to add PCXE Rule 5.2(j)(3), formerly PCX Rule 3.2(k). The Exchange is also proposing to add PCXE Rules 5.5(g)(1) and (2), formerly Rules 3.5(g) and (h). Finally, the Exchange proposes to add Commentaries .02 and .03 to PCXE Rule 7.28(a)(1), formerly PCX Rule 5.33(a).[20]

k. *PCXE Rule 6—Business Conduct. Communications to and on the Trading Facilities*—The Exchange proposes to add PCXE Rule 6.17, adapted from PCX Rule 4.23.[21]

l. *PCXE Rule 4—Capital Requirements and Financial Reports, Margins. Exceptions to Margins*—The Exchange proposes to amend PCXE Rule 4.15(c)(5), adapted from PCX Rule 2.15–2.16, by replacing the phrase "margin required by the other provisions of this Rule" with the phrase "haircut requirements of SEC Rule 15c3–1." Also the Exchange proposes to add Rule 4.15(c)(6).[22]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b)[23] of the Act, in general, and section 6(b)(5),[24] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)[25] of the Act and subparagraph (f)(3) of Rule 19b–4[26] thereunder because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

[7] *See* Securities Exchange Act Release No. 42890 (June 1, 2000), 65 FR 36877 (June 12, 2000).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 42822 (May 24, 2000), 65 FR 35150 (June 1, 2000).

[10] *See* Securities Exchange Act Release No. 41712 (August 5, 1999), 64 FR 44072 (August 12, 1999).

[11] *See supra* note 6.

[12] *See* Securities Exchange Act Release No. 42577 (March 27, 2000), 65 FR 17329 (March 31, 2000).

[13] *See* Securities Exchange Act Release No. 42431 (February 16, 2000), 65 FR 9026 (February 23, 2000).

[14] *See* Securities Exchange Act Release No. 42708 (April 20, 2000), 65 FR 25780 (May 3, 2000).

[15] *See supra* note 7.

[16] *See* Securities Exchange Act Release No. 41083 (February 22, 1999), 64 FR 10052 (March 1, 1999).

[17] *See* Securities Exchange Act Release No. 40863 (December 30, 1998), 64 FR 1057 (January 7, 1999).

[18] *See* Amendment No. 1, *supra* note 3.

[19] *See* Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999).

[20] *See id.*

[21] *See* Securities Exchange Act Release No. 40852 (December 28, 1998), 64 FR 1058 (January 7, 1999).

[22] *See* Securities Exchange Act Release No. 42453 (February 24, 2000), 65 FR 11620 (March 3, 2000).

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(3).

Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–35 and should be submitted by December 6, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29181 Filed 11–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43518; File No. SR–PCX–00–32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Pacific Exchange, Inc. To Increase the Maximum Size of Orders Eligible for Automatic Execution

November 3, 2000.

Pursuant to Section 19(b)(1) of he Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to increase the maximum size of equity and index option contracts that may be designated for automatic execution to seventy-five contracts.

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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Automatic Execution System ("Auto-Ex") automatically executes public customer market and marketable limit orders within certain size parameters. PCX Rule 6.87(b) currently provides that the Options Floor Trading Committee ("OFTC") shall determine the size of orders that are eligible to be executed through Auto-Ex. The rule further provides that although the OFTC may change the order size parameter on an issue-by-issue basis, the maximum order size for execution through Auto-Ex is fifty contracts for both equity and index options.[3] The Exchange is now proposing to increase the maximum size of option orders that are eligible for automatic execution, subject to designation by the OFTC on an issue-by-issue basis, to seventy-five contracts.[4]

The Exchange believes that these changes will help it to meet the changing needs of customers in the marketplace and give the Exchange better means of competing with other options exchanges for order flow, particularly in multiply traded issues. The Exchange also believes that increasing to seventy-five the number of option contracts executable through Auto-Ex will enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option issues consistent with its obligations under the Act. In addition, the Exchange indicates that this increase should bring the speed and efficiency of automated execution to a greater number of retail orders. The PCX further believes that it should have flexibility to complete for order flow with other exchanges without being limited to responding to increases in automatic execution eligibility levels initiated by those other exchanges.[5]

The Exchange represents that it believes that the increase will not expose Auto-Ex to risk of failure or operational capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of this proposal.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[6] of the Act, in general, and furthers the objectives of section 6(b)(5),[7] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The PCX requests that the proposed rule change be given accelerated

[3] *See* Securities Exchange Act Release No. 41823 (September 1, 1999), 64 FR 49265 (September 10, 1999) (approving PCX proposal to increase the maximum size of index and equity option orders that may be automatically executed, from twenty to fifty contracts).

[4] The Exchange notes that, pursuant to PCX Rule 6.86(g), if the OFTC determines, pursuant to PCX Rule 6.87(b), that the size of orders in an issue that are eligible to be executed on Auto-Ex will be greater than twenty contracts, then the trading crowd will be required to provide a market depth for manual (non-electronic) orders in that greater amount, as provided in PCX Rule 6.86(a).

[5] *See* PCX Rule 6.87(c) (permitting the PCX to match the maximum size of orders eligible for automatic execution that are permitted on another options exchange in multiply traded issues).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

effectiveness pursuant to section 19(b)(2)[8] of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–32 and should be submitted December 6, 2000.

V. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act.[9] Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national securities system; and protect investors and the public interest.[10]

Pursuant to section 19(b)(2)[11] of the Act, the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register.**[12] The Commission believes that granting accelerated approval will provide the PCX with flexibility to compete for order flow with other exchanges without being limited to responding to increases in automatic execution eligibility levels initiated by those other exchanges.[13]

While increasing the maximum order size limit from fifty contracts to seventy-five contracts for Auto-Ex eligibility by itself does not raise concerns under the Act, the Commission believes that this increase raises collateral issues that the PCX will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for the Exchange's automatic execution system. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed onto the Auto-Ex system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly,it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through Auto-Ex, the greater the risk market makers must be willing to accept. The Commission does not believe that, because the Exchange's OFTC determines to approve orders as large as seventy-five contracts as eligible for Auto-Ex, the OFTC or any other PCX committee or officials should disengage Auto-Ex more frequently by, for example, declaring a "fast" market. Disengaging Auto-Ex can negatively affect investors by making it slower and less efficient to executive their option orders. It is the Commission's view that the Exchange, when increasing the maximum size of orders that can be sent through Auto-Ex, should not disadvantage all customers—the vast majority of which enter orders for less than seventy-five contracts—by making the Auto-Ex system less reliable.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed change, as amended, (SR–PCX–00–32) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29183 Filed 11–14–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78(b)(2).

[9] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] The Commission notes that it is concurrently approving similar proposals filed by the American Stock Exchange, LLP ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), and the Philadelphia Stock Exchange, Inc. ("Phlx"). *See* Securities Exchange Act Release Nos. 43516 (November 3, 2000) (SR–Amex–99–45); 43517 (November 3, 2000) (SR–CBOE–99–51); and 41515 (November 3, 2000) (SR–Phlx–99–32).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43519; File No. SR–PCX–00–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Increase the Maximum Auto-Ex Order Size to 100 Contracts

November 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. 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 PCX is proposing to increase the maximum size of equity and index option contracts that may be designated for automatic execution to 100 contracts.

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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's automatic execution system ("Auto-Ex") automatically executes public customer market and marketable limit orders within certain size parameters. PCX Rule 6.87(b) currently provides that the Options Floor Trading Committee ("OFTC") shall determine the size of orders that are eligible to be executed through Auto-Ex. The rule further provides that although the OFTC may change the order size parameter on an issue-by-issue basis, the maximum order size for execution through Auto-Ex is fifty contracts for both equity and index options.[3] The Exchange is now proposing to increase the maximum size of option orders that are eligible for automatic execution, subject to designation by the OFTC on an issue-by-issue basis, to 100 contracts.[4]

The Exchange believes that these changes will help it to meet the changing needs of customers in the marketplace and give the Exchange better means of competing with other options exchanges for order flow, particularly in multiply traded issues. The Exchange also believes that increasing to 100 the number of option contracts executable through the Exchange's Auto-Ex order execution system will enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option issues consistent with its obligations under the Act. In addition, this increase should bring the speed and efficiency of automated execution to a greater number of retail orders. The PCX further believes that it should have flexibility to compete for order flow with other exchanges without being limited to responding to increases in automatic execution eligibility levels initiated by those other exchanges.[5]

The Exchange represents that it believes that the increase will not expose the Exchange's Auto-Ex system to risk of failure or operational breakdown. The Exchange represents that it further believes that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of this proposal.

2. Statutory Basis

The Exchange believes that this proposal is consistent with section 6(b)[6] of the Act, in general, and furthers the objectives of section 6(b)(5),[7] in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–18 and should be submitted by December 6, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29185 Filed 11–14–00; 8:45 am]

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[3] See Securities Exchange Act Release No. 41823 (September 1, 1999), 64 FR 49265 (September 10, 1999) (approving PCX proposal to increse the maximum size of index and equity option orders that may be automatically executed, from twenty to fifty contracts). Concurrent with its issuance of this notice, the Commission approved, on an accelerated basis, a PCX proposal to increase the maximum order size for Auto-Ex eligibility from fifty contracts to seventy-five contracts. *See* Securities Exchange Act Release No. 43518 (November 3, 2000).

[4] The Exchange notes that, pursuant to PCX Rule 6.86(g), if the OFTC determines, pursuant to PCX Rule 6.87(b), that the size of orders in an issue that are eligible to be executed on Auto-Ex will be greater than twenty contracts, then the trading crowd will be required to provide a market depth for manual (non-electronic) orders in that greater amount, as provided in PCX Rule 6.86(a).

[5] *See* PCX Rule 6.87(c) (permitting the PCX to match the maximum size of orders eligible for automatic execution that are permitted on another options exchange in multiply traded issues).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43524; File No. SR–Phlx–00–74]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Regarding Exchange Liability in Connection with the Administration of its Proprietary Indices

November 6, 2000.

I. Introduction

On August 4, 2000, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to amend Phlx Rule 1102A, Limitation of Exchange Liability, to add to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–1.

limitation of the Exchange's liability, in connection with its administration of Phlx proprietary indices, negligent acts or omission. Notice of the proposed rule change appeared in the **Federal Register** on September 22, 2000.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Phlx currently lists and trades options on several proprietary indices.[4] Phlx Rule 1102A limits the Exchange's liability in connection with the administration of its proprietary indices. The Exchange proposes to amend Phlx Rule 1102A to disclaim liability for negligent conduct. The Exchange represents that there is a great deal work involved in the daily calculation and dissemination of these indices. In addition, the Exchange represents that although much of such work is automated, manual input is still required and the potential for human error exists which exposes the Exchange to a risk of liability. Potential human errors include inputting a symbol or index value incorrectly or missing a corporate action that has an effect on the index.

Phlx Rule 1102A disclaims Exchange liability for damages caused by errors, omissions or delays in the calculation or dissemination of any index value resulting from any conduct beyond the reasonable control of the Exchange, including an act of God, a power failure, or any error, omission or delay in the reported price of the underlying security. The Exchange believes that these disclaimer provisions are arguably ambigous with respect to whether the Exchange remains potentially liable for damages caused by any human error or omission by an Exchange employee in connection with the performance of the Exchange's index responsibilities. The Exchange believes, however, that the proposed amendment to Phlox Rule 1102 would make clear that the Exchange disclaims liability for negligent conduct, in addition to conduct beyond the Exchange's reasonable control, currently covered by Phlx Rule 1102A. The Exchange represents that other exchanges, including the American Stock Exchange "(Amex"),[5] disclaim liability for negligent conduct in connection with their index operations. Finally, the Exchange acknowledges that Phlx Rule 1102A cannot be relied upon by the Exchange to limit liability to non-members or for any intentional or negligent violation of federal securities laws.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act[6] that rules of an exchange be designed to facilitate transactions in securities.[7]

The Commission notes that the proposed rule change is to the Amex's rule.[8] Further, the Commission notes that the proposed change cannot be used to limit the Phlx's liability to non-members for any intentional or negligent violations of the federal securities laws. The Commission believes that the prosed change should serve to facilitate transactions in securities. In this regard, the Commission believes that the proposal will encourage the Exchange continue to make options in its proprietary indices available to investors.

IV. Conclusion

It is therefore ordered, pursuant to section 19(2) of the Act,[9] that the proposed rule change (SR–Phlx–00–74) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29182 Filed 11–14–00; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 43292 (September 14, 2000), 64 FR 54719.

[4] Examples of the Exchange's proprietary indices Computer Box Maker Index (BMX), Phlx Oil Service Index (OSX), Gold-Sliver Index (XAU), National Over-the-Counter Index (XOC), Phlx Forest and Paper Products Sector Index (FPP), Over-the-Counter Prime Index (OTX), Utility Index (UTY), Semiconductor Index (SOX), TheStreet.com Internet Sector Index (DOT) and Wireless Telecom Sector Index (YLS).

[5] *See* Amex Rule 902C.

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] *See supra* note 5.

[9] 15 U.S.C. 78s(b)2.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43515; File No. SR–Phlx–99–32]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Maximum Size of Option Orders That May Be Executed Automatically

November 3, 2000.

I. Introduction

On August 23, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending its rules regarding the automatic execution of options orders to increase the maximum number of contracts eligible to be executed on the Exchange's automatic execution system ("AUTO–X") from fifty contracts to seventy-five contracts. On September 27, 1999 and January 23, 2000, respectively, the Phlx submitted Amendments Nos. 1 and 2 to the proposed rule change.[3] Notice of the proposal was published in the **Federal Register** on June 21, 2000.[4] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The AUTO–X feature of the Exchange's Automated Options Market System ("AUTOM") automatically executes public customer market and marketable limit orders in options at the Exchange's displayed bid or offer. Generally, public customer market and marketable limit orders of up to fifty contacts may be automatically executed through AUTO–X.[5] Orders are routed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange designated the proposal as filed pursuant to Section 19(b)(2) of the Act. The Exchange originally filed the proposal pursuant to Section 19(b)(3)(A). *See* Letter from Edith Hallahan, Deputy General Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated September 23, 1999 ("Amendment No. 1"). In Amendment No. 2, the Exchange deleted a provision in the original proposal that restricted the increase in maximum order size eligibility to 100 options. *See* Letter from Nandita Yagnik, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated January 20, 2000 ("Amendment No. 2").

[4] *See* Securities Exchange Act Release No. 42932 (June 13, 2000), 65 FR 38621 (June 21, 2000).

[5] *See* Securities Exchange Act Release No. 36601 (December 18, 1995), 60 FR 66817 (December 26,

through AUTOM from member firms directly to the appropriate specialist on the trading floor. Orders routed through AUTOM that are eligible for AUTO–X are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.[6]

The Exchange proposes to amend Phlx Rule 1080(c) to increase the maximum order size eligibility for automatic execution through AUTO–X from fifty contracts to seventy-five contracts. The Exchange represents that AUTO–X affords prompt and efficient automatic executions at the displayed price and therefore believes that increasing automatic execution levels will provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange notes that this increase from fifty contracts to seventy-five contracts is in line with prior changes to AUTO–X levels.[7]

The Exchange represents that its rules contain several safeguards to ensure the proper handling of AUTO–X orders. First, Phlx Rule 1080(f)(iii) states that a specialist is responsible for the remainder of an AUTOM order where a partial execution has occurred. Phlx Rule 1015 governs quotation guarantees and requires the trading crowd to ensure that public customer orders are filled at the best market for a minimum of ten contracts ("ten-contract guarantee"). Further, Options Floor Procedure Advice F–7 provides that the volume guarantees (including AUTO–X levels) are deemed to be the stated size in any bid or offer voiced or displayed on the Options Floor. Therefore, quoted markets are guaranteed up to that size. The Exchange represents that violations of any of these provisions could be referred to the Business Conduct Committee for disciplinary action.

Second, the Exchange represents that Registered Options Traders ("ROTs") have discretion to participate on the Wheel that allocates AUTO–X trades.[8] Consequently, an increase in the maximum AUTO–X order size does not prevent an ROT from declining to participate on the Wheel. The Exchange represents that the Wheel operates by rotating in two-lot to ten-lot increments depending upon the size of the order, and thus no single ROT will be allocated the entire seventy-five contracts.

Third, the Exchange represents that its procedures allow a specialist to disengage AUTO–X in extraordinary circumstances,[9] and that AUTOM users will be notified of such situations. For example, in extraordinary (fast market) conditions, quotations are disseminated with an "F" and the ten-contract guarantee on the screen markets is suspended pursuant to Options Floor Procedure Advice F–10.[10]

Finally, the Exchange notes that its rules provide a minimum net capital requirement for ROTs.[11] In addition, a ROTs clearing firm performs risk management functions to ensure that the ROT has sufficient financial resources to cover positions throughout the day. In this regard, the function includes real-time monitoring of positions. Further, the Exchange represents that it believes that clearing firm procedures address concerns regarding whether an ROT has the financial capability to support trading of options orders a large as seventy-five contracts.

The Exchange represents that it believes that automatic execution of orders for up to seventy-five contracts will provide customers with quicker, more efficient executions for a larger number of orders, by providing automatic rather than manual executions, thereby reducing the number of orders subject to manual processing. Further, the Exchange represents that increasing the AUTO–X maximum order size should not impose a significant burden on operation or capacity of the AUTOM System and will give the Exchange better means of competing with other options exchanges for order flow.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[12] Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national securities system; and protect investors and the public interest.[13]

While increasing the maximum order size limit from fifty contracts to seventy-five contracts for AUTO–X eligibility by itself does not raise concerns under the Act,[14] the Commission believes that this increase raises collateral issues that the Phlx will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for the Exchange's automatic execution system. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed onto the AUTO–X system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through AUTO–X, the greater the risk market makers must be willing to accept. The Commission does not believe that, because the Exchange's Options Committee determines to approve orders as large as seventy-five contracts as eligible for AUTO–X, the Options Committee or any other Phlx committee or officials should disengage AUTO–X more frequently by, for example, declaring a "fast" market. Disengaging AUTO–X can negatively affect investors by making it slower and less efficient to

1995) (approving proposal to increase order size eligibility limits for AUTO–X from twenty-five to fifty contracts).

[6] *See* Phlx Rule 1080(c).

[7] *See supra* note 5; Securities Exchange Act Release Nos. 32906 (September 15, 1993), 58 FR 49345 (September 22, 1999) (approving proposal to increase order size eligibility limits for AUTO–X from twenty to twenty-five contracts); and 29837 (October 18, 1991), 56 FR 55146 (October 24, 1991) (approving proposal to increase order size eligibility limits for AUTO–X from ten to twenty contracts).

[8] Unlike ROTs, specialists are required to participate on the Wheel. *See* Phlx Rule 1080(g).

[9] *See* Phlx Rule 1080(e) and Options Floor Procedure Advice A–13.

[10] Options Floor Procedure Advice F–10 states, in relevant part, that "[d]uring the period for which a fast market is in effect, displayed quotes for the respective options are not firm and volume guarantees of Option Advice A–11 are not applicable. * * *" Options Floor Procedure Advice A–11 provides that "public customer market or marketable limit orders in any options series on the Exchange are to be filled at the best market to a minimum of ten contracts by floor traders in the crowd. * * *"

[11] *See* Phlx Rule 703.

[12] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] The Commission notes that it is concurrently approving similar proposals filed by the American Stock Exchange, LLP ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), and the Pacific Stock Exchange, Inc. ("PCX"). *See* Securities Exchange Act Release No. 43516 (November 3, 2000) (SR–Amex–99–45); 43517 (November 3, 2000) (SR–CBOE–99–51); and Securities Exchange Act Release No. 43518 (November 3, 2000) (SR–PCX–00–32).

execute their option orders. It is the Commission's view that the Exchange, when increasing the maximum size of orders that can be sent through AUTO–X, should not disadvantage all customers—the vast majority of which enter orders for less than seventy-five contracts—by making the AUTO–X sytstem less reliable.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5).[15]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Phlx–99–32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29186 Filed 11–14–00; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 00-5 (6)]

Salamalekis v. Apfel; Entitlement to Trial Work Period Before Approval of an Award of Benefits and Before 12 Months Have Elapsed Since the Alleged Onset of Disability—Titles II and XVI of the Social Security Act.

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 00-5(6).

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Cassia W. Parson, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-0446.

SUPPLEMENTARY INFORMATION: We are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative review within the Sixth Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after November 15, 2000. If we made a determination or decision on your application for benefits between July 20, 2000, the date of the Court of Appeals' decision, and November 15, 2000, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior determination or decision. You must demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior determination or decision in your case.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior determination or decision on his or her claim as provided in 20 CFR 404.985(b)(2) or 416.1485(b)(2), discussed above.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: October 19, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 00–5 (6)

Salamalekis v. *Apfel*, 221 F.3d 828 (6th Cir. 2000)—Entitlement to Trial Work Period Before Approval of an Award of Benefits and Before 12 Months Have Elapsed Since the Alleged Onset of Disability—Titles II and XVI of the Social Security Act.

Issue: Whether a claimant's return to substantial gainful activity (SGA) within 12 months of the alleged onset date of his or her disability, and prior to an award of benefits, precludes an award of benefits and entitlement to a trial work period.

Statute/Regulation/Ruling Citation: Sections 222(c), 223, 1614(a)(3) and (4) and 1619 of the Social Security Act (42 U.S.C. 422(c), 423, 1382c(a)(3) and (4) and 1382h); 20 CFR 404.1505, 404.1520, 404.1592, 416.905, 416.906, 416.920; Social Security Ruling (SSR) 82-52.

Circuit: Sixth (Kentucky, Michigan, Ohio, Tennessee).

Salamalekis v. *Apfel*, 221 F.3d 828 (6th Cir. 2000).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

Description of Case: Manuel G. Salamalekis applied for Social Security disability insurance benefits on October 1, 1991, alleging disability since April 24, 1991, due to a heart condition and Parkinson's Disease. On March 2, 1992, less than a year after the alleged onset of disability, Mr. Salamalekis returned to work and promptly notified the Agency of his return. On the same day that Mr. Salamalekis returned to work, we "determined he was entitled to receive disability insurance benefits" and an award notice was sent to Mr. Salamalekis on March 8, 1992. It was not disputed that we were unaware that Mr. Salamalekis had returned to work when we determined his eligibility for benefits. We subsequently learned of his return to work. In May of 1992, we notified Mr. Salamalekis that his claim would be reviewed when his "9th month of trial work" ended. He

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

continued to work and received benefits for approximately the next 2 years.

On March 25, 1994, we notified Mr. Salamalekis that we intended to revise our initial award determination finding him disabled to a determination that he was never disabled because he returned to work on March 2, 1992, prior to the Agency's award of benefits and less than 12 months after the onset of his impairment. We revised our initial award determination, ceased payment of Mr. Salamalekis' benefits and assessed him with a $30,080.20 overpayment. An ALJ affirmed the revised determination and the Appeals Council denied review. Mr. Salamalekis sought judicial review in the Federal district court where a United States Magistrate Judge affirmed SSA's final decision.

On his appeal to the United States Court of Appeals for the Sixth Circuit, Mr. Salamalekis argued that he was disabled and was entitled to a 9-month trial work period beginning with his return to work in March 1992, plus a 3-month reentitlement period. For this reason, Mr. Salamalekis contended that the Agency should not have considered his work during this period as evidence of substantial gainful activity demonstrating that he was not disabled.

Holding: The Sixth Circuit held that Mr. Salamalekis was entitled to a trial work period regardless of whether he returned to work before or after SSA's award of benefits. Consequently, it reversed and remanded the case to the district court with instructions to return the case to SSA for a recalculation of the overpayments owed by Mr. Salamalekis. The court found that according to the plain language of the Social Security Act (the Act), an individual may take advantage of a trial work period once he becomes entitled to disability insurance benefits.

According to the court, Mr. Salamalekis had satisfied all five prerequisites for entitlement to benefits under section 223(a) of the Act when he returned to his job. He was insured for disability insurance benefits; he was below retirement age; he filed an application for benefits; the 5-month waiting period had expired; and he was under a disability. The court rejected the Agency's argument that it should apply SSR 82-52 and find that Mr. Salamalekis was never disabled in view of his return to work within 12 months of his alleged disability onset date. In so doing, the court noted that at the time Mr. Salamalekis returned to work his impairment was ongoing and was expected to last for 12 months.

The court found that the relevant language from SSR 82-52 was inconsistent with the plain language of the Act. In addition, the court noted "the Seventh, Eighth and Tenth Circuits have also held that a claimant is entitled to a trial work period if the waiting period has expired and the claimant's impairment is expected to last for 12 months, regardless of whether the Agency has made an award determination and regardless of whether the impairment has actually lasted 12 months." [1]

Statement as to How Salamalekis Differs From SSA's Interpretation of the Social Security Act

Under the Act, an individual who is entitled to disability insurance benefits is generally entitled to a trial work period. The individual can test his or her ability to work for up to 9 months without that work activity affecting his or her entitlement to benefits. However, to be entitled to a trial work period, the individual must be entitled to disability insurance benefits. In order to be entitled to disability insurance benefits, the individual must be disabled, i.e., he or she must have an impairment that has prevented, or can be expected to prevent him or her from performing substantial gainful activityfor at least 12 months. *See* Sections 223(a)(1)(D) and (d)(1)(A) of the Act.

SSR 82-52 contains a clear statement of SSA policy on this issue [2] as follows:

> When the [individual's] return to work demonstrating ability to engage in SGA occurs before approval of the award and prior to the lapse of the 12-month period after onset, the claim must be denied.

The Sixth Circuit held, however, that SSR 82-52 is inconsistent with the plain language of section 222(c) of the Act.[3] The holding in *Salamalekis* is inconsistent with our policy because it permits a claimant to be found to be under a disability, and entitled to benefits and a trial work period even if he or she engages in work activity demonstrating the ability to engage in substantial gainful activity before the lapse of the 12-month period after the alleged disability onset date and before a decision by SSA to award benefits.[4] Our interpretation is that a claimant cannot be found to have been under a disability if, at the time we are adjudicating the claim, the evidence shows that his or her impairment no longer prevents the performance of substantial gainful activity and that it had not done so for at least 12 continuous months. In the preamble to our August 10, 2000, final rules, we explain why we believe that this interpretation is consistent with the relevant statutory language and with the legislative history of the 12-month duration requirement. That legislative history indicates that Congress intended that the disability program not "result in the payment of disability benefits in cases of short-term, temporary disability." [5]

Explanation of How SSA Will Apply The Salamalekis Decision Within the Circuit

This Ruling applies only to cases in which the claimant resides or resided in Kentucky, Michigan, Ohio or Tennessee at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, ALJ hearing or Appeals Council review.

This Ruling applies to claims for title II benefits based on disability. It also applies to claims for title XVI benefits based on disability as explained below.

A claim for title II disability insurance benefits, widow(er)'s insurance benefits based on disability or child's insurance benefits based on disability in which the claimant returns to work within 12 months of the established onset date of an impairment which could otherwise be the basis for a finding of disability should be allowed and the claimant granted a trial work period if the following conditions are met:

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[1] The courts in *Newton* v. *Chater*, 92 Cir. 1996); *Walker* v. *Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991); *McDonald* v. *Bowen*, 818 F.2d 559 (7th Cir. 1986) found that the pertinent provision of SSR 82-52 was inconsistent with the Social Security Act.

[2] SSR 91-7c superseded SSR 82-52, but only to the extent that SSR 82-52 discussed former procedures used to determine disability in children. The issue in this AR does not relate to those former procedures and the cited policy statement in SSR 82-52 remains in effect.

[3] Section 222(c)(2) of the Act provides that "any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether disability has ceased in a month during such period." Section 222(c)(3) of the Act provides, in pertinent part, that "[a] period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits * * * " Under section 222(c)(4) of the Act, a trial work period ends with the ninth month, in any period of 60 consecutive months, in which the individual renders services (whether or not the 9 months are consecutive), or, if earlier, with the month in which disability ceases.

[4] While the court in *Salamalekis* addressed SSR 82-52 in its opinion issued July 20, 2000, it should be noted that final rules that reflect, clarify, and provide a more detailed explanation and justification for the SSR 82-52 policy at issue were published in the **Federal Register** on July 11, 2000 (65 FR 42772) with an effective date of August 10. The court in *Salamalekis*, apparently unaware of the July 11th publication, simply noted that the proposed rules to incorporate SSA's position in SSR 82-52 had been published, but had not been finalized; the court did not discuss the more detailed explanation and justification for our policy provided in the preamble to the final rules.

[5] That legislative history is found at S. Rep. No. 404, 89th Cong. 1st Sess. 98-99, *reprinted* in 1965 U.S. Code Cong. & Ad. News, 1943, 2038-39.

(1) the claimant establishes that, at the time he or she returned to work and thereafter, the impairment was still expected to last for at least 12 consecutive months from the date of onset;

(2) the claimant returns to work after the waiting period (if a waiting period is applicable) but within the 12-month period following the established onset date; and

(3) the return to work demonstrating an ability to engage in substantial gainful activity occurs either before or after approval of the award.

A claim for title XVI benefits based on disability in which the claimant returns to work within 12 months of the established onset date of an impairment which could otherwise be the basis for a finding of disability should be allowed and the claimant granted section 1619 status[6] if the following conditions are met:

(1) The claimant establishes that, at the time he or she returned to work and thereafter, the impairment was still expected to last for at least 12 consecutive months from the date of onset;

(2) The claimant returns to work in a month subsequent to the month of established onset but within the 12-month period following the established onset date;

(3) The claimant is eligible to receive "regular" SSI benefits under section 1611 of the Act (or a federally administered State supplementary payment) based on the impairment (disregarding the effect the claimant's return to work within 12 months after the date of onset would otherwise have on eligibility for such benefits or payment) for at least 1 month in the period preceding the month in which he or she returns to work;

(4) The claimant meets all other nondisability requirements for section 1619 status; and

(5) The return to work demonstrating an ability to engage in substantial gainful activity occurs either before or after approval of the award.

[FR Doc. 00-29191 Filed 11-14-00; 8:45 am]

BILLING CODE 4190-29

[6] Pursuant to statutory amendments made by Public Law 99-643 effective July 1, 1987, the trial work period provisions no longer apply to title XVI disability claims. Beginning July 1, 1987, a disabled individual, who was eligible to receive "regular" SSI benefits under section 1611 of the Act (or a federally administered State supplementary payment) for a month and subsequently has earnings ordinarily considered to represent substantial gainful activity, will move directly to section 1619 status rather than be accorded a trial work period. This Ruling extends to such individuals, i.e., a claim for title XVI benefits based on disability should be allowed and the claimant granted section 1619 status if the claimant would otherwise be eligible for section 1619 status and the same conditions set out above for title II claims based on disability are met.

DEPARTMENT OF STATE

[Public Notice No. 3466]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9 a.m. on Monday, December 11, 2000, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This meeting will discuss the upcoming 44th Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on September 17–21, 2001, at the IMO Headquarters in London, England.

Items of discussion will include the following:

a. Review of results from the previous Session (SLF 43),

b. Harmonization of damage stability provisions in the IMO instruments,

c. Revision of technical regulations of the 1966 International Load Line Convention,

d. Revisions to the Fishing Vessel Safety Code and Voluntary Guidelines.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G–MSE–2), Room 1308, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: November 8, 2000.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 00–29244 Filed 11–14–00; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice No. 3467]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Thursday, December 14, 2000, in Room 6103 of the U.S. Coast Guard Headquarters, 2100 2nd Street SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 32nd Session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping, which is scheduled for January 22 to 26, 2001, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

— Training and certification of maritime pilots
— Unlawful practices associated with certificates of competency (*i.e.*, forged certificates)
— Standard Marine Communication Phrases
— Training in the use of Electronic Chart Display and Information Systems
— Guidance for training in ballast water management
— Guidance for ships operating in ice-covered waters
— Validation of an IMO model course on assessment of competence
— Guidance associated with the International Convention on Standards of Training,

Certification and Watchkeeping for Fishing Vessel Personnel Convention, as adopted by the 1995 conference; not yet ratified or in force.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: LCDR Luke Harden, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, Room 1210, 2100 2nd Street SW., Washington, DC 20593–0001 or by calling (202) 267–0229.

Dated: November 8, 2000.

Stephen Miller,

Executive Secretary Shipping Coordinating Committee.

[FR Doc. 00–29245 Filed 11–14–00; 8:45 am]

BILLING CODE 4210–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–58]

WTO Dispute Settlement Proceeding Regarding Section 609 of Public Law 101–162 Relating to the Protection of Sea Turtles in Shrimp Trawl Fishing Operations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the government of

Malaysia has requested the establishment of a dispute a settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO) to examine whether the United States has implemented the recommendations and rulings of the WTO Dispute Settlement Body (DSB) in a dispute involving import restrictions under section 609 of Public Law 101–162 (Section 609). Section 609 is intended to promote the conservation of endangered sea turtle species by restricting the importation of shrimp and shrimp products harvested by methods harmful to sea turtles. Interested persons are invited to submit written comments concerning the issues raised in the dispute.

DATES: Although USTR will accept any submissions received during the course of the dispute settlement proceedings, comments should be submitted on or before November 30, 2000 to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, , Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: Dispute Regarding U.S. Sea Turtle Conservation Law. Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Director for Marine Resources and Regional Affairs, (202) 395–7320, or William Busis, Associate General Counsel, (202) 395–3150. For questions concerning the operation of U.S. import restrictions under Section 609, please contact David Hogan, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington DC, telephone number (202) 647–2335.

SUPPLEMENTARY INFORMATION:

Prior WTO Proceedings

On November 6, 1998, the WTO DSB adopted the reports of a dispute settlement panel and the WTO Appellate Body in a case brought by India, Malaysia, Pakistan and Thailand challenging U.S. restrictions on shrimp imports under section 609. The Appellate Body report found that section 609 itself was not inconsistent with U.S. obligations under the WTO Agreement and was, in fact, covered by the WTO provision relating to the conservation of exhaustible natural resources. At the same time, however, the Appellate Body report found that certain aspects of the manner in which section 609 was being implemented, in their cumulative effect, were inconsistent with U.S. obligations under the WTO Agreement. The Appellate Body report recommended that the United States revise its implementation of section 609 accordingly.

At the time the dispute settlement panel was established, USTR published a notice inviting public comments on the issues in the dispute. See 62 FR 13,934 (March 24, 1997). The dispute settlement panel and Appellate Body reports are publicly available in the USTR reading room and on the WTO web site (www.wto.org).

U.S. Implementation

In November 1998, and after consultations with Congress and other stakeholders, the United States notified the DSB that the United States intended to implement the recommendations and rulings of the DSB in a manner which is consistent not only with U.S. WTO obligations, but also with the firm commitment of the United States to the protection of endangered sea turtles.

The United States and the other parties to the dispute reached agreement on 13 months as a reasonable period for implementation. The 13-month period ended in December 1999.

In March 1999, the Department of State, which administers section 609, published a notice summarizing steps being taken to implement the DSB recommendations and rulings, and requesting comments on proposed revisions to the guidelines used for making certifications under section 609. See 64 FR 14,481 (March 25, 1999). In July 1999, the Department of State published a notice reviewing and responding to the comments received on its March 1999 notice, and setting forth revised section 609 guidelines. See 64 FR 36,946 (July 8, 1999).

In January 2000, the United States informed the DSB that the United States had implemented the recommendations and rulings of the DSB during the 13-month implementation period. The United States explained that the implementation steps had both responded to the issues raised by the Appellate Body report, and—with the cooperation of the countries in the Indian Ocean region—had advanced efforts to conserve endangered sea turtles. Those implementation steps included the revisions to the Department of State guidelines, efforts to negotiate an agreement with the governments of the Indian Ocean region on the protection of sea turtles, and renewed offers of technical training in sea turtle conservation measures.

Article 21.5 Proceeding

On October 23, 2000, the Government of Malaysia—one of the four complaining parties in the prior WTO proceeding—requested that the DSB establish a panel under Article 21.5 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) to examine whether the United States had implemented the recommendations and rulings of the DSB. Malaysia is claiming that implementation of the DSB recommendations and rulings required the U.S. to remove the import restrictions imposed under section 609.

The DSB has established a dispute settlement panel to consider Malaysia's claim. As provided under the DSU, the panel is composed of the same members as in the prior proceeding. The panel is scheduled to issue its report in mid-March, 2001. Pursuant to an understanding between the United States and Malaysia, either party may request that the WTO Appellate Body review the report of the dispute settlement panel.

The European Communities and the governments of Japan, Ecuador, Australia, India, Thailand, Canada, Mexico, Pakistan, and Hong Kong, China have indicated their interest to participate in the dispute as third parties.

Invitation for Comments

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR maintains a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington. DC 20508. The public file includes a listing of any comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute; as well as the reports of the panel and the Appellate Body. An appointment to review the public file (Docket WTO/DS–58, U.S. Sea Turtle Conservation Law) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–29241 Filed 11–14–00; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending October 20, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–8113.
Date Filed: October 17, 2000.
Parties: Members of the International Air Transport Association.
Subject: CTC COMP 0314 dated 13 October 2000, Resolution 033f—Local Currency Rate Changes—Pakistan, Intended effective date: 16 October 2000.

Docket Number: OST–2000–8120.
Date Filed: October 18, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0695 (Re-issue) dated 6 October 2000, Mail Vote 088—Resolution 010j, Special Passenger Amending Resolution to/from Cyprus, Intended effective date: 1 January 2001.

Docket Number: OST–2000–8130.
Date Filed: October 18, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0706 dated 17 October 2000, Mail Vote 091—Resolution 024d (Amending), Currency Names, Codes, Rounding Units and Acceptability of Currencies, Intended effective date: 1 December 2000.

Docket Number: OST–2000–8166.
Date Filed: October 20, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–JK 0059 dated 3 October 2000, Europe-Japan/Korea Resolutions r1–r–48, Technical Correction PTC23 EUR–JK 0060 dated 10 October 2000, Minutes—PTC23 EUR–JK 0061 dated 13 October 2000, Tables—PTC23 EUR–JK FARES 0023 dated 6 October 2000, Intended effective date: 1 April 2001.

Docket Number: OST–2000–8167.
Date Filed: October 20, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–SWP 0048 dated 13 October 2000, Europe-South West Pacific Resolutions r1–r23, Minutes—PTC23 EUR–SWP 0045 dated 3 October 2000, Tables—PTC23 EUR–SWP FARES 0019 dated 17 October 2000, Intended effective date: 1 April 2001.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–29234 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending October 27, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–8204.
Date Filed: October 27, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC23 AFR–TC3 0108 dated 10 October 2000, TC23/TC123 Africa–TC3 Resolutions r1–r43, PTC23 AFR–TC3 0110 dated 20 October 2000, Technical Correction, Minutes—PTC23 AFR–TC3 0109 dated 20 October 2000, Tables—PTC23 AFR–TC3 FARES 0048 dated 20 October 2000, Intended effective date: 1 April 2001.

Docket Number: OST–2000–8205.
Date Filed: October 27, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC23 ME–TC3 0104 dated 3 October 2000, TC23/TC123 Middle East–TC3 Resolutions r1–r52, Minutes—PTC23 ME–TC3 0105 dated 27 October 2000, Tables—PTC23 ME–TC3 FARES 0045 dated 10 October 2000, Intended effective date: 1 April 2001.

Docket Number: OST–2000–8208.
Date Filed: October 27, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC1 0166 dated 27 October 2000, Mail Vote 092—Resolution 010k, TC1 Caribbean Special Passenger Amending Resolution, Intended effective date: 15 November 2000.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–29236 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 3, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–8213.
Date Filed: October 31, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC123 0116 dated 27 October 2000 (r—1–6), PTC123 0117 dated 27 October 2000 (r—7–9), TC123 North Atlantic Expedited Resolutions, Intended effective dates: 1 December 2000/1 January 2001.

Docket Number: OST–2000–8214.
Date Filed: October 31, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC123 0118/0119/0120/0121 dated 27 October 2000, TC123 Mid/South Atlantic Resolutions, Intended effective dates: 1 December 2000/1 January 2001.

Docket Number: OST–2000–8244.
Date Filed: November 3, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0718 dated 3 November 2000, Mail Vote 093—Resolution 010h, Special Passenger Currency Conversion Resolution—euro, Intended effective date: 1 January 2001.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–29237 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 20, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–8155.

Date Filed: October 19, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 9, 2000.

Description: Application of Britannia Airways AB ("Applicant") pursuant to 49 U.S.C. Sections 41301 *et seq.* and Subpart Q, applies for a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons and their accompanying baggage, and property: (1) Between a point or point in Sweden, Denmark and Norway and a point or points in the United States; (2) between a point or points in the United States and any point or points in a third country provided that such service constitutes point of a continuous operation that includes service to Sweden, Denmark and/or Norway for the purpose of carrying local traffic between Sweden, Denmark and Norway and the United States; and also authorizing Applicant to engage in other charter trips in foreign air transportation subject to the terms, conditions, and limitations of the Department's regulations governing charters.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–29235 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 3, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–8212.

Date Filed: October 30, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 20, 2000.

Description: Application of Venture Travel, LLC d/b/a Taquan Air (Venture) and Taquan Air Service, Inc. (TAS, Inc.), applies for a disclaimer of jurisdiction and transfer of the certificate of public convenience and necessity currently held by TAS, Inc.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–29238 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 6, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–8059.

Date Filed: October 4, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 25, 2000.

Description: Application of Mountain Bird Inc. d/b/a Salmon Air pursuant to 49 U.S.C. Section 41738 and Subpart Q, requests authority to operate scheduled passenger service as a commuter air carrier.

Docket Number: OST–2000–8074.

Date Filed: October 5, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 26, 2000.

Description: Application of Euroatlantic Airways-Transportes Aereos, S.A. ("Euroatlantic") pursuant to 49 U.S.C. Section 41301 and Subpart Q, requests a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons, property and mail between points in Portugal and points in the United States and between points in the United States and points in third countries.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–29239 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

[Docket OST–2000–7800]

RIN: 2105–AC94

Interim Statement of Policy on Alternative Dispute Resolution

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of interim statement of policy; request for comments.

SUMMARY: The Department of Transportation publishes this Interim Statement of Policy to further its commitment to using alternative dispute resolution (ADR) to advance our mission by preventing, minimizing escalation of, and resolving disputes among our employees and with external parties, at the earliest stage possible, in a cost-effective manner. This notice is intended to provide information about ADR, introduce new ADR initiatives, and promote the use of ADR. We request comments on our interim policy statement, on how to incorporate ADR into our processes, and how to encourage its use in appropriate circumstances.

DATES: Comments must be received by January 16, 2001.

ADDRESSES: Submit written comments to the Dockets Management System,

U.S. Department of Transportation, PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should refer to Docket Number OST–2000–7800 and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on "Help & Information" to obtain instructions for filing the comment electronically. In every case, the comment should refer to the Docket number. The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at "http://dms.dot.gov/."

FOR FURTHER INFORMATION CONTACT: Judith S. Kaleta, Senior Counsel for Dispute Resolution and Dispute Resolution Specialist, 202–493–0992.

SUPPLEMENTARY INFORMATION:

Interim Statement of Policy on Alternative Dispute Resolution (ADR)

ADR is a collaborative, consensual dispute resolution approach. It describes a variety of problem-solving processes that are used in lieu of litigation or other adversarial proceedings to resolve disagreements. ADR encompasses mediation, facilitation, conciliation, factfinding, mini-trials, negotiation, negotiated rulemaking, neutral evaluation, policy dialogues, use of ombuds, arbitration, and other processes that usually involve a neutral third party who assists the parties in preventing, minimizing the escalation of, and resolving disputes. The efficient and effective use of ADR will help us resolve disputes at an early stage, in an expeditious, cost-effective, and mutually acceptable manner.

The Department of Transportation is committed to using ADR to advance our mission. We will consider using ADR in all areas including workplace issues, formal and informal adjudication, issuance of regulations, enforcement and compliance, issuing and revoking licenses and permits, contract and grant award and administration, litigation brought by or against the Department, and other interactions with the public and the regulated community.

We will provide learning and development opportunities for our employees so that they will be able to use conflict resolution skills, understand the theory and practice of ADR, and apply ADR appropriately.

We will use a variety of evaluation and assessment strategies to measure and improve our processes and our use of ADR.

We will allocate resources to support the use of ADR.

We will provide confidentiality consistent with the provisions of the Administrative Dispute Resolution Act and other applicable Federal laws.

The Department will attempt to incorporate ADR in its dispute resolution, or as appropriate, rulemaking processes. In addition, either on our own initiative or in response to a request, the Department will examine the appropriateness of using ADR on a case-by-case basis. The decision-making on when to use ADR should reflect sound judgment that ADR offers the best opportunity to resolve the dispute. In appropriate disputes, the Department will use ADR in a good-faith effort to achieve consensual resolution. However, if necessary, we will litigate or participate in some other process to resolve a dispute.

We will work together to further ADR use across the Department. However, decision-making on incorporating ADR into dispute resolution processes, using ADR to resolve a particular dispute, and allocating resources rests with the Department's operating administrations, secretarial offices, or Office of the Inspector General.

All employees and persons who interact with the Department are encouraged to identify opportunities for collaborative, consensual approaches to dispute resolution or rulemaking.

Background

The Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571–583, authorizes and encourages Federal agencies to use consensual means of dispute resolution as alternatives to traditional dispute resolution processes. The Act defines alternative means of dispute resolution as "any procedure that is used to resolve issues in controversy * * *" It defines "issue in controversy" as "an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement * * *" The Act requires that each Federal agency adopt a policy that addresses the use of ADR and appoint a Dispute Resolution Specialist. Congress enacted the Administrative Dispute Resolution Act to reduce the time, cost, inefficiencies, and contentiousness that too often are associated with litigation and other adversarial dispute resolution mechanisms.

The Negotiated Rulemaking Act of 1996, 5 U.S.C. 561–570, establishes a framework for use of negotiated rulemaking. Congress enacted the Negotiated Rulemaking Act to increase the acceptability and improve the substance of rules, making it less likely that the affected parties will challenge the rules or resist enforcement.

On May 1, 1998, President Clinton issued a memorandum for heads of executive departments and agencies encouraging the use of ADR and negotiated rulemaking. In his memorandum, the President stated that each Federal agency must take steps to promote greater use of mediation, facilitation, arbitration, early neutral evaluation, ombuds, negotiated rulemaking, and other dispute resolution techniques.

For purposes of this ADR initiative, "the Department" or "we" refers to the Office of the Secretary, the operating administrations (the United States Coast Guard, the Federal Aviation Administration, the Federal Highway Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, the National Highway Traffic Safety Administration, the Federal Transit Administration, the Maritime Administration, the Saint Lawrence Seaway Development Corporation, the Research and Special Programs Administration, the Bureau of Transportation Statistics, and the Transportation Administrative Services Center (TASC)), and the Office of Inspector General. The Department's ADR initiative is a ONEDOT effort, where we are working better together to create and communicate our ADR goals. As we strive to meet our national transportation goals, we recognize the need to collaborate and form partnerships, internally and externally.

Experience at the Department of Transportation and other Federal agencies shows that ADR can achieve mutually acceptable solutions more effectively than traditional, non-collaborative processes.

Promoting ADR

The Department has taken several affirmative steps to promote the use of ADR.

Dispute Resolution Specialist

As required by the Administrative Dispute Resolution Act, the Secretary appointed a Dispute Resolution Specialist. The Dispute Resolution Specialist is authorized to: (1) Implement the Administrative Dispute

Resolution Act of 1996 and coordinate with the Assistant General Counsel for Regulation and Enforcement with regard to ADR policy as it relates to rulemaking under the Negotiated Rulemaking Act of 1996; (2) develop dispute resolution policy and procedures; (3) monitor and evaluate dispute resolution program execution and results; (4) identify barriers to the use of ADR and work for their removal; (5) require reports from Departmental organizations and report to the Secretary annually on the Department's ADR efforts; (6) determine appropriate training to educate employees and external parties about ADR and conflict management options and processes; (7) provide advice and assistance in obtaining neutrals; and (8) represent the Department on ADR matters.

Notwithstanding this focal point for ADR activity, decision-making on whether to incorporate ADR into dispute resolution processes or to use ADR to resolve a particular dispute rests with the Department's operating administrations, secretarial offices, and the Office of Inspector General. Furthermore, the participation in a particular ADR process is by mutual consent of the parties.

Dispute Resolution Council

The Secretary established a Dispute Resolution Council as part of the Department's ONEDOT management strategy to work better together and to further use of ADR across the Department. The Council, chaired by the Department's Dispute Resolution Specialist, is comprised of representatives appointed by heads of modal administrations and secretarial officers and the Inspector General, who serve as Deputy Dispute Resolution Specialists to promote and coordinate the use of ADR within their organizations and coordinate with their Regulation or Liaison Officer with regard to ADR policy as it relates to rulemaking under the Negotiated Rulemaking Act of 1996. The Dispute Resolution Council worked together to develop the Department's interim policy statement. The Dispute Resolution Council supports the Dispute Resolution Specialist and works together to (1) facilitate the sharing of ADR information; (2) examine how the Department is currently using ADR, in headquarters and the regions, and make recommendations for improvements; (3) explore the use of ADR techniques in connection with a variety of areas; and (4) assist in identifying future ADR uses and coordinating the development of ADR programs.

Web Site

The Dispute Resolution Council has established a web site to provide information about the Department's use of ADR. The site provides links to a variety of other ADR sites, including the Interagency ADR Working Group, the Federal Procurement ADR Electronic Guide, and the Office of Personnel Management ADR Resource Guide. The site will be regularly updated to provide information about our ADR efforts. The web address is www.dot.gov/adr.

Training

The Department is committed to educating its personnel about the potential benefits and appropriate use of ADR, as well as to obtain ADR guidance and assistance. The Department has provided training about ADR, effective communication, and conflict management. Employees who serve as neutrals to resolve disputes using ADR techniques have received core training and will receive additional training annually. The Department intends to work in partnership with other Federal agencies, through the Interagency ADR Working Group, and in other ways to meet our training needs.

Evaluation

The Department will use a variety of evaluation and assessment strategies to provide valid and reliable information for measuring and improving performance. Depending on the ADR program, we may look at the number of attempts to use ADR , the number of resolutions, customer satisfaction with the process, the neutral, and/or the resolutions, or estimated cost- and/or time-savings.

Resources

As noted in Appendix II, the Department is using ADR for a variety of activities and has provided resources to support ADR use. However, lack of resources is often identified as a barrier to ADR use. To avoid this potential barrier, the Department will continue to allocate resources to support ADR initiatives. This may include collateral duty or detail assignments, permanent ADR positions, contract dollars, or other funding alternatives. Decision-making on allocating resources rests with the Department's operating administrations and secretarial offices.

Confidentiality

In some instances, many of the benefits of ADR can be realized only through confidential proceedings. Confidentiality ensures that the parties may speak freely with a neutral who will not disclose their confidences to other parties or to the outside world. Without that assurance, the parties may be unwilling to freely discuss their interests and possible settlements with the neutral. Confidentiality also allows the parties to raise sensitive issues and discuss creative ideas and solutions that they would be unwilling to discuss publicly.

Although negotiated rulemaking is a process conducted under the Federal Advisory Committee Act at public meetings that have been announced in the **Federal Register**, confidentiality may also be a consideration for the participants. For example, a convenor who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate may agree not to disclose the identity of a party who raises a particular concern about an agency. Information shared in caucuses may also be confidential.

The Administrative Dispute Resolution Act generally provides that communications (including a neutral's notes and documents prepared for the proceedings) between a neutral and the parties must be kept confidential by the neutral and the parties, unless certain specific exceptions exist. A court may require disclosure of such information if it is necessary to prevent a manifest injustice, help establish a violation of law, or prevent harm to the public health or safety. The injustice, violation, or harm must be of a sufficient magnitude in the particular case to outweigh the integrity of the dispute resolution proceedings. In addition, other Federal laws may impact the confidentiality of information in specific cases.

ADR Considerations

A decision to use ADR may be made before or after a dispute arises. Several factors should be considered in making that decision. Some factors may favor the use of ADR while others may weigh against it. Although not intended as an exhaustive list of factors, the Department has determined that ADR may be helpful in resolving a particular dispute where one or more of the following factors is present:

1. *Identifiable Parties.* There is an identifiable group of constituents with interests (the parties) so that all reasonably foreseeable interests can be represented.

2. *Good Faith.* The parties are willing to participate in good faith.

3. *Communication.* The parties are interested in seeking agreement, but poor communication or personality conflicts between the parties adversely affect negotiations.

4. *Continuing Relationship.* A continuing relationship between the parties is important and desirable.

5. *Issues.* There are issues that are agreed to be ripe for a negotiated solution.

6. *Unrealistic View of the Issues.* The parties' demands or views of the issues are unrealistic. A discussion of the situation with a neutral may increase the parties' understanding and result in more realistic alternatives and options.

7. *Sufficient Areas of Compromise.* There are sufficient areas of compromise to make ADR worthwhile.

8. *Expectation of Agreement.* The parties expect to agree eventually, most likely before reaching the court room or engaging in other adversarial processes.

9. *Timing.* There is sufficient time to negotiate and ADR will not unreasonably delay the outcome of the matter in dispute. There is a likelihood that the parties will be able to reach agreement within a fixed time. There are no statutory or judicial deadlines that are adversely affected by the process. ADR may result in an earlier resolution of the dispute.

10. *Resources.* The parties have adequate resources (budget and people) and are willing to commit them to the process.

While many of these factors may apply to agency rulemaking, there may be some variation in the consideration. For example, with regard to "Expectation of Agreement," the consideration may be that all affected interests recognize that there is a problem that must be solved and that Federal regulation is the appropriate response. Furthermore, under the Negotiated Rulemaking Act, the head of the agency would determine whether negotiated rulemaking is in the public interest and would consider several factors concerning the parties, the timing, the costs, and the issues. *See* 5 U.S.C. 561.

There are also factors that suggest that ADR should not be used. The Administrative Dispute Resolution Act of 1996 provides factors that suggest that ADR is inappropriate or may not be productive in a particular dispute resolution proceeding. *See* 5 U.S.C. 572.

Relationship to Other Dispute Resolution Procedures

This interim policy statement replaces DOT Order 2101.1. It does not supersede collective bargaining agreements or other statutory, regulatory, or contractual dispute resolution procedures, or military disciplinary processes. ADR is intended to supplement, not replace, existing procedures.

No Creation of Rights

The choice of when and how to use ADR is within the discretion of the Department's operating administrations and secretarial offices. This interim statement of policy does not create any right to judicial review involving the compliance or noncompliance with the statement. In addition, the statement does not obligate the Department to offer funds to settle any case, to accept a particular settlement or resolution of a dispute, or to alter any existing delegation of settlement or litigation authority.

Request for Public Comment

The Department invites comment on the interim policy statement. In addition, the Department welcomes input on areas of agency activity that would benefit from a dispute resolution process that incorporates ADR techniques including workplace issues, formal and informal adjudication, issuance of regulations, enforcement and compliance, issuing and revoking licenses and permits, contract and grant award and administration, litigation brought by or against the Department, and other interactions with the public and the regulated community. Appendix II includes examples of ADR initiatives currently in use and under consideration.

Issued in Washington, DC on October 23, 2000.

Rodney E. Slater,

Secretary of Transportation.

Appendix I—Glossary of ADR Terms

The following terms are commonly associated with ADR. They are provided for your convenience and have been adapted from the Administrative Dispute Resolution Act and other sources.

Arbitration: Arbitration is a process in which a neutral decision-maker oversees the exchange of information, presides over a mini-hearing, and decides the matter. Arbitration may be binding or non-binding.

Conciliation: Conciliation is a process in which a neutral independently communicates with the parties either to improve relations, resolve a dispute, or pave the way for some other ADR process, such as mediation. Conciliation is intended to help establish trust and openness between parties to a dispute.

Convening: Convening is a process used to identify issues, interests, and parties to a dispute or potential dispute. The goal of convening is to assess the potential for use of other ADR processes to resolve a problem and to recommend a process or combination of processes.

Early Neutral Evaluation: Early neutral evaluation is a process in which the parties provide the highlights of their positions to an expert neutral fact-finder who evaluates the merits. The neutral provides a non-binding, objective evaluation of the strength of each party's position. This assists in future negotiations between the parties.

Facilitation: Facilitation is a process in which a neutral works with all parties in group sessions, helping the group to effectively move through the problem-solving steps of the meeting to reach the agreed upon goal.

Mediation: Mediation is a process in which a neutral, a mediator, assists open discussion between parties in dispute and helps them come to a mutually agreeable solution. A mediator has no authority to impose a decision on the parties.

Mini-trial: A mini-trial is a process in which a neutral presides over the presentation of highlights of the parties' cases by the parties' attorneys to the parties' principals and may include witness testimony. The neutral engages the parties in litigation risk analysis and facilitates settlement discussions.

Negotiated rulemaking: Negotiated rulemaking is a process in which representatives of those interests that would be affected by a rule convene to consider and discuss issues for the purpose of reaching consensus in the development of a rule.

Negotiation: Negotiation is a bargaining relationship between two or more parties. The parties join in a temporary relationship to educate each other about their needs and interests and then exchange specific resources or promises that will resolve one or more issues. Almost all of the ADR procedures in which the parties maintain control over the outcome of the conflict are variations of negotiation.

Neutral: A neutral is an individual who functions specifically to aid the parties in resolving a dispute. The neutral may be a Federal employee or any private individual who is acceptable to the parties. A neutral may not have financial, official, or personal conflict of interest with respect to the dispute, unless the interest is disclosed in writing to the parties and all parties agree that the neutral may serve.

Ombuds: An ombuds receives complaints and questions from individuals concerning the functioning of an entity, works for the resolution of particular issues, and where necessary, makes recommendations for the improvement of the general administration of the entity.

Policy Dialogue: A policy dialogue is a process designed to facilitate voluntary, interactive exchanges of views and information among interested groups and individuals working towards consensus solutions to policy issues. A policy dialogue is a flexible tool to enable all parties to participate in a non-adversarial setting to define and resolve issues. The product of a policy dialogue can be a report, a set of recommendations, agreements in principle, exchanges of information, or other ways of addressing the issues involved.

Roster: A roster is a list of persons qualified to provide services as neutrals and may indicate the person's area of ADR expertise.

Settlement Judge: A settlement judge is an administrative law judge, a Board of Contract Appeals judge, or Dispute Resolution Officer

trained in alternative dispute resolution techniques who consults with the parties and assists them in resolving a dispute instead of using a formal administrative hearing.

Appendix II—Examples of ADR Initiatives

ADR is working to bring parties together and to resolve disputes, resulting in less adversarial relationships and a better work environment. Employees who have been made aware of ADR techniques are routinely beginning to see them as desirable alternatives to traditional, more adversarial approaches. The Department has used ADR in various administrative and programmatic areas. Some examples of ADR initiatives that reflect the Department's commitment to collaborative decision-making include the following:

Civil Enforcement

Administrative Law Judges at the U.S. Coast Guard will continue to use ADR as appropriate. The ADR techniques may include early neutral evaluation, mediation, and settlement judges.

Contract and Procurement

Currently, the Department is reviewing its Transportation Acquisition Regulations and its Transportation Acquisition Manual and may incorporate an "ADR first" approach for agency protests, GAO protests, and appeals from contracting officers' final decisions. The Department encourages parties to call upon the Department's Board of Contract Appeals to provide early neutral evaluation and other ADR assistance on all acquisition controversies including bid protests and performance disputes.

In FY 1999, the Department's Board of Contract Appeals used alternative means of dispute resolution, including mini-trials and appointment of an independent neutral, in seven cases. Settlement was reached in six of the cases. The Board also provided early neutral evaluation on contract dispute matters.

The Federal Aviation Administration (FAA) issued a final rule on the procedural requirements of the Office of Dispute Resolution for Acquisition (ODRA) for the resolution of both bid protests and contract disputes. This dispute resolution process emphasizes the use of ADR as the primary means to resolve disputes. ODRA makes its Dispute Resolution Officers available as ADR neutrals with the concurrence of the parties. In addition, ODRA has established a web site, (*www.faa.gov/agc/*) which includes a guide to the conduct of protests and contract disputes and information about specific cases. In 1999, ODRA employed ADR techniques in 42 cases (bid protests and contract disputes) helping the parties to reach settlements in 95% of the contract disputes and 53% of bid protests.

The U.S. Coast Guard has established a Solicitation Ombuds and is completing development of an agency protest procedure. Contracting professionals consider ADR in resolution of pre- and post-award procurement disputes, and innovative processes, including contractor partnering, as appropriate. To enhance employee awareness, the Coast Guard provided ADR training to the chiefs of its contracting offices and its procurement attorneys.

Environmental

In response to Section 1309 of the Transportation Efficiency Act for the 21st Century, the Federal Highway Administration has requested that the U.S. Institute for Environmental Conflict Resolution provide assistance in developing a national policy and set of procedures that define a project level ADR system. This system will be applied during the National Environmental Policy Act (NEPA) evaluation process to specific transportation projects. The ADR system will be used to help stakeholders identify, avoid, and resolve potential problems and issues related to specific projects that would, if not addressed, cause delays during the NEPA process, fragment agency reviews, and make project sponsors and the lead agencies vulnerable to legal liability.

The Maritime Administration (MARAD) is using ADR to resolve environmental litigation. In two cases filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, MARAD successfully engaged in mediation to resolve the cases. In both instances, external mediators were used and mediation lasted for 3 days. All parties saved on the costs of litigation by using mediation. Savings to the government included: expedited discovery; reduced travel expenses; elimination of court costs; elimination of trial preparation costs; reduced witness costs; and elimination of protracted procedural costs. Moreover, the United States was successful in greatly reducing the assessment against the government by convincing the parties in both cases that the government's defenses to higher allocation were credible.

Evaluation

As the Department links the budget process to results by using performance measures to make resource decisions, the validity, reliability, timeliness, and comparability over time of performance data will be a challenge to ADR programs. The Bureau of Transportation Statistics will assist in evaluation efforts. For example, the Bureau has provided statistical support to the ONEDOT Sharing Neutrals Program, assisting in defining what data to collect and designing a data collection and evaluation system.

Labor-Management Partnership

The Transportation Partnership Council (TPC), under Executive Order 12871, provides a mechanism for the representation of over 30,000 bargaining unit employees and both career mid-level managers and top DOT and operating administration executives to fully discuss issues of importance. TPC objectives include facilitating the formation and operation of partnerships in the Operating Administrations. TPC has fostered informal dispute resolution and resolution and interest-based bargaining throughout DOT. For example, FAA-National Air Traffic Controller Association used interest-based bargaining in term negotiations, Research and Special Programs Administration's Volpe National Transportation Systems Center and National Association of Government Employees used a collaborative approach on term negotiations, FRA-Association of Federal Government Employees used interest-based bargaining and partnerships with industry labor-management teams, and the U.S. Coast Guard and International Metal Trades-Aerospace Workers completed negotiations using an interest-based process.

Negotiated Rulemaking

The Department was the first Federal agency to use negotiated rulemaking back in 1983, and has a long, successful experience with the process. In the early 1980s, we advised employees throughout the Department of the process and factors to consider in deciding whether to use it. This led to the first use of the process for an FAA rulemaking on flight and duty time rules. Building on this success, we continued to provide information about and encourage the use of negotiated rulemaking. For example, in 1991, we circulated a memorandum providing more detail on the factors to consider in determining whether a particular rulemaking was an appropriate candidate for a regulatory negotiation in light of our experience and, in 1996, we circulated a memorandum that made a number of suggestions for cutting the costs of conducting negotiated rulemakings. Furthermore, senior political leadership has been briefed on the process and two DOT attorney have taught a negotiated rulemaking course attended by many DOT attorneys at the Department of Justice's National Advocacy Center.

Many of the Department's operating administrations have used negotiated rulemaking. The Federal Highway Administration conducted a regulatory negotiation on incorporation of physical fitness determinations into the commercial drivers license process for state enforcement of medical certification. The National Highway Traffic Safety Administration conducted negotiations on standards for headlight aimability, specifically for altering lower beam pattern, and reached consensus that led to a final rule. The Research and Special Programs Administration (RSPA) conducted negotiations and reached consensus on a recommended rule on the qualifications for personnel performing certain safety related functions for pipelines. In addition, RSPA successfully conducted a regulatory negotiation to develop recommendations for alternative safety standards for preventing and mitigating unintentional releases during the unloading of cargo tank motor vehicles in liquefied compressed gas service, such as propane and anhydrous ammonia. The U.S. Coast Guard used negotiated rulemaking to develop a rule on the operating schedule for a series of drawbridges over the Chicago River to balance the recreational boaters' need for lake access with the need to reduce the adverse impact of bridge openings on downtown motor vehicle traffic. Although unsuccessful in achieving consensus, the process did aid in developing the rule. Finally, the FAA and the Federal Railroad Administration have established standing advisory committees that they use to negotiate rules.

Process Design

In 1998, the FAA established the Office of Administrative Dispute Resolution under the Associate Chief Counsel for ADR, within the FAA Chief Counsel's Office. This Office is responsible for implementing provisions of the Administrative Dispute Resolution Act within the FAA. This Office provides leadership and support for new and existing ADR programs within FAA headquarters and the regions. It provides ADR briefings and orientation, assistance with system design, and instruction in conflict management, mediation, and advocacy in the ADR process. The Office has also worked with the FAA's Center for Management to develop training in mediation techniques for supervisors and managers.

The U.S. Coast Guard is establishing an information cross-flow ADR awareness program which will align with the Department's policy, with integrated training components to continue and expand current Coast Guard ADR uses. In furtherance of this, a core group has met and will continue to meet on a quarterly basis pending full stand-up of Dispute Resolution Council activities. The U.S. Coast Guard anticipates that the program will ultimately provide and continually invigorate awareness across directorate and operational lines, and enhance coordination with other modes to optimize program effectiveness and share and exchange information and implementations.

Workplace

The Department, under its ONE DOT initiative, has been developing a DOT-wide mediation program to help resolve Equal Employment Opportunity complaints. The department has trained employees to serve as neutral mediators to assist in the consensual resolution of those complaints and has established a pilot DOT-wide Sharing Neutrals Program for the mediation of discrimination complaints in the Washington, DC area. The U.S. Coast Guard, FAA, and Federal Railroad Administration also established mediation programs for discrimination complaints. In 1999, FAA mediated 123 complaints of discrimination. Mediation resolved 71 (58%) of the disputes. This resolution rate is up from 43% in 1998. With regard to other workplace issues, one office within the FAA has established an Early Resolution System and successfully resolved 16 out of 18 cases.

The FAA also established two new programs at its William J. Hughes Technical Center in Atlantic City, N.J., under which employees and management mediate workplace disputes. One program includes the bargaining unit employees of the American Federation of Government Employees, Local 200. The other involves the non-bargaining unit employees.

The FAA and the National Air Traffic Controllers Association (NATCA) established an ADR Working Group in accordance with their collective bargaining agreement. NATCA represents approximately 25,000 air traffic employees. The ADR Working Group has produced three Memoranda of Agreement designed to encourage joint problem solving, and to assist in the resolution of current disputes and the avoidance of future disputes between the FAA, NATCA, and NATCA members. The first program is designed to eliminate the backlog of current grievances through an upper level joint review process. The second program is a Neutral Evaluation pilot being conducted in two FAA regions. This program uses a neutral evaluator, generally an arbitrator with labor law expertise, to give the parties a realistic assessment of the respective merits of the grievance cases that would normally proceed to arbitration. The goal is to enhance opportunities for settlement, and the neutral is available to move the process into mediation should the parties so desire. The third program consists of a grievance mediation process and a facility-to-facility review process. Both processes are designed to resolve disputes early, so as to reduce the negative consequences of conflict.

[FR Doc. 00–29099 Filed 11–14–00; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2000–8278]

High Density Airports; Notice of Lottery of Slot Exemptions at LaGuardia Airport

AGENCY: Federal Aviation Administration.

ACTION: Notice of intent to conduct a lottery of takeoff and landing times at LaGuardia Airport.

SUMMARY: This notice announces the Federal Aviation Administration's (FAA) intention to hold a lottery, with the Port Authority of New York and New Jersey, in late November or early December to reallocate exemption slots at LaGuardia Airport as authorized under the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century. The FAA finds that this action is necessary to address the level of delays that are currently experienced as a result of the significant increase in operations authorized by that legislation, and to prevent an increase in delays from additional flights scheduled to begin in the near future.

DATES: Comments must be received on or before November 20, 2000.

ADDRESSES: Comments on this notice should be mailed or delivered in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–2000–8278, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: DMS.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3053.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this process by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions. Communications should identify the docket number and be submitted in triplicate to the above specified address. All communications and a report summarizing any substantive public contact with FAA personnel on this notice will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider all comments made on or before the closing date for comments and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The post card should be marked "Comments to Docket No. FAA–2000-8278." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Authority

The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of the navigable airspace of the United States. Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

The High Density Traffic Airports Rule, or "High Density Rule," 14 CFR part 93, subpart K, was promulgated in

1968 to reduce delays at five congested airports: JFK International Airport, LaGuardia Airport, O'Hare International Airport, Ronald Reagan National Airport and Newark International Airport (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, by hour or half hour, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a "slot" for each IFR landing takeoff during a specific 30- or 60-minute period. The restrictions were lifted at Newark in the early 1970s.

"AIR–21"

On April 5, 2000, the "Wendell H. Ford Aviation Investment and Reform Act of the 21st Century" ("AIR–21") was enacted. Section 231 of AIR–21 significantly amended 49 U.S.C. 41714 and included new provisions codified at 49 U.S.C. 41716, 41717, and 41718. These provisions enable air carriers meeting specified criteria to obtain new slot exemptions at New York's LaGuardia Airport (LaGuardia) and John F. Kennedy International Airport (JFK), Chicago's O'Hare International Airport (O'Hare) and Washington DC's Ronald Reagan Washington National Airport (National). As a result of this legislation, the Department of Transportation (Department) issued eight orders establishing procedures for the processing of various applications.

Specifically, Order 2000–4–11 implements 49 U.S.C. 41716(a), which provides in pertinent part that an exemption must be granted to any airline using Stage 3 aircraft with less than 71 seats that proposes to provide nonstop service between LaGuardia and an airport that was designated as a small hub or nonhub in 1997, under certain conditions. The exemption must be granted if: (1) The airline was not providing such nonstop service between the small hub or nonhub and LaGuardia Airport during the week of November 1, 1999; or (2) the proposed service between the small hub or nonhub and LaGuardia, exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999.

According to AIR–21 and the Department's Orders, air carriers meeting the statutory tests delineated above automatically receive blanket approval for slot exemptions, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each and every one of the statutory criteria. The certification should state the communities and airport to be served, that the community was designated a small hub or nonhub as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers must also certify that the proposed service represents new service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service of the week of November 1, 1999. In addition, carriers must state the number of slot exemptions and the times needed to provide the service.

Order 2000–4–10 implements the provisions of 49 U.S.C. 41716(b), which states in pertinent part, that exemptions must be granted to any new entrant or limited incumbent airline using Stage 3 aircraft that proposes "* * * to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of slot exemptions granted under this subsection to such air carrier with respect to such airport when added to the slots and slot exemptions held by such air carrier with respect to such airport does not exceed 20." Applications submitted under this provision must identify the airports to be served and the time requested.

Section 231 of AIR–21, 49 U.S.C. 41715(b)(1) expressly provides that the provisions for slot exemptions are not to affect the FAA's authority for safety and the movement of air traffic. The actions proposed in this notice are taken under that FAA authority, and do not rescind the exemptions issued by the Department of Transportation under Orders 2000–4–10 and 2000–4–11. As provided in those orders, carriers that have filed the exemption certifications also need to obtain slot exemption times from the FAA. This notice proposes to limit and allocate those times, in recognition that it is not possible to add an unlimited number of new operations at LaGuardia Airport even if those operations would otherwise qualify for exemptions under AIR–21.

Lastly, § 93.225 of Title 14 of the Code of Federal Regulations sets forth the process for slot lotteries under the High Density Rule. The process described in the regulations is similar to the process described herein and allows for special conditions to be included when circumstances warrant special consideration.

Actions of the Port Authority of New York and New Jersey

In response to a significant increase in exemption operations under AIR–21 beginning in late summer (from 53 operations in August 2000 to 192 operations at the end of September), the Port Authority of New York and New Jersey (Port Authority) issued a letter on August 2 to all carriers filing for AIR–21 exemptions requiring 45 days advance notice of new operations at the airport under AIR–21. On August 21, the Port Authority issued a second letter to carriers planning to initiate service under AIR–21 exemptions requesting that the carriers schedule their flights outside of the most congested hours in order to mitigate the delays generated by additional flights. On September 19, the Port Authority announced a temporary moratorium on new flights. In that letter, the Port Authority stated its intent to replace this moratorium as soon as possible with a measure that will prevent an unlimited increase in operations at LaGuardia, and at the same time fairly accommodate Federal interests in competition and in service to small hub or nonhub airports as provided in AIR–21. To that end, the Port Authority has proposed to the FAA the imposition of a limit on the number of AIR–21 exemption flights at LaGuardia, and the allocation of those flights to eligible carriers through a lottery procedure to address, in the short-term, the current situation at the airport.

The following factors describe the current operating conditions experienced at LaGuardia:

- There were more than 9,000 flight delays at LaGuardia in September 2000, up from 3,108 in September 1999. In September 2000, 25% of the flight delays in the U.S. were at LaGuardia. In September 1999, the figure was 12%.
- Average delays for many afternoon flights at LaGuardia in September 2000 exceeded 48 minutes. The average delay for all flights that month was 43 minutes.
- LaGuardia has recently experienced as many as 600 delayed flights on a day when there is good weather and no other significant problems in the air traffic control system.
- Some flights at LaGuardia have experienced average ground delay time that exceeds scheduled flight time.
- Air carriers routinely cancel scheduled flights, especially in afternoon and evening hours, due to aircraft positioning and other operational issues related to excessive delays.

Since AIR–21 was enacted on April 5, 2000:

- Carriers have filed exemption requests for more than 600 new flights a day at LaGuardia.
- As of November 1, almost 300 new flights are operating under AIR–21 exemptions.
- Carriers have published schedules for 28 new flights in December and 23 more new flights in January 2001.
- In April 2000, the number of scheduled operations at LaGuardia was 1064. As of November 1, that number is 1344.
- If the flights published for December and January began operation, there would be approximately 1395 scheduled operations each day at the airport, an increase of 30% in less than a year at an airport that was already one of the top two delay airports in the U.S.

There is no question that the exemption provisions of AIR–21 have significant benefits for competition, by providing new entrant carriers access to slot-controlled airports, and permitting new service to small hub and non-hub airports. The FAA fully supports these goals, and intends to accommodate those goals to the maximum extent practical in measures to manage congestion and delay at LaGuardia Airport.

At the same time, the FAA understands that the capacity of the airport to accommodate additional flights is not unlimited. At some point, the increase in operations at the airport will result in hundreds of operating delays each day, with increasing average delay times for each flight. Market forces alone have not limited the scheduling of additional operations or the scheduling of these operations in peak hours at the airport. This increasing level of congestion and delay makes carrier schedules impossible to meet, frustrates passenger travel plans, and places an unnecessary strain on carrier ground operations and on air traffic control services. The goals of the AIR–21 exemptions are not served by an unlimited increase in operations, because the flights operating under those exemptions experience the same disruption and delay as existing flights. Ultimately, unlimited growth is not just a service issue; increasing ground congestion increases the possibility of aircraft collisions during taxi and ramp operations, and could increase the possibility of a runway incursion at the airport.

The agency does believe that some action is appropriate and necessary to prevent the scheduling of more flights at LaGuardia than can possibly be operated on any published schedule, and to address the substantial delays experienced even in ideal conditions. After consideration of a number of options for short-term management of congestion, the Port Authority presented a preferred option to the FAA on November 2, which included: (1) The establishment of a certain number of total daily operations at the airport (the Port Authority proposed a limit of 75 total scheduled operations per hour); (2) the total would include a fixed number of AIR–21 exemption operations, determined by the difference between 75 and existing HDR and exemption slots that preceded the AIR–21 exemptions; and (3) allocation by lottery of slot exemptions to conduct that number of AIR–21 operations. (A copy of the Port Authority's letter is placed in the docket.) On November 8, 2000, the Port Authority and the FAA convened a meeting and invited all affected carriers to discuss the situation at LaGuardia and presented the lottery concept. This notice supplements and clarifies the information made available by the FAA at that meeting. (A copy of the agency's November 7 letter to the Port Authority is located on the FAA's website *FAA.gov.* and has been placed in the docket.)

In consideration of the urgency of the delay situation at LaGuardia, described above, and the fact that even more flights are planned and will commence operations if some action is not taken, the number of AIR–21 slot exemption flights should be limited to recognize practical constraints of the airport environment and provisions of air traffic services. Since other categories of flights at LaGuardia are already limited, a limit on AIR–21 exemption flights serves to achieve a general limit on airport operations that will prevent increasingly disruptive congestion and longer delays in the future. The limit would not be permanent and would remain in effect until September 15, 2000, when a permanent demand management policy for the airport would be developed with the participation of all interested parties.

The FAA's Air Traffic Service has independently reviewed the Port Authority's proposal for scheduled operations. The limit of 75 scheduled operations per hour would limit daily and hourly demand on airport facilities and the air traffic control system to a number of flights that can be accommodated, at least in good weather conditions and, at the same time, provides access for AIR–21 exemption flights. The number does not include extra sections of scheduled air carrier flights or the 6 slots per hour reserved for "Other" nonscheduled operations including general aviation, charters and military flights.

Reallocation of Slot Exemptions at LaGuardia Airport by Lottery

The FAA intends to proceed with the development of new department policy on measures available to airport operators for management of congestion, with participation by all interested parties. The goal is to have that policy in final form in time to permit the Port Authority to adopt measures to replace the allocation of exemption slots under the lottery described in this notice. . However, in the short-term, the FAA believes that the number of AIR–21 exemption operations at LaGuardia should be limited and that an allocation of those flights by lottery to eligible carriers is preferable. The FAA believes that a reallocation of AIR–21 exemption flights at LaGuardia in accordance with the following conditions would meet the goals and requirements of AIR–21, and also would be consistent with the FAA's responsibility for the efficient use of the navigable airspace, under 49 U.S.C. 40103(b).

On January 1, 2001, the number of scheduled operations at LaGuardia would be limited to approximately 75 per hour. As a result, the number of AIR–21 slot exemptions at LaGuardia would be limited to approximately 150 a day between the hours of 7:00 a.m. and 9:59 p.m. Also on January 1, 2001, the FAA would reissue AIR–21 slot exemptions to eligible carriers in accordance with the results of a lottery. The FAA seeks comments as to whether the January 1, 2001, date is feasible or whether alternative dates are suggested.

In late November or early December, the FAA proposes, in conjunction with the Port Authority, to conduct a lottery at the Port Authority's facilities in New York. Details regarding this lottery would be provided under separate notice in the near future, following consideration of the comments received in response to this notice. The preliminary number of AIR–21 slot exemptions that would be issued in each hour, consistent with an hourly total of 75 scheduled operations is as follows (allocations will be made by 30 minute time periods):

Hourly period	Number of exemptions
0700	18
0800	11
0900	9
1000	8
1100	8
1200	13
1300	15
1400	8
1500	13
1600	7
1700	2

Hourly period	Number of exemptions
1800	7
1900	8
2000	6
2100	26

The FAA proposes that carriers eligible for participation in the lottery would be those carriers that have applications on file with the Department, have fulfilled the certification requirements articulated in OST Orders 2000–4–10 and 2000–4–11 as of the date of this notice, and will have commenced operations by January 1, 2001. Definitions for the terms "carrier," "new entrant," and "limited incumbent" for purposes of participation in the lottery, are proposed as set forth in 14 CFR 93.123, and amended by section 231 of AIR–21. The Port Authority proposed to consider all carriers operating under a single designator code to be considered a single carrier for the purposes of the lottery. We note that the language in AIR–21 addressing affiliated carriers applies only in determining new entrant status and does not include the provision addressing service for small hub or nonhub airports. Upon reconsideration, the FAA is proposing for comment that independently owned carriers that had obtained AIR–21 certification in their own name could participate in the lottery separately, regardless of code-share arrangements. The list of eligible carriers below is based on this reconsideration. However, comments are specifically requested on this distinction.

The FAA further proposes that no carrier may select more exemption times than it operated between 0700–2159 on January 1, 2001. The slot exemptions reallocated by lottery would remain in effect until September 15, 2001. The FAA seeks comment as to whether another date in September is more feasible for carriers to make general schedule changes. Carriers that are reallocated exemption slots by lottery should re-certify to the Department of Transportation in accordance with the procedures articulated in OST Orders 2000–4–10 and 2000–4–11, and provide the Department and the FAA with the markets to be served, the number of exemption slots and the time of operation. While this temporary re-allocation process will be conducted jointly with the Port Authority, the FAA wants to make clear that this measure is taken in response to a serious and currently unique situation at LaGuardia Airport under the FAA's authority for the efficient management of the navigable airspace and provided for in AIR–21.

Reallocation of Slot Exemption at LaGuardia by Lottery

In late November or early December 2000, the FAA intends to hold a lottery with the Port Authority to allocate approximately 150 slot exemptions authorized under AIR–21. The FAA proposes the following lottery procedure for allocation of the AIR–21 slot exemptions at LaGuardia:

1. All AIR–21 slot exemptions will be allocated in this lottery, and all carriers currently operating under AIR–21 exemption authority will be required to conform their schedules to the slots received in the lottery, effective on the effective date of the allocation (in January 2001).

2. To be eligible to participate in this lottery, a carrier must have applied to the Department of Transportation under Orders OST 2000–4–10 or 2000–4–11, received allocations by the FAA as of the date of this notice, and commenced operation by January 1, 2001. Carriers that meet this criteria under Order 2000–4–10 and would be eligible for a lottery of times between 0700–2159 are: Air Tran (11 operations), American Trans Air (8 operations), Legend, (7 operations), Midway (9 operations), Midwest Express (8 operations), Spirit Airlines (14 operations), Shuttle America (14 operations), Southeast Airlines (4) and Vanguard (4 operations). Carriers that meet the criteria of Order 2000–4–11 for service for small hub and nonhub airports and would be eligible for a lottery are: American Eagle (26 operations), Atlantic Coast Jet (44 operations), Chautauqua Airlines (12 operations), Colgan Air (20 operations), Commutair (10 operations), Continental Express (22 operations), Delta Connection (37 operations) and US Airways Express (50 operations).

3. The slot exemption lottery will be conducted in accordance with the following procedures:

a. Carriers will participate in a random drawing for selection order. Carriers will select in that order in each round.

b. No carrier may select more exemption times than it operated between 0700–2159 on January 1, 2001.

c. In the first round, only new entrants and limited incumbent carriers may participate. Each new entrant and limited incumbent carrier may select up to 4 slot exemption times, 2 arrivals and 2 departures. No more than one slot exemption time may be selected in any hour. In this round each carrier may select one slot exemption time in each of 4 hours without regard to whether a slot is available in that hour.

d. In the second and third rounds, only carriers providing service to small hub and nonhub airports may participate. Each carrier may select up to 2 slot exemption times, one arrival and one departure in each round.

e. Beginning with the fourth round, all eligible carriers may participate. Each carrier may select up to 2 of the remaining slot exemption times, one arrival and one departure, in each round, until a total of 150 slot exemption times have been selected.

f. If the last remaining slot exemption times available do not permit a reasonable arrival-departure turnaround, the FAA will take requests for trades among AIR–21 operators, or will make an adjustment to one of the times to assure that all slot exemption time pairs selected provide for a viable operation by the selecting carrier.

g. The Chief Counsel will be the final decisionmaker concerning eligibility of carriers to participate in the lottery.

Issued on November 9, 2000 in Washington, DC.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 00–29356 Filed 11–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Tuesday, December 5, 2000. The following designations are made for each item: (A) is an "action" item; (I) is an "information item"; and (D) is a "discussion" item. The agenda includes the following: (1) Housekeeping Items, i.e. Introductions, Statements of Antitrust Compliance and Conflict of Interest, and Previous Minutes (I); (2) Federal Report (I&D); (3) President's Report (I); (4) Council Membership Issues Discussion (I/D/A); (5) Adoption of ITS America Privacy Principles (D/A); (6) Break (20 minutes) (A); (7) Progress Report: Joint Task Force on ITS Deployment Strategy (I/D); (8) Approval of IVI Advice letter to USDOT (D/A); (9) Progress Report: 10-Year Program Plan & Research Agenda (I/D); (10) Closing Housekeeping—Next meeting: TBD.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Tuesday, December 5, 2001 from 8 a.m.–Noon (Eastern Standard time).

ADDRESSES: Wyndham Miami Beach Resort, 4833 Collins Ave., Miami Beach, Florida, 33140. Phone: (305) 532–3600 and Fax: (305) 538–2807.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons needing further information or to request to speak at this meeting should contact Carren Kaston at ITS AMERICA by telephone at (202) 484–4669, or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–0722. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: November 9, 2000.

Whitey Metheny,

ITS Joint Program Office.

[FR Doc. 00–29268 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–7354; Notice 2]

Honda Motor Co., Ltd.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

We are granting the application by Honda Motor Co. Ltd. ("Honda"), a Japanese corporation, through American Honda Motor Co., Inc., of Torrance, California, for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays.* The basis of the request was that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. 30113(b)(3)(B)(iv).

On May 18, 2000, we published a notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and asked for comments (65 FR 31629). We received many comments in support, as discussed below.

Honda applied on behalf of its NSS250 motor scooters. The scooters are defined as "motorcycles" for purposes of compliance with the Federal motor vehicle safety standards. If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control (the left handlebar is permissible only for a motor driven cycle (Item 11, Table 1), *i.e.,* a motorcycle with a motor that produces 5 brake horsepower or less).

Honda asked that it be allowed to use the left handlebar as the control for the rear brakes of its NSS250, which is a motorcycle and not a motor driven cycle. The model features an automatic transmission that eliminates the left-hand clutch lever as well as any left-foot gearshift lever. This leaves the left hand of the rider free to operate a brake lever. In Honda's opinion, "removal of the left-handlebar clutch lever, left-foot-controlled gearshift lever and right-foot-controlled rear brake pedal result in simpler operation." Honda pointed out that NHTSA exempted three other motorcycle manufacturers from this requirement of S5.2.1. in 1999 (Aprilia, 64 FR 44262; Vectrix, 64 FR 45585; and Italjet, 64 FR 58127).

Honda argued that the overall level of safety of the scooters equals or exceeds that of a motorcycle that complies with the brake control location requirement of Standard No. 123. Unlike the other exempted motorcycles, the NSS250 is equipped with a "combined brake system" which "provides single-point, front- and rear-wheel braking action." The vehicle meets the braking performance requirements "of both FMVSS 122 and ECE78." The company submitted test results demonstrating that the braking performance of the NSS250 with its combined brake system is better than that of a scooter without the combined brake system. For the second effectiveness test, for example, the NSS250 stopped in shorter distances than a Honda model equipped with a foot brake, that is to say, from a maximum speed of 65.4 mph in 165 feet (compared with 178 feet), and, from 30 mph, in 38 feet (compared with 40 feet).

Honda has developed the NSS250 for the world market. In Europe, Japan, and other Asian countries, scooters are equipped with handlebar-mounted front and rear brakes. Absent an exemption, then, Honda said that it will be unable to sell the NSS250 in the United States. The cost to conform the NSS250 to comply with Standard No. 123 "would add considerable cost to the product" and result in a motorcycle that would not be competitive.

Honda will not sell more than 2,500 scooters a year while an exemption is in effect. It argued that an exemption would be in the public interest and consistent with the objectives of traffic safety because "the level of safety is equal to similar vehicles certified under FMVSS No. 123."

We received approximately 40 comments, all of which urged us to grant the application. Typical of the comments are those from Richard A. Smith of Orem, Utah, Brian Hotaling of Austin, Texas, and Deb Lee of Carriere, Mississippi. Mr. Hotaling adduces that Honda's tests show that its "simple yet innovative combined braking system is better" than that of a scooter without it, and that "the NSS250 stopped in shorter distances than a Honda model equipped with a foot brake by a remarkable amount." Mr. Smith recommended that "this exemption should be allowed on a permanent basis," and that "given the recent prices of gasoline in our country and the environmental concerns over air pollution in our cities * * * Honda should be allowed to import more than 2500 of these vehicles." Ms. Lee recommends an amendment to Standard No. 123, and comments that the Honda product "could be used by many senior citizens and Americans with disabilities."

As Honda noted in its petition, we have exempted three other motorcycle manufacturers from S5.2.1 (Aprilia, 64 FR 44262, re-issued at 65 FR 1225; Vectrix, 64 FR 45585; and Italjet, 64 FR 58127). We have reviewed Honda's brake test results demonstrating the superiority of the NSS250 with its combined brake system over that of a scooter without such a system. Our concerns about a lack of standardization of the rear brake control for scooter-type vehicles was addressed by Aprilia in its petition which included a report on "Motorscooter Braking Control Study" which is available for examination in Docket No. NHTSA–99–4357. This report indicated that test subjects' brake reaction times using a vehicle much like Honda's were approximately 20% quicker than their reaction times on the conventional motorcycle. We interpreted the report as indicating that a rider's braking response is not likely to be degraded by the different

placement of brake controls, and cited it in granting the similar petition by Vectrix. In the present case, the number of favorable comments appear to sustain our previous conclusions.

With respect to the public interest and the objectives of motor vehicle safety, the overall level of safety, as Honda argues, appears at least equal to that of vehicles certified to comply with Standard No. 123. The numerous comments make convincing arguments that an exemption would be in the public interest by making available a compact, fuel-efficient vehicle that would not otherwise be available without an exemption.

In consideration of the foregoing, we hereby find that Honda has met its burden of persuasion that, to require compliance with Standard No. 123 would prevent the manufacturer from selling a motor vehicle with an overali level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Honda Motor Co. Ltd. is hereby granted NHTSA Temporary Exemption No. EX2000–2 from the requirements of item 11, Column 2, Table 1 of 49 CFR 571.123 Standard No. 123 Motorcycle Controls and Displays, that the rear wheel brakes be operable through the right foot control. This exemption applies only to the NSS250, and will expire on November 1, 2002.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50)

Issued on November 8, 2000.

Sue Bailey,

Administrator.

[FR Doc. 00–29240 Filed 11–14–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33959]

Ballard Terminal Railroad Company, L.L.C. d/b/a Meeker Southern Railroad—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Ballard Terminal Railroad Company, L.L.C. (BTRC), a limited liability company doing business as Meeker Southern Railroad,[1] has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from The Burlington Northern and Santa Fe Railway Company (BNSF) and operate BNSF's Meeker-McMillin Rail Line located between Meeker, milepost 32.82, and McMillin, milepost 28.34, in Pierce County, WA, a distance of approximately 4.5 miles (line).

The parties report that they intend to close the transaction on or after the later of November 13, 2000, or seven days from date of filing of this notice with the Board. The earliest the transaction can be consummated is November 10, 2000, the effective date of the exemption (7 days after the exemption was filed).[2]

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33959, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Stephen L. Day, Esq., Betts, Patterson & Mines, P.S., 1215 4th Avenue, Suite 800, Seattle, WA 98161–1090.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV*.

Decided: November 7, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–29077 Filed 11–14–00; 8:45 am]

BILLING CODE 4915–00–P

[1] BTRC is an existing carrier currently operating in Seattle, WA. *See Ballard Terminal Railroad Company, L.L.C.—Modified Rail Certificate*, STB Finance Docket No. 33594 (STB served Feb. 26, 1999).

[2] After consummation of the transaction in STB Finance Docket No. 33959, the line will be referred to as the Meeker Southern Railroad line.

Corrections

Federal Register
Vol. 65, No. 221
Wednesday, November 15, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Financial Management Service

31 CFR Part 205

Public Meetings on Proposed Revisions to the Regulations Implementing the Cash Management Improvement Act

Correction

In proposed rule document 00–28579 beginning on page 66671 in the issue of Tuesday, November 7, 2000 make the following corrections:

1. On page 66671, in the first column, under the heading **ADDRESSES** in the fifth line, "A 7 B" should read "A & B".

2. On the same page, in the third column, in the second paragraph, in the third line "allowed" should read "disallowed".

3. On the same page, in the same column, in the same paragraph, in the fourth line "by" should read "be".

4. On the same page, in the same column, in the sixth paragraph, in the third line "Plan" should read "Plain".

5. On page 66672, in the first column, in the first paragraph, in the fourth line "http://www.fms.treas.giv/policymia" should read "http://www.fms.treas.gov/policycmia".

[FR Doc. C0–28579 Filed 11–14–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
November 15, 2000

Part II

Environmental Protection Agency

Forty-Fourth Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–41052; FRL–6087–8]

Forty-Fourth Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Forty-Fourth Report to the Administrator of the EPA on May 27, 1999. In the 44th Report, which is included with this notice, the ITC initiated a process to identify chemicals with production volumes greater than 10,000 pounds per year that are predicted to bioconcentrate, persist, and cause ecological or human health effects. To date the process has identified more than 400 chemicals.

At this time, the ITC is implementing the process and has no revisions to its TSCA section 4(e) *Priority Testing List.* EPA invites interested persons to submit written comments on the Report.

DATES: Comments, identified by docket control number OPPTS–41052, must be received on or before December 15, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–41052 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: John D. Walker, ITC Executive Director (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1825; fax: (202) 260–7895; e-mail address: *walker.johnd@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested , the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/.* To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

You may also access additional information about the ITC and the TSCA testing program through the web site for the Office of Pollution Prevention and Toxics (OPPT) at *http://www.epa.gov/opptintr/*, or go directly to the ITC home page at *http://www.epa.gov/opptintr/itc/*.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–41052. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–41052 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: *oppt.ncic@epa.gov*, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–41052. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public

version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views and comments on the ITC 44th Report. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. Make sure to submit your comments by the deadline in this notice.
6. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) authorizes the Administrator of the EPA to promulgate regulations under section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of the EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

A. The ITC's 44th Report

The 44th Report was received by the EPA Administrator on May 27, 1999, and is included in this notice. In the 44th Report, the ITC stated that it had initiated a process to identify chemicals with production/importation volumes greater than 10,000 pounds per year that are predicted to bioconcentrate, persist, and cause ecological or human health effects. According to the ITC report, more than 400 chemicals have been identified.

B. Status of the Priority Testing List

At this time, the ITC is implementing the process and has no revisions to its TSCA section 4(e) *Priority Testing List.* The current TSCA section 4(e) *Priority Testing List* as of May 1999 can be found in Table 1 of the 44th ITC Report which is included in this notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: November 6, 2000.

Wardner G. Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Forty-Fourth Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

This is the 44th Report of the TSCA Interagency Testing Committee (ITC) to the Administrator of the U.S. Environmental Protection Agency (EPA). The ITC was established by section 4(e) of the Toxic Substances Control Act (TSCA) "to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every six months..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions" (Public Law 94–469, 90 Stat. 2003 *et seq.* (15 U.S.C. 2601 *et seq.*)). Since its creation in 1976, the ITC has submitted 43 semi-annual (May and November) Reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. In 1989, the ITC began recommending chemical substances for information reporting, screening, and testing to meet the data needs of its member U.S. Government organizations. ITC Reports are available from *http://www.epa.gov/opptintr/itc* within a few days of submission to the Administrator and from *http://www.epa.gov/fedrgstr* after publication in the **Federal Register**. The ITC meets monthly and produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC staff and contract support provided by EPA. ITC members and staff are listed at the end of this Report.

During this reporting period (November 1998 to May 1999), the ITC began developing a process to identify chemicals with production or importation volumes >10,000 lb/year that are predicted to bioconcentrate, persist, and cause ecological or human health effects. To date, the process has been used to identify more than 400 chemicals with production or importation volumes >10,000 lb/year with log octanol-water partition coefficients and aerobic biodegradation removal rates that suggest bioconcentration and persistence potential. In addition, the process is being used to:

1. Organize chemicals into structurally related chemical classes for the purpose of developing structure activity relationships (SARs).
2. Characterize the type, quantity, and quality of ecological or human health effects data associated with each chemical.
3. Determine uses.
4. Estimate potential environmental releases and human exposures.
5. Evaluate existing regulations.
6. Identify U.S. Government data needs.

This process supports EPA's current High Production Volume (HPV) Chemical Challenge program (*http://www.epa.gov/opptintr/chemrtk/volchall.htm*) and Persistent Bioaccumulative Toxics (PBT) project (*http://www.epa.gov/opptintr/chemrtk/persbioa.htm*). At this time, the ITC is implementing this process and has no revisions to its TSCA section 4(e) *Priority Testing List* which follows as Table 1.

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST(MAY 1999)[1]

Report	Date	Chemical/group	Action
26	May 1990	8 Isocyanates	Recommended with intent-to-designate
27	November 1990	62 Aldehydes	Recommended with intent-to-designate
28	May 1991	Chemicals with low confidence reference dose (RfD) Acetone Thiophenol	Designated
30	May 1992	5 Siloxanes	Recommended
31	January 1993	24 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	32 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	24 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	16 Alkylphenols and 3 alkylphenol polyethoxylates[2]	Recommended
39	November 1996	15 Nonylphenol ethoxylates and 8 alkylphenol polyethoxylates[2]	Recommended

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST(MAY 1999)[1]—Continued

Report	Date	Chemical/group	Action
41	November 1997	18 Alkylphenols, 5 polyalkyphenols, and 6 alkylphenol polyethoxylates[2]	Recommended
42	May 1998	3-Amino-5-mercapto-1,2,4-triazole[2]	Recommended
42	May 1998	Glycoluril[2]	Recommended
42	May 1998	Methylal[2]	Recommended
42	May 1998	Ethyl silicate[2]	Recommended

1 The *Priority Testing List* is available from the ITC's web site (*http://www.epa.gov/opptintr/itc*).
2 Data requested through the ITC's Voluntary Information Submissions Innovative Online Network (VISION) (see *http://www.epa.gov/opptintr/itc/vision.htm*).

TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

Council on Environmentol Quolity
Brad Campbell, Member
Deportment of Commerce
Notionol Institute of Stondords ond Technology
Malcolm W. Chase, Member
Barbara C. Levin, Alternate
Notionol Oceonogrophic and Atmospheric Administration
Nancy Foster, Member
Teri Rowles, Alternate
Richard S. Artz, Alternate
Environmentol Protection Agency
Paul Campanella, Member
David R. Williams, Alternate
Notionol Concer Institute
Victor Fung, Member
Harry Seifried, Alternate
Notionol Institute of Environmentol Heolth Sciences
William Eastin, Member, Chair
H.B. Matthews, Alternate
Notionol Institute for Occupotionol Sofety and Heolth
Albert E. Munson, Member
Christine Sofge, Alternate
Notionol Science Foundotion
A. Frederick Thompson, Member
Occupotionol Sofety and Heolth Administrotion
Lyn Penniman, Member
Val H. Schaeffer, Alternate

Liaison Organizations and Their Representatives

Agency for Toxic Substonces and Diseose Registry
William Cibulas, Member
Consumer Product Safety Commission
Jacqueline Ferrante, Member, Vice Chair
Deportment of Agriculture
Clifford P. Rice, Member
Deportment of Defense
Rick Drawbaugh, Member
Janet Whaley, Alternate
Jose Centeno, Alternate
Deportment of the Interior
Barnett A. Rattner, Member
Food ond Drug Administrotion
Raju Kammula, Member
Notionol Library of Medicine
Vera W. Hudson, Member
Notionol Toxicology Progrom
NIEHS, FDA, and NIOSH Members
Counsel
Scott Sherlock, Office of Pollution Prevention and Toxics, EPA
Technicol Support Controctor
Syracuse Research Corporation
ITC Stoff
John D. Walker, Executive Director
Norma S. L. Williams, Executive Assistant

TSCA Interagency Testing Committee, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1825; fax number: (202) 260–7895; e-mail address: *willioms.normo@epo.gov; url: http://www.epa.gov/opptintr/itc.*

[FR Doc. 00–29051 Filed 11–15–00; 8:45 am]
BILLING CODE 6560–50–S

Federal Register

Wednesday,
November 15, 2000

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Stock Transfer Rules: Carryover of Earnings and Taxes; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116050–99]

RIN 1545–AX65

Stock Transfer Rules: Carryover of Earnings and Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations addressing transactions described in section 367(b) of the Internal Revenue Code (section 367(b) transactions). A section 367(b) transaction includes a corporate reorganization, liquidation, or division involving one or more foreign corporations. The proposed regulations address the carryover of certain tax attributes, such as earnings and profits and foreign income tax accounts, when two corporations combine in a section 367(b) transaction. The proposed regulations also address the allocation of certain tax attributes when a corporation distributes stock of another corporation in a section 367(b) transaction. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for March 13, 2001 must be received by February 20, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–116050–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–116050–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. The public hearing will be held in room 7218, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Anne O'Connell Devereaux, at (202) 622–3850; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by January 16, 2001. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information (see below);
- How the quality, utility, and clarity of the information to be collected may be enhanced;
- How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.367(b)–1. This collection of information is required by the IRS to verify compliance with the regulations under section 367(b) relating to exchanges described therein. The likely respondents are corporations that are affected by such exchanges.

Estimated total annual reporting burden: 1,800 hours.

The estimated annual burden per respondent: 3 hours.

Estimated number of respondents: 600.

Estimated annual frequency of responses: One.

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

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

Background

On December 27, 1977, the IRS and Treasury issued proposed and temporary regulations under section 367(b) of the Code. Subsequent guidance updated and amended the 1977 temporary regulations several times over the next 14 years. On August 26, 1991, the IRS and Treasury issued proposed regulations §§ 1.367(b)–1 through 1.367(b)–6 (the 1991 proposed regulations). Final regulations under section 367(b) of the Internal Revenue Code (Code) were issued in June 1998 and January 2000 and the 1977 temporary regulations and the 1991 proposed regulations were generally removed. The preamble to the January 2000 final regulations refers to proposed regulations that would be issued at a later date to address the carryover of certain corporate tax attributes in transactions involving one or more foreign corporations. Those proposed regulations are set forth in this document.

Overview

A. General Policies of Section 367(b)

In general, section 367 governs corporate restructurings under sections 332, 351, 354, 355, 356, and 361 (Subchapter C nonrecognition transactions) in which the status of a foreign corporation as a "corporation" is necessary for the application of the relevant nonrecognition provisions. Other provisions in Subchapter C (Subchapter C carryover provisions) apply to such transactions in conjunction with the enumerated provisions and detail additional consequences that occur in connection with the transactions. For example, sections 362 and 381 govern the carryover of basis and earnings and profits from the transferor corporation to the transferee corporation in applicable transactions and section 312 governs the allocation of earnings and profits from a distributing corporation in a transaction described in section 355.

The Subchapter C carryover provisions generally have been drafted to apply to domestic corporations and U.S. shareholders, and thus do not fully take into account the cross-border

aspects of U.S. taxation. For example, sections 381 and 312 do not take into account source and foreign tax credit issues that arise when earnings and profits move from one corporation to another.

Congress enacted section 367(b) to ensure that international tax considerations in the Code are adequately addressed when the Subchapter C provisions apply to an exchange involving a foreign corporation in order to prevent the avoidance of U.S. taxation. Because determining the proper interaction of the Code's international and Subchapter C provisions is "necessarily highly technical," Congress granted the Secretary broad regulatory authority to provide the "necessary or appropriate" rules rather than enacting a complex statutory regime. H.R. Rep. No. 658, 94th Cong., 1st Sess. 241 (1975). Thus, section 367(b)(2) provides in part that the regulations "shall include (but shall not be limited to) regulations * * * providing * * * the extent to which adjustments shall be made to earnings and profits, basis of stock or securities, and basis of assets."

The proposed regulations provide rules regarding the movement of certain corporate tax attributes between corporations in a Subchapter C nonrecognition transaction involving one or more foreign corporations. Generally, the regulations continue to apply the principles of the Subchapter C carryover provisions with modifications as necessary or appropriate to preserve international tax policies of the Code and to prevent material distortions of income.

The remainder of this Overview section is divided by specific categories of section 367(b) transactions and describes the relevant Subchapter C and international policies and provisions. The "Details of Provisions" portion of this preamble describes the proposed regulations' principal operative rules that implement the policies and reconcile the provisions described in the Overview portion of this preamble. The IRS and Treasury welcome comments regarding both the general approach and the specific provisions of the proposed regulations.

B. Specific Policies Related to Inbound Nonrecognition Transactions (Prop. Reg. § 1.367(b)–3)

Proposed § 1.367(b)–3 addresses acquisitions by a domestic corporation (domestic acquiring corporation) of the assets of a foreign corporation (foreign acquired corporation) in a section 332 liquidation or an asset acquisition described in section 368(a)(1), such as a C, D, or F reorganization (inbound nonrecognition transaction).

The preamble to the January 2000 final regulations generally describes international policy issues that can arise in an inbound nonrecognition transaction. The preamble states that the "principal policy consideration of section 367(b) with respect to inbound nonrecognition transactions is the appropriate carryover of attributes from foreign to domestic corporations. This consideration has interrelated shareholder-level and corporate-level components." The final regulations address the carryover of certain attributes, such as the carryover of foreign taxes, earnings and profits, and basis. However, the carryover of earnings and profits and basis are addressed only to the extent attributable to earnings and profits accumulated during a U.S. shareholder's holding period, *i.e.*, "the all earnings and profits amount," as defined in § 1.367(b)–2(d).

The preamble to the final regulations also notes that it would be consistent with the policy considerations of section 367(b) for future regulations to provide further rules with respect to the extent to which attributes carry over from a foreign corporation to a U.S. corporation. The proposed regulations do not comprehensively address this issue. Compare Modify Treatment of Built-In Losses and Other Attribute Trafficking, General Explanations of the Administration's Fiscal Year 2001 Revenue Proposals at 205. However, the proposed regulations do provide additional rules concerning several attributes, specifically net operating loss and capital loss carryovers, and earnings and profits that are not included in income as an all earnings and profits amount (or a deficit in earnings and profits). The proposed regulations generally provide that these tax attributes carry over from a foreign acquired corporation to a domestic acquiring corporation only to the extent that they are effectively connected to a U.S. trade or business (or attributable to a permanent establishment, in the case of an applicable U.S. income tax treaty).

C. Specific Policies Related to Foreign 381 Transactions (Prop. Reg. § 1.367(b)–7)

Proposed regulation § 1.367(b)–7 applies to an acquisition by a foreign corporation (foreign acquiring corporation) of the assets of another foreign corporation (foreign target corporation) in a transaction described in section 381 (foreign 381 transaction) and addresses the manner in which earnings and profits and foreign income taxes of the foreign acquiring corporation and foreign target corporation carry over to the surviving foreign corporation (foreign surviving corporation). This would include, for example, a C, D, or F reorganization or a section 332 liquidation between two foreign corporations.

The international provisions of the Code distinguish between categories of foreign corporations. A foreign acquiring, target, or surviving corporation can be a controlled foreign corporation as defined in section 957 (CFC), a noncontrolled section 902 corporation as defined in section 904(d)(2)(E) after 2003, the effective date of section 1105(b) of Public Law 105–34 (111 Stat. 788) (the 1997 Act) (look-through 10/50 corporation and, together with CFCs, look-through corporations), a noncontrolled section 902 corporation before 2003 (non-look-through 10/50 corporation and, together with look-through 10/50 corporations, 10/50 corporations), or a foreign corporation that is neither a CFC nor a 10/50 corporation (less-than-10%-U.S.-owned foreign corporation).

The principal Code sections implicated by the carryover of earnings and profits and foreign income taxes in a foreign 381 transaction are sections 381, 902, 904, and 959. Section 381 generally permits earnings and profits (or deficit in earnings and profits) to carry over to a surviving corporation, thus enabling "the successor corporation to step into the 'tax shoes' of its predecessor. * * * [and] represents the economic integration of two or more separate businesses into a unified business enterprise." H. Rep. No. 1337, 83rd Cong., 2nd Sess. 41 (1954). However, a deficit in earnings and profits of either the transferee or transferor corporation can only be used to offset earnings and profits accumulated after the date of transfer (hovering deficit rule). Section 381(c)(2)(B). The hovering deficit rule is a legislative mechanism designed to deter the trafficking in favorable tax attributes that the IRS and courts had repeatedly encountered. See, *e.g.*, *Commissioner* v. *Phipps*, 336 U.S. 410 (1949). The proposed regulations adopt the principles of section 381 but adapt its operation in consideration of the international provisions that address foreign corporations' earnings and profits and their related foreign income taxes, such as sections 902, 904, and 959.

Section 902 generally provides that a deemed paid foreign tax credit is available to a domestic corporation that receives a dividend from a foreign corporation in which it owns 10 percent or more of the voting stock (*i.e.*, a look-

through corporation or non-look-through 10/50 corporation). The Code modifies the general last-in, first-out (LIFO) rule of section 316 and provides that look-through corporations and non-look-through 10/50 corporations pay dividends out of multi-year pools of earnings and profits and foreign income taxes for earnings and profits accumulated (and related foreign income taxes paid or deemed paid) in taxable years beginning after December 31, 1986, or the first day after which a domestic corporation owns 10 percent or more of the voting stock of a foreign corporation, whichever is later. Section 902(c). (The Code and regulations refer to pooled earnings and profits and foreign income taxes as post-1986 undistributed earnings and post-1986 foreign income taxes even though a particular corporation may begin to pool after 1986. Sections 902(c)(1) and (2), § 1.902–1(a)(8) and (9).)

Congress enacted the pooling rules because it believed that averaging of foreign income taxes was fairer than distributions out of annual layers. Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986 (Public Law 99–514) (1986 Bluebook) at 870. Averaging prevents taxpayers from inflating their foreign income tax rate for a particular year in order to obtain artificially enhanced foreign tax credits. *Id.* Averaging also prevents the trapping of foreign income taxes in years in which a taxpayer may have no earnings and profits. *Id.*

However, Congress enacted pooling on a limited basis. Earnings and profits accumulated (and related foreign income taxes paid or deemed paid) while a foreign corporation is a less-than-10%-U.S.-owned foreign corporation and pre-1987 earnings and profits accumulated (and related foreign income taxes paid or deemed paid) by a look-through corporation or non-look-through 10/50 corporation are not pooled. Rather, such earnings and profits (and related foreign income taxes) are maintained in separate annual layers. Section 902(c)(6). (The Code and regulations refer to earnings and profits and foreign income taxes in annual layers as pre-1987 accumulated profits and pre-1987 foreign income taxes even though a particular corporation may have annual layers for years after 1986. Section 902(c)(6); § 1.902–1(a)(10).)

A distribution of earnings and profits is first out of pooled earnings and profits and then, only after all pooled earnings and profits have been distributed, out of annual layers of earnings and profits on a LIFO basis. Section 902(a) and (c). The retention of annual layers beneath pooled earnings and profits limits the need to recreate tax histories, an administrative burden that is more significant for periods during which a corporation had limited nexus to the U.S. taxing jurisdiction and for pre-1987 earnings and profits when pooling was not required.

The section 904 foreign tax credit limitation ensures that taxpayers can use foreign tax credits only to offset U.S. tax on foreign source income. The limitation is computed separately with respect to different categories of income (baskets). The purpose of the baskets is to limit taxpayers' ability to cross-credit taxes from different categories of foreign source income. Congress was concerned that, without separate limitations, cross-crediting opportunities would distort economic incentives to invest in the United States versus abroad. 1986 Bluebook at 862.

A dividend received by a U.S. shareholder that owns less than 10 percent of the stock of a foreign corporation is categorized as passive income because such a dividend is in the nature of a portfolio investment. 1986 Bluebook at 866.

A dividend received by a U.S. shareholder that owns 10 percent or more of a foreign corporation is subject to other limitations. Dividends paid by a non-look-through 10/50 corporation to a 10 percent or greater U.S. corporate shareholder are currently subject to a separate basket limitation on a corporation-by-corporation basis. Congress initially separately basketed dividends from each 10/50 corporation because it believed a minority investment in a foreign corporation did not create sufficient identity of interest to justify look-through treatment and that cross-crediting of taxes among investments in 10/50 corporations was inappropriate because the foreign companies were not parts of a single economic unit. 1986 Bluebook at 868. In addition, Congress was concerned about the administrability of applying the look-through rules to 10/50 corporations. 1986 Bluebook at 868.

In 1997, Congress amended the Code's treatment of dividends from 10/50 corporations to provide that dividends paid after taxable years beginning after December 31, 2002 by a look-through 10/50 corporation out of earnings and profits accumulated before 2003 are subject to a single separate basket limitation for all 10/50 corporations, while dividends paid out of earnings and profits accumulated after 2003 are treated as income in a basket based on the ratio of the earnings and profits attributable to income in such basket to the foreign corporation's total earnings and profits (the so-called "look-through" approach). Earnings and profits accumulated after 2003 by a look-through 10/50 corporation are distributed before earnings and profits accumulated by that same foreign corporation before 2003. Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 1997 (1997 Bluebook) at 303.

The legislative history indicates that Congress changed its view with respect to 10/50 corporations because the separate basket limitation for dividends from each 10/50 corporation imposed a substantial recordkeeping burden and discouraged minority investments in foreign joint ventures. 1997 Bluebook at 302. However, as described above, the 1997 Act enacted look-through treatment for 10/50 corporation dividends only on a limited basis. Furthermore, Congress provided regulatory authority regarding the treatment of distributions out of earnings and profits for periods prior to a taxpayer's acquisition of stock in a look-through 10/50 corporation because of concerns that look-through treatment could provide inappropriate opportunities to traffic in foreign tax credits.

Dividends paid by a CFC out of earnings and profits accumulated while the corporation was not a CFC are treated as a distribution from a 10/50 corporation while dividends paid out of earnings and profits accumulated while the corporation was a CFC are eligible for look-through treatment. Section 904(d)(2)(E)(i) and (d)(3). As in the case of a look-through 10/50 corporation, pooled earnings and profits of a CFC that are eligible for look-through treatment are distributed before other pooled earnings and profits. Prop. Reg. § 1.904–4(g)(3)(iii). Congress provided look-through treatment for dividends paid by CFCs in order to provide greater parity between the treatment of income earned through a branch and a subsidiary. 1986 Bluebook at 866.

Before 1997, except as otherwise provided in regulations, dividend distributions to a 10 percent U.S. shareholder of a CFC did not obtain look-through treatment unless the distributed earnings and profits accrued while the shareholder was a 10 percent U.S. shareholder and the corporation was a CFC. Section 904(d)(2)(E)(i), as in effect before the 1997 Act. This rule was intended to prevent trafficking in foreign income taxes related to preacquisition earnings and profits. However, because of the administrative issues presented by maintaining shareholder-level earnings and profits accounts, Congress modified the rule in 1997 to provide that look-through

treatment applies with respect to CFC earnings and profits without regard to whether a 10 percent U.S. shareholder was a shareholder at the time accumulated. However, pre-CFC earnings and profits continue to be treated as earnings and profits of a 10/50 corporation because of foreign tax credit trafficking concerns.

The section 904 basketing rules reflect Congress' concern with respect to cross-crediting opportunities and its intent to limit the benefit of look-through treatment to appropriate circumstances. Where Congress determined that look-through is inappropriate, a dividend is treated as passive income or is subject to a separate limitation for 10/50 corporations (whether separately or collectively). Regulations have not yet been issued with respect to preacquisition earnings and profits of a look-through 10/50 corporation and the effect, if any, on the treatment of pre-CFC earnings and profits described in section 904(d)(2)(E)(i). The IRS and Treasury solicit comments as to the appropriate treatment of such earnings and profits after 2003 in light of Congress' anti-trafficking concerns, as well as the impact that such rules should have on the section 367(b) regulations.

Another international provision implicated by the movement of earnings and profits in foreign 381 transactions is section 959. Section 959 governs the distribution of earnings and profits that have been previously taxed to U.S. shareholders under section 951(a) (PTI). After studying the interaction of section 367(b) and the PTI rules, the IRS and Treasury determined that more guidance under section 959 would be useful before issuing regulations to address PTI issues that arise under section 367(b). Accordingly, the IRS and Treasury have opened a separate regulations project under section 959 and expect to issue regulations that address PTI issues under section 959 as well as section 367(b) in the future. The fundamental issue under consideration in that project is whether earnings and profits that are treated as PTI should be distributable to another shareholder, as well as the various implications that result from that determination. The IRS and Treasury invite comments with respect to these issues. Accordingly, the proposed regulations reserve on section 367(b) issues related to PTI.

Other sections may have also applied to characterize pre-transaction earnings of a foreign acquiring corporation or a foreign target corporation for certain purposes of the Code. For example, certain earnings may have been subject to characterization as U.S. source earnings under section 904(g), effectively connected earnings and profits under section 884, or post-1986 undistributed U.S. earnings under section 245. The characterization of such earnings carry over to the foreign surviving corporation for purposes of applying the relevant Code sections. See *Georday Enterprises* v. *Commissioner*, 126 F.2d 384 (4th Cir. 1942).

D. Specific Policies Related to Foreign Divisive Transactions (Prop. Reg. § 1.367(b)–8)

Proposed regulation § 1.367(b)–8 addresses the allocation of earnings and profits and foreign income taxes in a transaction described in section 312(h) (that is, a section 355 distribution whether or not in connection with a section 368(a)(1)(D) reorganization) in which either or both the distributing or the controlled corporation is a foreign corporation (foreign divisive transaction). The scope of proposed § 1.367(b)–8 thus encompasses three situations: a domestic distributing corporation that distributes stock of a foreign controlled corporation, a foreign distributing corporation that distributes stock of a domestic controlled corporation, and a foreign distributing corporation that distributes stock of a foreign controlled corporation. The proposed regulations generally adopt the principles embodied in the regulations under section 312(h) but modify their application in consideration of the international provisions such as the source and foreign tax credit rules.

Regulations under section 312(h) reflect the principle that a pro rata portion of a distributing corporation's earnings and profits should be reduced to account for the distribution of a portion of its assets. § 1.312–10. Furthermore, the earnings and profits of a controlled corporation should include the portion of the distributing corporation's earnings and profits allocable to any assets transferred to the controlled corporation in connection with a section 368(a)(1)(D) reorganization (D reorganization) that immediately precedes the section 355 distribution (together with a D reorganization, a D/355 distribution). § 1.312–10(a). If a section 355 distribution is not preceded by a D reorganization, the earnings and profits of the controlled corporation are at least equal to the amount of the reduction in the distributing corporation's earnings and profits. § 1.312–10(b). It is likely that this rule was included to prevent taxpayers from using a section 355 distribution as a device to facilitate a bailout of earnings and profits through the controlled corporation. (The § 1.312–10 rules are derived from the Senate's directions to the IRS and Treasury in implementing the regulatory authority in section 312(h); the Senate Report does not, however, explain its reasons for these rules. Senate Finance Committee, Report on H.R. 8300 (1954), at 249.)

The application of the § 1.312–10 rules to foreign divisive transactions implicates the Code's international provisions because earnings and profits are moving in the cross-border context and because the earnings and profits of controlled foreign corporations are being adjusted. In transactions involving a domestic distributing corporation and a foreign controlled corporation, the foreign controlled corporation may succeed to earnings and profits of the domestic distributing corporation. A post-transaction distribution by the foreign controlled corporation out of earnings and profits it receives from the domestic distributing corporation is generally eligible for the dividends received deduction and treated as U.S. source income under sections 243(e) and 861(a)(2)(C). This treatment is appropriate because the earnings and profits have already been subject to U.S. corporate taxation and should not be subject to a second level of U.S. corporate tax upon repatriation if the earnings and profits would have qualified for the dividends received deduction if distributed before the section 355 distribution. H.R. Rep. No. 2101, at 3 (1960). In addition, such earnings and profits should not increase a domestic distributee's foreign tax credit limitation under section 904.

In circumstances where the foreign controlled corporation makes a post-transaction distribution to foreign shareholders, the foreign divisive transaction should not alter the character of earnings and profits allocated from the domestic distributing corporation. Otherwise, the section 355 distribution may serve as a vehicle to avoid U.S. tax, including U.S. withholding tax. Accordingly, the proposed regulations provide that a post-transaction distribution out of earnings and profits of a distributing corporation that carry over to a foreign controlled corporation is generally treated as a U.S. source dividend for purposes of Chapter 3 of subtitle A of the Code. See *Georday Enterprises* v. *Commissioner*, 126 F.2d 384 (4th Cir. 1942).

Foreign divisive transactions involving a foreign distributing corporation and a domestic controlled corporation are similar to inbound nonrecognition transactions to the

extent the domestic controlled corporation receives assets of a foreign corporation. Current regulations under § 1.367(b)–3 require direct and indirect U.S. shareholders in an inbound asset reorganization to include an all earnings and profits amount in income in order to ensure, in part, that the bases of assets repatriated to the United States reflect an after-tax amount. Section 1.367(b)–3(d) and proposed § 1.367(b)–3(f) provide further rules regarding the carryover of earnings and profits and foreign income taxes from a foreign corporation to a domestic corporation. Those rules should also apply to a section 355 distribution involving a foreign distributing corporation and a domestic controlled corporation. These transactions also implicate the current rules under § 1.367(b)–5, because a reduction in a foreign distributing corporation's earnings and profits can directly affect the post-transaction application of section 1248 with respect to U.S. shareholders of the distributing corporation.

Foreign divisive transactions involving a foreign distributing corporation and a foreign controlled corporation raise issues similar to those raised in the context of a foreign 381 transaction described in § 1.367(b)–7, to the extent the controlled corporation succeeds to earnings and profits (and related foreign income taxes) of the distributing corporation. Accordingly, the proposed regulations adopt the principles of § 1.367(b)–7 to determine the manner in which the foreign controlled corporation succeeds to the earnings and profits (and related foreign income taxes) of a foreign distributing corporation. These transactions also implicate the § 1.367(b)–5 rules concerning diminutions in U.S. shareholders' section 1248 amounts.

The proposed regulations under § 1.367(b)–8 balance the § 1.312–10 rules and policies with the interests and concerns of the relevant international provisions of the Code. However, the IRS and Treasury recognize that the mechanics of § 1.312–10 as applied in the international context can be cumbersome and complex. The IRS and Treasury solicit comments as to whether the mechanical difficulties of applying the section 312 rules in the cross-border context outweigh the benefits and, if so, whether there are simpler alternative regimes that would address the international policy concerns without compromising the Subchapter C policies embodied in § 1.312–10.

Details of Provisions

A. Prop. Reg. § 1.367(b)–1

The proposed regulations supplement the current § 1.367(b)–1 notice requirements in consideration of the transactions addressed by proposed §§ 1.367(b)–7 and 1.367(b)–8. Accordingly, foreign surviving corporations described in proposed § 1.367(b)–7 and distributing and controlled corporations involved in transactions described in proposed § 1.367(b)–8 are included within the scope of the § 1.367(b)–1 notice requirement.

B. Prop. Reg. § 1.367(b)–3

The proposed regulations address the carryover of net operating loss and capital loss carryovers, and earnings and profits that are not included in income as an all earnings and profits amount (or a deficit in earnings and profits). The proposed regulations generally provide that these tax attributes do not carry over from a foreign acquired corporation to a domestic acquiring corporation unless they are effectively connected to a U.S. trade or business (or attributable to a permanent establishment, in the context of a relevant U.S. income tax treaty).

The limitations on the carryover of these attributes prevent inappropriate or anomalous results. For example, net operating loss and capital loss carryovers are eligible to carry over from a foreign acquired corporation to a domestic acquiring corporation only to the extent the underlying deductions or losses were allowable under Chapter 1 of subtitle A of the Code. Thus, only a net operating loss or capital loss carryover that is effectively connected to a U.S. trade or business (or attributable to a permanent establishment) may carry over. Inappropriate or anomalous results are thus avoided because losses incurred by a foreign acquired corporation outside the U.S. taxing jurisdiction should not be available to offset the future U.S. tax liability of a domestic acquiring corporation. Otherwise, a taxpayer would have an incentive to import losses into the United States in order to shelter future income from U.S. tax.

The carryover of earnings and profits (or a deficit in earnings and profits) of the foreign acquired corporation can create similarly inappropriate results. For example, the policies underlying the section 243(a) dividends received deduction are not present with respect to a subsequent distribution by the domestic acquiring corporation out of earnings and profits accumulated by the foreign acquired corporation because those earnings and profits are not generally subject to a U.S. corporate level of tax. On the other hand, if the foreign acquired corporation has PTI, those earnings should not be taxed again when distributed to U.S. shareholders to whom the PTI is attributable regardless of whether or not the U.S. shareholder is eligible for the dividends received deduction. A deficit in earnings and profits can also be used to avoid tax, such as in the case of a foreign shareholder of a domestic acquiring corporation that imports a deficit and therefore is not subject to U.S. withholding tax on subsequent corporate distributions.

As a result of the issues raised by a carryover of earnings and profits and given that § 1.367(b)–3 already requires U.S. shareholders to include in income as a deemed dividend the all earnings and profits amount, the proposed regulations provide that earnings and profits (or deficit in earnings and profits) of the foreign acquired corporation do not carry over to the domestic acquiring corporation except to the extent effectively connected to a U.S. trade or business (or attributable to a permanent establishment, in the context of a relevant U.S. income tax treaty).

C. Prop. Reg. § 1.367(b)–7

Proposed § 1.367(b)–7 provides the manner in which a foreign surviving corporation succeeds to and takes into account the earnings and profits and foreign income taxes of a foreign acquiring corporation and a foreign target corporation. The proposed regulation attempts to preserve the character of earnings and profits and foreign income taxes to the extent possible in light of the applicable statutory limitations, as well as the relevant policy and administrative concerns. Compare § 1.381(c)(2)–1(a)(3) (ensuring that earnings and profits accumulated before March 1, 1913 retain their character as pre-1913 earnings and profits after a section 381 transaction). Accordingly, the proposed rules provide that, to the extent possible, pooled earnings and profits (and foreign income taxes) remain pooled, earnings and profits (and foreign income taxes) in annual layers remain in annual layers, foreign income taxes trapped before the transaction remain trapped after the transaction, and earnings and profits (and foreign income taxes) remain in the same basket before and after the transaction.

The proposed regulation also respects the section 902 preference for distributing pooled earnings and profits before earnings and profits in annual

layers. Accordingly, proposed § 1.367(b)–7 provides that a foreign surviving corporation's pooled earnings and profits are distributed first (even though earnings and profits in the annual layers may have been accumulated after earnings and profits in the pool) and annual layers are distributed on a LIFO basis. Similarly, the proposed regulation also incorporates the section 904 preference for distributing pooled earnings and profits eligible for look-through before other pooled earnings and profits.

However, in certain cases, an overriding statutory policy requires that the proposed regulation modify the character of earnings and profits (and related foreign income taxes). For example, if a CFC combines with a non-look-through 10/50 corporation in a foreign 381 transaction and the foreign surviving corporation is a non-look-through 10/50 corporation, dividends paid by the surviving non-look-through 10/50 corporation are required to be separately basketed and do not obtain the benefit of look-through. Thus, earnings and profits of a CFC that would have obtained the benefit of look-through if distributed before the foreign 381 transaction are not eligible for look-through after the transaction. (The loss of look-through in connection with this type of foreign 381 transaction is somewhat ameliorated by a U.S. shareholder's section 1248 amount inclusion under § 1.367(b)–4 with respect to earnings and profits that accrued during its holding period.)

Proposed regulation § 1.367(b)–7 also provides rules regarding the carryover of deficits in earnings and profits from one foreign corporation to another. The purpose of the hovering deficit rule in the domestic context is to prevent the trafficking of deficits in earnings and profits. Otherwise, a corporation with positive earnings and profits may acquire or be acquired by another corporation with a deficit in earnings and profits and make distributions out of capital rather than earnings and profits.

In transactions involving foreign corporations, similar concerns exist regarding the trafficking of deficits in earnings and profits. The ability to benefit from combining positive and deficit earnings and profits among foreign corporations is different than in the domestic context, however, because of the nature of the foreign tax credit rules. In a reorganization involving two domestic corporations, the hovering deficit rule applies to a corporation with a net accumulated deficit in earnings and profits because the relevant statutory rules do not distinguish among classes of earnings and profits. In contrast, the foreign tax credit rules require further subcategorization of earnings and profits according to the pooling and basketing rules. Because of these distinctions, taxpayers may inappropriately benefit by trafficking in an earnings and profits deficit in a basket, pool, or particular annual layer, even though a corporation may have net positive earnings and profits. Accordingly, the proposed regulations apply the hovering deficit principle to the relevant subcategories of earnings and profits and provide that foreign income taxes related to the deficit are not added to the foreign surviving corporation's foreign income tax accounts until all of the deficit has been offset with post-transaction earnings. (Under proposed § 1.367(b)–9 (which is described below), these hovering deficit rules do not apply to F reorganizations and foreign 381 transactions in which either the foreign target corporation or the foreign acquiring corporation is newly created.)

Because the treatment of distributions by a foreign surviving corporation depends on whether it is a look-through corporation, a non-look-through 10/50 corporation, or a less-than-10%-U.S.-owned foreign corporation, proposed § 1.367(b)–7 is divided according to these categories. The proposed regulation uses the term surviving corporation in order to prevent confusion between the acquiring corporation and the foreign surviving entity. In addition, the term highlights the proposed regulation's general approach that provides the same results regardless of whether a corporation is the ostensible acquiring or target corporation.

1. Look-Through Surviving Corporation

Where the foreign surviving corporation is a look-through corporation, the proposed regulation generally preserves the character of earnings and profits and foreign income taxes. For example, if a CFC (CFC1) acquires the assets of another CFC (CFC2) in a foreign 381 transaction and the surviving corporation is a CFC, then the corporations' positive amounts of earnings and profits and foreign income taxes would carry over in a manner that combines the look-through earnings and profits pools (and related foreign income taxes) of each corporation on a basket-by-basket basis. Thus, for example, CFC1's passive basket would be combined with CFC2's passive basket, CFC1's general basket would be combined with CFC2's general basket, and so forth.

If CFC1 or CFC2 has pooled earnings and profits or foreign income taxes that do not qualify for look-through treatment (non-look-through pool) (for example, earnings and profits accumulated during a period when the corporation was not a CFC and that are subject to a separate 10/50 limitation), such earnings and profits and foreign income taxes would be distributed only after all of the look-through earnings and profits pool has been distributed. This rule is consistent with the ordering rule in Prop. Reg. § 1.904–4(g)(3)(iii), which provides that when a 10/50 corporation becomes a CFC, pooled earnings and profits accumulated and foreign income taxes paid or accrued while the corporation is a CFC are distributed before pooled earnings and profits accumulated and foreign income taxes paid or accrued while the corporation was a 10/50 corporation. (If the foreign surviving corporation is instead a look-through 10/50 corporation, this rule is also consistent with the earnings and profits in the look-through pool being distributed before earnings and profits in the non-look-through pool.)

When earnings and profits from the non-look-through pool are distributed, the earnings and profits will be distributed pro rata out of the non-look-through pools of CFC1 and CFC2 (if any) and placed in two separate baskets under section 904(d)(1)(E). This preserves the character of the earnings and profits and related foreign income taxes and is consistent with the policy of section 904(d)(1)(E) to maintain separate baskets for each 10/50 corporation. After 2003, these earnings and profits will continue to be distributed pro rata from separate non-look-through pools but will be combined into a single 10/50 basket in the hands of the distributee. Maintaining separate pools prevents the refreshing of foreign income taxes that would have been trapped had the foreign 381 transaction not occurred. (The same rules apply in the case of a foreign surviving corporation that is a look-through 10/50 corporation.)

If CFC1 or CFC2 has pre-1987 accumulated profits (*i.e.*, annual layers of earnings and profits) or foreign income taxes, then those earnings and profits are distributed only after the distribution of all pooled earnings and profits and taxes, regardless of whether those earnings and profits may have been accumulated after the pooled earnings and profits of the other corporation. Such earnings and profits are distributed on a LIFO basis and pro rata out of the respective corporation's annual layers if both companies have

earnings and profits in the same year that are treated as pre-1987 accumulated profits and foreign income taxes. This rule respects two international policies. First, pooled earnings and profits are distributed before earnings and profits in annual layers. Second, earnings and profits in annual layers should not be pooled unless they are distributed to an upper-tier entity. Compare § 1.902–1(a)(8)(ii) (providing that distributions out of pre-1987 earnings and profits by a lower-tier corporation are included in the post-1986 earnings and profits of an upper-tier corporation). This rule is also consistent with the section 902 rule that traps foreign income taxes in annual layers in which there are no earnings and profits.

These results preserve the character of earnings and profits and taxes because pooled earnings and profits and taxes remain pooled, earnings and profits and taxes retain the same character under the look-through provisions, and foreign income taxes that were trapped before the foreign 381 transaction remain trapped. The rules are also consistent with concerns about limiting the administrative burden of requiring taxpayers to recreate tax histories.

Because of the foreign tax credit considerations presented by foreign 381 transactions, § 1.367(b)–7 applies the hovering deficit rule to subcategories of earnings and profits. Thus, deficits in the look-through pool, non-look-through pool, and net deficits in annual layers can offset only future earnings and profits of the foreign surviving corporation. In addition, a hovering deficit cannot be used to reduce current earnings and profits of the foreign surviving corporation and, as a result, does not reduce subpart F income. Foreign income taxes related to a hovering deficit do not enter the foreign income tax accounts of the surviving corporation until the entire hovering deficit offsets post-transaction earnings and profits. However, foreign income taxes related to the post-transaction earnings that are offset by the hovering deficit immediately enter the foreign income tax accounts of the foreign surviving corporation.

2. Non-Look-Through 10/50 Surviving Corporation

The proposed regulation's rules with respect to a non-look-through 10/50 corporation apply if the foreign surviving corporation is a 10/50 corporation before 2003. The principal statutory limitation of a non-look-through 10/50 corporation is that a dividend distribution is not eligible for look-through treatment and is instead separately basketed for each 10/50 corporation. As a result, earnings and profits of an acquiring or target corporation that would have been eligible for look-through (assuming the corporation qualified under the look-through rule) if distributed before the foreign 381 transaction lose their look-through character after the transaction.

For example, suppose a CFC combines with a non-look-through 10/50 corporation in a foreign 381 transaction in 2001 and the surviving entity is a non-look-through 10/50 corporation. Prior to the transaction, the CFC maintained earnings and profits and foreign income tax accounts expecting that the look-through rules would apply on a distribution of earnings and profits to U.S. shareholders. However, after the foreign 381 transaction, section 904(d)(1)(E) requires that a distribution from the surviving 10/50 corporation will be deemed to be paid out of a single pool of earnings and profits that will be separately basketed. In order to address the carryover of attributes to a non-look-through 10/50 corporation in a manner consistent with section 904(d)(1)(E), the proposed regulations combine the net positive earnings and profits and foreign income taxes in the respective pools of the acquiring and target corporations. (Thus, the separate baskets of pooled earnings and profits and foreign income taxes of the CFC would be netted into a single pool along with the non-look-through 10/50 corporation's pooled earnings and profits and foreign income taxes.)

Annual layers of the acquiring and target corporations are carried over to the foreign surviving corporation under the same rules as described above with respect to look-through corporations. Hovering deficit rules similar to those described with respect to a look-through corporation's non-look-through pool and annual layers also apply to surviving non-look-through 10/50 corporations.

Look-through treatment of earnings and profits and foreign income taxes does not re-emerge if the corporation later becomes a look-through corporation. For example, if the surviving non-look-through 10/50 corporation becomes a CFC, all of the earnings and profits and foreign income taxes of the surviving non-look-through 10/50 corporation remain as earnings and profits to which the look-through rules do not apply. Look-through only applies to earnings and profits accumulated after the corporation becomes a CFC. The IRS and Treasury believe that this rule is appropriate because of the administrative difficulties posed by recreating tax histories. In addition, earnings and profits and foreign income taxes of a CFC accumulated during a U.S. shareholder's holding period are generally deemed distributed (and the look-through rules apply) if a U.S. shareholder includes a section 1248 amount in income under § 1.367(b)–4 in connection with the foreign 381 transaction.

3. Less-than-10%-U.S.-owned Foreign Surviving Corporation

Proposed § 1.367(b)–7 also determines the manner in which earnings and profits and foreign income taxes of the acquiring and target corporation are combined if the foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation. Generally, rules similar to the rules provided for annual layers of look-through corporations and non-look-through 10/50 corporations apply with respect to the annual layers of the acquiring and target corporation, but the rules take into account the possibility that one of the corporations may have been a CFC or 10/50 corporation immediately prior to the foreign 381 transaction.

If either the acquiring or target corporation is a CFC or a 10/50 corporation, its pooled earnings and profits and foreign income taxes are treated as earnings and profits and foreign income taxes accumulated in the annual layer of the applicable corporation immediately before the foreign 381 transaction. For example, suppose a less-than-10%-U.S.-owned foreign corporation combines with a 10/50 corporation and the foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation. The foreign surviving corporation is an entity that has never been required to pool earnings and profits and foreign income taxes under section 902(c)(3). Accordingly, distributions from the foreign surviving corporation are out of annual layers on a LIFO basis. Rather than recreating the tax history of the acquired 10/50 corporation for each year, the proposed regulation places all pooled earnings and profits and foreign income taxes of the 10/50 corporation into a single annual layer that closes immediately before the foreign 381 transaction. This rule is intended to ameliorate administrative burdens while respecting the policy that earnings and profits and foreign income taxes are distributed from annual layers for a less-than-10%-U.S.-owned foreign corporation. Because of concerns about neutrality, the same result applies regardless of whether the 10/50 corporation is the ostensible acquiring or target corporation.

If the surviving less-than-10%-U.S.-owned foreign corporation later becomes a non-look-through 10/50 corporation or a look-through corporation, earnings and profits and foreign income taxes that were pooled or obtained the benefit of look-through prior to the foreign 381 transaction are not recreated. Instead, those earnings and profits and foreign income taxes remain as earnings and profits accumulated and foreign income taxes paid or deemed paid while the corporation was a less-than-10%-U.S.-owned foreign corporation. As in the case of a surviving non-look-through 10/50 corporation that later becomes a look-through corporation, this rule is provided because of administrative issues associated with recreating tax histories. In addition, earnings and profits and foreign income taxes of a CFC accumulated during a shareholder's holding period generally would have been deemed distributed (and the look-through rules would have applied) if the shareholder was required to include a section 1248 amount in income under § 1.367(b)–4 in connection with the foreign 381 transaction.

D. Prop. Reg. § 1.367(b)–8

Section 1.367(b)–8 provides rules applicable to foreign divisive transactions. The regulation is divided into four sections. Section 1.367(b)–8(b) provides rules that are generally applicable to foreign divisive transactions. The other three sections describe the application of the general rules to specific situations. Section 1.367(b)–8(c) applies to a distribution by a domestic distributing corporation of the stock of a foreign controlled corporation, § 1.367(b)–8(d) applies to a distribution by a foreign distributing corporation of the stock of a domestic controlled corporation, and § 1.367(b)–8(e) applies to a distribution by a foreign distributing corporation of the stock of a foreign controlled corporation.

1. General Rules Applicable to Foreign Divisive Transactions

Section 1.367(b)–8(b) provides that the rules of § 1.312–10 generally apply to determine the allocation of earnings and profits between a distributing and a controlled corporation, as well as to determine the reduction in the earnings and profits of a distributing corporation. The rules of § 1.312–10 are, however, subject to certain modifications.

In a D/355 distribution involving a controlled corporation that is newly created as part of the transaction, § 1.312–10(a) allocates the pre-transaction earnings and profits of the distributing corporation between the distributing and controlled corporations based upon a comparison of the fair market values of the assets received by the controlled corporation and the assets retained by the distributing corporation after the D reorganization. Section 1.312–10(a) provides that, "in a proper case," this allocation should be based on the relative net bases of the assets transferred and retained by the distributing corporation, or based on another "appropriate" method.

The proposed regulations generally adopt the rule of § 1.312–10(a), except that the allocation is based upon relative net adjusted bases of assets transferred and retained in all cases. This rule reflects the view that net basis is the most accurate measure of the appropriate amount of earnings and profits that should be allocated to the assets transferred by a distributing corporation in the D reorganization. For example, in cases where the controlled corporation recognizes gain on a later sale or distribution of appreciated property that it receives from the distributing corporation an allocation based upon relative bases prevents a misallocation of earnings and profits to the controlled corporation.

In a section 355 distribution that is not preceded by a D reorganization, § 1.312–10(b) provides that the earnings and profits of the distributing corporation are decreased by an amount equal to the lesser of (i) the amount by which the earnings and profits of the distributing corporation would have been decreased if it had transferred the stock of the controlled corporation to a new corporation in a D/355 distribution, and (ii) the net worth of the controlled corporation. For this purpose, net worth is defined as "the sum of the bases of all of the properties plus cash minus all liabilities." If "the earnings and profits of the controlled corporation immediately before the transaction are less than the amount of the decrease in earnings and profits of the distributing corporation . . . the earnings and profits of the controlled corporation, immediately after the transaction, shall be equal to the amount of such decrease. If the earnings and profits of the controlled corporation immediately before the transaction are more than the amount of the decrease in the earnings and profits of the distributing corporation, they shall remain the same."

Section 1.312–10(b) reflects the principle that a pro rata portion of a distributing corporation's earnings and profits should be reduced to account for the distribution of the controlled corporation. In addition, the requirement that the earnings and profits of the controlled corporation at least equal the reduction in the distributing corporation's earnings and profits appears intended to prevent a bailout of earnings and profits through the controlled corporation, while preventing the potential double counting of earnings and profits in situations where the distributing corporation did not organize the controlled corporation.

In consideration of the complexities raised by the cross-border application of the § 1.312–10(b) adjustment to the controlled corporation's earnings and profits, taken together with the current rules that prevent the potential bailout of earnings and profits in the international context (such as the § 1.367(b)–5 requirement that a shareholder include in income a reduction in its section 1248 amount), the IRS and Treasury have concluded that the § 1.312–10(b) rules should be modified when applied to section 367(b) transactions. Accordingly, the proposed regulations provide that the earnings and profits of the distributing corporation are decreased in an amount equal to the amount by which the earnings and profits of the distributing corporation would have been decreased if it had transferred the stock of the controlled corporation to a new corporation in a D/355 distribution. However, the earnings and profits of the controlled corporation are not increased or replaced. The reduction in earnings and profits (and related foreign income taxes) of the distributing corporation disappears unless otherwise included in income, such as under § 1.367(b)–5.

Section 1.312–10 does not specifically address the allocation and reduction of earnings and profits in connection with a D/355 distribution that involves a preexisting controlled corporation. The proposed regulations provide that, in such a case, the distributing corporation's earnings and profits are reduced in a manner that incorporates both the rules applicable to a D/355 distribution with a newly created controlled corporation and a section 355 distribution that is not preceded by a D reorganization. The rule thus accounts for a decrease in earnings and profits attributable to assets transferred to the controlled corporation as part of the D reorganization as well as a decrease in earnings and profits attributable to the distribution of stock of a preexisting controlled corporation (without regard to the D reorganization). The controlled corporation succeeds only to those earnings and profits allocable to the property it receives in the D reorganization.

In consideration of the international provisions' distinctions among classes and categories of earnings and profits, proposed § 1.367(b)–8(b) specifically addresses the determination of which earnings and profits of the distributing corporation are affected by a foreign divisive transaction. The proposed regulation provides that an allocation or reduction in earnings and profits shall generally be pro rata out of a cross-section of the distributing corporation's tax history (except to the extent it is included in income as a deemed dividend such as under § 1.367(b)–3 or § 1.367(b)–5). This rule determines the earnings and profits (and related foreign income taxes, where applicable) that remain in the distributing corporation after the transaction as well as any earnings and profits (and related foreign income taxes, where applicable) to which the controlled corporation succeeds in a D reorganization.

The proposed § 1.367(b)–8(b) cross-section rule decreases the earnings and profits of a distributing corporation without regard to the type of income generated by the assets of the controlled corporation. This is consistent with the general assumption in § 1.312–10 and the proposed regulations that the earnings and profits of the distributing corporation should be decreased proportionately to reflect the transfer or distribution of assets, rather than by some other measure, such as by determining the earnings and profits attributable to the income generated by assets transferred or distributed (a tracing model) or by decreasing most recently accumulated earnings and profits to the extent of assets transferred or distributed (a dividend model).

2. Branch Profits Tax Considerations

Notwithstanding the above-described rules, the proposed regulations provide that an allocation or reduction in a distributing corporation's earnings and profits shall not reduce the distributing corporation's effectively connected earnings and profits or non-previously taxed accumulated effectively connected earnings and profits, as defined in the branch profits rule in section 884 (branch earnings). Both a domestic or foreign distributing corporation can potentially have branch earnings that are subject to the branch profits tax.

In the case of a foreign divisive transaction that does not include a D reorganization, a U.S. branch of a foreign distributing corporation would be retained by the foreign distributing corporation. Accordingly, § 1.367(b)–8 should not reduce the foreign distributing corporation's branch earnings because such a reduction would improperly decrease the earnings subject to the branch profits tax upon the section 355 distribution (which would trigger the branch profits tax under section 884). The same issues arise in the case of a D/355 distribution in which a foreign distributing corporation transfers the assets that are not part of a U.S. branch to a controlled corporation. The IRS and Treasury do not believe that it is appropriate to reduce the earnings that could give rise to a subsequent branch profits tax under these circumstances.

Different issues arise in a foreign divisive transaction in which a foreign distributing corporation transfers the assets of a U.S. branch to a controlled corporation as part of a D/355 distribution. While the branch profits rules permit a deferral of the branch profits tax in certain instances (by allowing branch earnings to be allocated to the domestic transferee in proportion to the assets transferred when a branch is incorporated in a section 351 exchange in a domestic corporation (see § 1.884–2T(d)(1)), the branch profits tax is triggered in any event if stock of the incorporated branch is later distributed to its shareholders. See § 1.884–2T(d)(5). Accordingly, because foreign divisive transactions include a section 355 distribution immediately following the D reorganization, it would be unnecessary and inappropriate to attribute branch earnings to a domestic controlled corporation under proposed § 1.367(b)–8.

Similar branch profits issues can arise with respect to a domestic distributing corporation. While branch earnings are accumulated by a foreign corporation, such earnings may have been carried over to a domestic corporation in a prior section 351 or 381 transaction. See § 1.884–2T(c)(4). Accordingly, the proposed regulations treat domestic distributing corporations in the same manner as foreign distributing corporations with respect to branch earnings.

3. Domestic Corporation Distributes Stock of a Foreign Corporation

In foreign divisive transactions involving a domestic distributing corporation and a foreign controlled corporation, the foreign controlled corporation may succeed to earnings and profits of the domestic distributing corporation. The regulations provide that sections 243(e) and 861(a)(2)(C) apply to earnings and profits allocated to the foreign controlled corporation that were accumulated by a domestic corporation. In addition, a post-transaction distribution out of earnings and profits allocated to the foreign controlled corporation is generally treated as a U.S. source dividend under section 904(g) and for purposes of Chapter 3 of subtitle A of the Code. See *Georday Enterprises* v. *Commissioner*, 126 F.2d 384 (4th Cir. 1942).

4. Foreign Corporation Distributes Stock of a Domestic Corporation

In foreign divisive transactions involving a foreign distributing corporation and a domestic controlled corporation, two issues arise in determining the appropriate reduction in the foreign distributing corporation's earnings and profits and its effects on the earnings and profits of the domestic controlled corporation. First, it should be determined whether it is appropriate to reduce PTI of the foreign distributing corporation and, if so, in what manner (*e.g.*, if the foreign distributing corporation has earnings and profits that are PTI and not PTI, should the reduction in earnings and profits be out of PTI first, last, pro rata, or depending on the identity of the controlled corporation's shareholders). As in the case of § 1.367(b)–7, § 1.367(b)–8 reserves on PTI issues, and the IRS and Treasury solicit comments with respect to the appropriate treatment of these amounts.

Second, a domestic corporation succeeds to the earnings and profits of a foreign corporation if the section 355 distribution is preceded by a D reorganization. Because earnings and profits are allocable from foreign corporate solution to U.S. corporate solution, U.S. shareholders are required to include in income the all earnings and profits amount attributable to earnings and profits that carry over to the controlled corporation. The proposed regulations provide rules that coordinate the proposed § 1.367(b)–8 and the current § 1.367(b)–3 regimes. The regulations, however, reserve with respect to the treatment of U.S. persons that own foreign distributing corporation stock after a non pro rata distribution. The IRS and Treasury invite comments as to whether U.S. shareholders should have an all earnings and profits amount inclusion in connection with a non pro rata foreign divisive transaction in which they do not receive stock of the domestic controlled corporation.

5. Foreign Corporation Distributes Stock of a Foreign Corporation

In foreign divisive transactions involving a foreign distributing corporation and a foreign controlled corporation, the foreign controlled corporation may succeed to earnings

and profits of the foreign distributing corporation. Because such earnings and profits are allocated from one foreign corporation to another foreign corporation, the transaction raises issues similar to those in a foreign 381 transaction. Accordingly, the proposed regulations adopt and apply the principles in proposed regulation § 1.367(b)–7 to these transactions.

E. Prop. Reg. § 1.367(b)–9

Proposed § 1.367(b)–9 provides special rules applicable to foreign-to-foreign F reorganizations and foreign 381 transactions in which either the foreign target corporation or the foreign acquiring corporation is newly created. Proposed § 1.367(b)–9 also applies to foreign divisive transactions that involve a foreign distributing and a foreign controlled corporation, either of which is newly created.

Under proposed § 1.367(b)–9, a foreign surviving corporation succeeds to earnings and profits, deficits in earnings and profits, and foreign income taxes without regard to the proposed § 1.367(b)–7 hovering deficit rules. See section 1.381(b)–1(a)(2) (providing an analogous rule with respect to domestic F reorganizations).

This rule prevents inappropriate tax consequences. For example, under the generally applicable hovering deficit rules, a foreign corporation with significant deficits in earnings and profits could combine with a newly created foreign corporation and thereafter distribute dividends (along with deemed paid foreign income taxes under section 902), despite the presence of a significant deficit that would have precluded a dividend distribution before the transaction. Proposed § 1.367(b)–7 provides the Commissioner discretion to apply the principles of proposed § 1.367(b)–9 to circumstances where a principal purpose of the foreign 381 transaction is to affirmatively use the hovering deficit rule in order to gain a tax benefit.

Proposed Effective Dates

These regulations are proposed to apply to section 367(b) exchanges that occur on or after 30 days after these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 13, 2001, beginning at 10 a.m., in room 7218 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by February 20, 2001. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Anne O'Connell Devereaux, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entries for sections 1.367(b)–7, 1.367(b)–8, and 1.367(b)–9 to read in part as follows:

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

Section 1.367(b)–7 also issued under 26 U.S.C. 367(a) and (b), 26 U.S.C. 902, and 26 U.S.C. 904.

Section 1.367(b)–8 also issued under 26 U.S.C. 367(a) and (b), 26 U.S.C. 902, and 26 U.S.C. 904.

Section 1.367(b)–9 also issued under 26 U.S.C. 367(a) and (b), 26 U.S.C. 902, and 26 U.S.C. 904. * * *

Par. 2. Section 1.312–10 is amended by adding paragraph (d) to read as follows:

§ 1.312–10 Allocation of earnings in certain corporate separations.

* * * * *

(d) For additional rules involving foreign corporations, see § 1.367(b)–8.

Par. 3. Section 1.367(b)–0 is amended by:

1. Revising the introductory text.
2. Revising the entry for § 1.367(b)–2(j)(3) and adding entries for § 1.367(b)–2(j)(4), (j)(5), and (l).
3. Adding entries for § 1.367(b)–3(e) and (f).
4. Adding entries for § 1.367(b)–5(c)(2)(i), (c)(2)(ii), and (e)(3).
5. Adding entries for §§ 1.367(b)-7 through 1.367(b)-9.

The revisions and additions read as follows:

§ 1.367(b)–0 Table of contents.

This section lists the paragraphs contained in §§ 1.367(b)–1 through 1.367(b)–9.

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§ 1.367(b)–2 Definitions and special rules.

* * * * *

(j) * * *

(3) Dividend described in section 243(e).

(4) Coordination with § 1.367(b)–8(c)(2).

(5) Other rules.

* * * * *

(l) Additional definitions.

(1) Foreign income taxes.

(2) Post-1986 undistributed earnings.

(3) Post-1986 foreign income taxes.

(4) Pre-1987 accumulated profits.

(5) Pre-1987 foreign income taxes.

(6) Pre-1987 section 960 earnings and profits.

(7) Pre-1987 section 960 foreign income taxes.

(8) Earnings and profits.

(9) Look-through corporation.

(10) Non-look-through 10/50 corporation.
(11) Less-than-10%-U.S.-owned foreign corporation.
(12) Separate category.
(13) Statutory grouping of earnings and profits.

§ 1.367(b)– Repatriation of foreign corporate assets in certain nonrecognition transactions.

* * * * *

(e) Net operating loss and capital loss carryovers.
(f) Carryover of earnings and profits.

* * * * *

§ 1.367(b)–5 Distributions of stock described in section 355.

* * * * *

(c) * * *
(2) * * *
(i) In general.
(ii) Exception.

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(e) * * *
(3) Divisive D reorganization with a preexisting controlled corporation.

* * * * *

§ 1.367(b)–7 Carryover of earnings and profits and foreign income taxes in certain foreign-to-foreign nonrecognition transactions.

(a) Scope.
(b) General rules.
(1) Non-previously taxed earnings and profits and related taxes.
(2) Previously taxed earnings and profits. [Reserved]
(c) Ordering rule for post-transaction distributions.
(1) If foreign surviving corporation is a look-through corporation.
(2) If foreign surviving corporation is a non-look-through 10/50 corporation.
(3) If foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation.
(d) Look-through pool.
(1) In general.
(i) Qualifying earnings and taxes.
(ii) Carryover rule.
(2) Hovering deficit.
(i) Offset Rule.
(ii) Related taxes.
(3) Examples.
(e) Non-look-through pool.
(1) If foreign surviving corporation is a look-through corporation.
(i) Qualifying earnings and taxes.
(iii) Hovering deficit.
(A) Offset rule.
(B) Related taxes.
(iv) Examples.
(2) If foreign surviving corporation is a non-look-through 10/50 corporation.
(i) Qualifying earnings and taxes.
(ii) Carryover rule.
(iii) Hovering deficit.
(A) Offset rule.
(B) Related taxes.
(iv Examples.
(f) Pre-pooling annual layers.
(1) If foreign surviving corporation is a look-through corporation or a non-look-through 10/50 corporation.
(i) Qualifying earnings and taxes.
(ii) Carryover rule.
(iii) Deficits.
(A) Aggregate positive earnings and profits.
(B) Aggregate deficit in earnings and profits.
(iv) Pre-1987 section 960 earnings and profits and foreign income taxes.
(v) Examples.
(2) If foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation.
(i) Qualifying earnings and taxes.
(ii) Carryover rule.
(iii) Deficits.
(A) Aggregate positive earnings and profits.
(B) Aggregate deficit in earnings and profits.
(iv) Pre-1987 section 960 earnings and profits and foreign income taxes.
(v) Examples.
(g) Special rules.
(1) Treatment of deficit.
(2) Reconciling taxable years.
(3) Post-transaction change of status.
(4) Ordering rule for offsetting multiple hovering deficits.
(i) Rule.
(ii) Example.
(5) Pro rata rule for earnings during transaction year.
(6) Nonapplicability of hovering deficit rules to certain transactions.
(i) Rule.
(ii) Example.
(h) Effective date.

§ 1.367(b)–8 Allocation of earnings and profits and foreign income taxes in certain foreign corporate separations.

(a) Scope.
(b) General rules.
(1) Application of § 1.312–10.
(i) In general.
(ii) Special rules for application of § 1.312–10(b).
(A) Distributing corporation.
(B) Controlled corporation.
(iii) Net deficit in pre-transaction earnings.
(iv) Use of net bases.
(v) Gain recognized by distributing corporation.
(vi) Coordination with branch profits tax.
(2) Cross-section of earnings and profits.
(3) Foreign income taxes.
(4) Divisive D reorganization with a preexisting controlled corporation.
(i) Calculation of earnings and profits of distributing corporation.
(ii) Calculation of earnings and profits of controlled corporation.
(c) Foreign divisive transactions involving a domestic distributing corporation and a foreign controlled corporation.
(1) Scope.
(2) Earnings and profits allocated to a foreign controlled corporation.
(3) Examples.
(d) Foreign divisive transactions involving a foreign distributing corporation and a domestic controlled corporation.
(1) Scope.
(2) Coordination with § 1.367(b)–3.
(i) In general.
(ii) Determination of all earnings and profits amount.
(iii) Interaction with section 358 and § 1.367(b)–2(e)(3)(ii).
(iv) Coordination with § 1.367(b)–3(c).
(v) Special rule for U.S. persons that own foreign distributing corporation stock after a non pro rata distribution. [Reserved]
(3) Foreign income taxes.
(4) Previously taxed earnings and profits. [Reserved]
(5) Coordination with § 1.367(b)–5.
(6) Examples.
(e) Foreign divisive transactions involving a foreign distributing corporation and a foreign controlled corporation.
(1) Scope.
(2) Earnings and profits of foreign controlled corporation.
(i) In general.
(ii) Special rule for pre-transaction earnings allocated to a newly created controlled corporation.
(3) Foreign income taxes.
(4) Previously taxed earnings and profits. [Reserved]
(5) Coordination with § 1.367(b)–5.
(6) Examples.
(f) Effective date.

§ 1.367(b)–9 Special rule for F reorganizations and similar transactions.

(a) Scope.
(b) Hovering deficit rules inapplicable.
(c) Example.
(d) Effective date.

Par. 4. Section 1.367(b)–1 is amended by:

1. Removing the language "and" at the end of paragraph (c)(2)(iii).
2. Removing the period at the end of paragraph (c)(2)(iv)(B) and adding ";" in its place.
3. Adding paragraphs (c)(2)(v), (c)(2)(vi), and (c)(2)(vii).
4. Revising paragraphs (c)(3)(ii)(A), (c)(4)(iv), and (c)(4)(v).

The additions and revisions read as follows:

§ 1.367(b)–1 Other transfers.

* * * * *

(c) * * *
(2) * * *

(v) A foreign surviving corporation described in § 1.367(b)–7(a);

(vi) A distributing corporation that is subject to the rules of § 1.367(b)–8; and

(vii) A controlled corporation that is subject to the rules of § 1.367(b)–8.

(3) * * *
(ii) * * *

(A) United States shareholders (as defined in § 1.367(b)–3(b)(2)) of foreign corporations described in paragraph (c)(2)(i), (v), (vi), or (vii) of this section; and

* * * * *

(4) * * *

(iv) A statement that describes any amount (or amounts) required, under the section 367(b) regulations, to be taken into account as income or loss or

as an adjustment (including an adjustment under § 1.367(b)–7, 1.367(b)–8, or 1.367(b)–9) to basis, earnings and profits, or other tax attributes as a result of the exchange;

(v) Any information that is or would be required to be furnished with a Federal income tax return pursuant to regulations under section 332, 351, 354, 355, 356, 361, 368, or 381 (whether or not a Federal income tax return is required to be filed), if such information has not otherwise been provided by the person filing the section 367(b) notice;

* * * * *

Par. 5. Section 1.367(b)–2 is amended by:

1. Revising paragraph (j)(1)(i).

2. Redesignating paragraph (j)(3) as paragraph (j)(5).

3. Adding new paragraphs (j)(3) and (j)(4).

4. Adding paragraph (l).

The revision and addition read as follows:

§ 1.367(b)–2 Definitions and special rules.

* * * * *

(j) *Sections 985 through 989*—(1) *Change in functional currency of a qualified business unit*—(i) *Rule.* If, as a result of a section 367(b) exchange described in section 381(a) or 312(h), a qualified business unit (as defined in section 989(a)) (QBU) has a different functional currency determined under the rules of section 985(b) than it used prior to the transaction, then the QBU shall be deemed to have automatically changed its functional currency immediately prior to the transaction. A QBU that is deemed to change its functional currency pursuant to this paragraph (j) must make the adjustments described in § 1.985–5.

* * * * *

(3) *Dividend described in section 243(e).* Dividend distributions by a foreign corporation out of earnings and profits accumulated by a domestic corporation that are eligible for the dividends received deduction under section 243(e) shall not exceed an amount equal to the U.S. dollar value of the earnings and profits at the time the earnings and profits were accumulated by such domestic corporation. See § 1.367(b)–8(c)(3), *Example 1* and *Example 3*.

(4) *Coordination with § 1.367(b)–8(c)(2).* Solely for purposes of Chapter 3 of subtitle A of the Internal Revenue Code, dividend distributions by a foreign corporation that are treated under § 1.367(b)—8(c)(2) as U.S. source shall not exceed an amount equal to the U.S. dollar value of the earnings and profits at the time allocated to the foreign corporation. See § 1.367(b)–8(c)(3), *Example 1*.

* * * * *

(l) *Additional definitions*—(1) *Foreign income taxes.* The term *foreign income taxes* has the meaning set forth in § 1.902–1(a)(7).

(2) *Post-1986 undistributed earnings.* The term *post-1986 undistributed earnings* has the meaning set forth in § 1.902–1(a)(9).

(3) *Post-1986 foreign income taxes.* The term *post-1986 foreign income taxes* has the meaning set forth in § 1.902–1(a)(8).

(4) *Pre-1987 accumulated profits.* The term *pre-1987 accumulated profits* means the earnings and profits described in § 1.902–1(a)(10)(i), computed in accordance with the rules of § 1.902–1(a)(10)(ii).

(5) *Pre-1987 foreign income taxes.* The term *pre-1987 foreign income taxes* has the meaning set forth in § 1.902-1(a)(10)(iii).

(6) *Pre-1987 section 960 earnings and profits.* The term *pre-1987 section 960 earnings and profits* means the earnings and profits of a foreign corporation accumulated in taxable years beginning before January 1, 1987, computed under § 1.964–1(a) through (e), and translated into the functional currency (as determined under section 985) of the foreign corporation at the spot rate on the first day of the foreign corporation's taxable year beginning after December 31, 1986. For further guidance, see Notice 88–70 (1988–2 C.B. 369, 370) (see also § 601.601(d)(2) of this chapter). The term pre-1987 section 960 earnings and profits does not include earnings and profits that represent previously taxed earnings and profits for purposes of section 959.

(7) *Pre-1987 section 960 foreign income taxes.* The term *pre-1987 section 960 foreign income taxes* means the foreign income taxes related to pre-1987 section 960 earnings and profits, determined in accordance with the rules of § 1.902–1(a)(10)(iii), except that the U.S. dollar amounts of pre-1987 section 960 foreign income taxes are determined by reference to the exchange rates in effect when the taxes were paid or accrued.

(8) *Earnings and profits.* The term *earnings and profits* means post-1986 undistributed earnings, pre-1987 accumulated profits, and pre-1987 section 960 earnings and profits.

(9) *Look-through corporation.* The term *look-through corporation* means a foreign corporation that is subject to the look-through rules of section 904(d)(3) or section 904(d)(4) (as in effect for taxable years beginning after December 31, 2002 (the day before the effective date of section 1105(b) of Public Law 105–34 (111 Stat. 788)) and regulations thereunder.

(10) *Non-look-through 10/50 corporation.* The term *non-look-through 10/50 corporation* means a noncontrolled section 902 corporation as defined in section 904(d)(2)(E) that is not a look-through corporation.

(11) *Less-than-10%-U.S.-owned foreign corporation.* The term *less-than-10%-U.S.-owned foreign corporation* means a foreign corporation that is neither a look-through corporation nor a non-look-through 10/50 corporation.

(12) *Separate category.* The term *separate category* has the meaning set forth in section 904(d)(1), and shall also include any other category of income to which section 904(a), (b), and (c) are applied separately under any other provision of the Internal Revenue Code (*e.g.*, sections 56(g)(4)(C)(iii)(IV), 245(a)(10), 865(h), 901(j), and 904(g)(10)).

(13) *Statutory grouping of earnings and profits.* The term *statutory grouping of earnings and profits* means the earnings and profits from a specific source or activity that must be determined for purposes of applying a provision of the Internal Revenue Code. Compare § 1.861–8(a)(4) (providing an analogous definition for statutory grouping of gross income).

Par. 6. Section 1.367(b)–3 is amended by adding paragraphs (e) and (f) to read as follows:

§ 1.367(b)–3 Repatriation of foreign corporate assets in certain nonrecognition transactions.

* * * * *

(e) *Net operating loss and capital loss carryovers.* A net operating loss or capital loss carryover of the foreign acquired corporation is described in section 381(c)(1) and (c)(3) and thus is eligible to carry over from the foreign acquired corporation to the domestic acquiring corporation only to the extent the underlying deductions or losses were allowable under chapter 1 of subtitle A of the Internal Revenue Code. Thus, only a net operating loss or capital loss carryover that is effectively connected with the conduct of a trade or business within the United States (or that is attributable to a permanent establishment, in the context of an applicable United States income tax treaty) is eligible to be carried over under section 381. For further guidance, see Rev. Rul. 72–421 (1972–2 C.B. 166) (see also § 601.601(d)(2) of this chapter).

(f) *Carryover of earnings and profits.* Except to the extent otherwise specifically provided (see, *e.g.*, 89–79

(1989–2 C.B. 392) (see also § 601.601(d)(2) of this chapter)), earnings and profits of the foreign acquired corporation that are not included in income as a deemed dividend under the section 367(b) regulations (or deficit in earnings and profits) are eligible to carry over from the foreign acquired corporation to the domestic acquiring corporation under section 381(c)(2) or § 1.367(b)–8(b)(1)(i) only to the extent such earnings and profits (or deficit in earnings and profits) are effectively connected with the conduct of a trade or business within the United States (or are attributable to a permanent establishment, in the context of an applicable United States income tax treaty). All other earnings and profits (or deficit in earnings and profits) of the foreign acquired corporation shall not carry over to the domestic acquiring corporation and, as a result, shall be eliminated.

Par. 7. Section 1.367(b)–5 is amended by:

1. Revising paragraphs (b)(1)(ii) and (c)(2).
2. Adding paragraph (e)(3).

The revisions and addition read as follows:

§ 1.367(b)–5 Distributions of stock described in section 355.

* * * * *

(b) * * *

(1) * * *

(ii) If the distributee is an individual or a tax-exempt entity as described in § 1.337(d)–4(c)(2) then, solely for purposes of determining the gain recognized by the distributing corporation, the controlled corporation shall not be considered to be a corporation, and the distributing corporation shall recognize any gain (but not loss) realized on the distribution.

* * * * *

(c) * * *

(2) *Adjustment to basis in stock and income inclusion*—(i) *In general.* If the distributee's postdistribution amount (as defined in paragraph (e)(2) of this section) with respect to the distributing or controlled corporation is less than the distributee's predistribution amount (as defined in paragraph (e)(1) of this section) with respect to such corporation, then the distributee's basis in such stock immediately after the distribution (determined under the normal principles of section 358) shall be reduced by the amount of the difference. However, the distributee's basis in such stock shall not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, the distributee shall instead include such amount in income as a deemed dividend from such corporation. See, *e.g.,* paragraph (g) *Example 1* of this section.

(ii) *Exception.* The basis reduction rule of paragraph (c)(2)(i) of this section shall apply only to the extent such reduction increases the distributee's section 1248 amount (as defined in § 1.367(b)–2(c)(1)) with respect to the distributing or controlled corporation; otherwise such basis reduction shall be replaced by the income inclusion rule of paragraph (c)(2)(i) of this section. See, *e.g.,* § 1.367(b)–8(d)(6) *Example 2.*

* * * * *

(e) * * *

(3) *Divisive D reorganization with a preexisting controlled corporation.* In the case of a transaction described in § 1.367(b)–8(b)(4), the predistribution amount with respect to a distributing or controlled corporation shall be computed after the allocation of the distributing corporation's earnings and profits described in § 1.367(b)–8(b)(4)(i)(A) and (b)(4)(ii)(A) (without regard to the parenthetical phrase in § 1.367(b)–8(b)(4)(ii)(A)), but before the reduction in the distributing corporation's earnings and profits described in § 1.367(b)–8(b)(4)(i)(B). See, *e.g.,* § 1.367(b)–8(d)(6) *Example 3* and § 1.367(b)–8(e)(7) *Example 3.*

* * * * *

Par. 8. In § 1.367(b)–6, paragraph (a)(1) is revised to read as follows:

§ 1.367(b)–6 Effective dates and coordination rules.

(a) *Effective date*—(1) *In general.* Sections 1.367(b)–1 through 1.367(b)–5, and this section, apply to section 367(b) exchanges that occur on or after the date that is 30 days after the date these regulations are published as final regulations in the **Federal Register**. For guidance with respect to section 367(b) exchanges that occur prior to the date 30 days after these regulations are published as final regulations in the **Federal Register**, see §§ 1.367(b)–1 through 1.367(b)–6 in effect prior to the date 30 days after these regulations are published in the **Federal Register** (see 26 CFR part 1 revised as of April 1, 2000).

Par. 9. Section 1.367(b)–7 is added to read as follows:

§ 1.367(b)–7 Carryover of earnings and profits and foreign income taxes in certain foreign-to-foreign nonrecognition transactions.

(a) *Scope.* This section applies to an acquisition by a foreign corporation (foreign acquiring corporation) of the assets of another foreign corporation (foreign target corporation) in a transaction described in section 381 (foreign 381 transaction). This section describes the manner and extent to which earnings and profits and foreign income taxes of the foreign acquiring corporation and the foreign target corporation carry over to the surviving foreign corporation (foreign surviving corporation). See § 1.367(b)–9 for special rules governing reorganizations described in section 368(a)(1)(F) and foreign 381 transactions in which either the foreign target corporation or the foreign acquiring corporation is newly created.

(b) *General rules*—(1) *Non-previously taxed earnings and profits and related taxes.* Earnings and profits and related foreign income taxes of the foreign acquiring corporation and the foreign target corporation (pre-transaction earnings and pre-transaction taxes, respectively) shall carry over to the foreign surviving corporation in the manner described in paragraphs (d), (e), (f), and (g) of this section. Dividend distributions by the foreign surviving corporation (post-transaction distributions) shall be out of earnings and profits and shall reduce related foreign income taxes in the manner described in paragraph (c) of this section.

(2) *Previously taxed earnings and profits.* [Reserved]

(c) *Ordering rule for post-transaction distributions.* Dividend distributions out of a foreign surviving corporation's earnings and profits shall be ordered in accordance with the rules of paragraph (c)(1), (2), or (3) of this section, depending on whether the foreign surviving corporation is a look-through corporation, a non-look-through 10/50 corporation, or a less-than-10%-U.S.-owned foreign corporation.

(1) *If foreign surviving corporation is a look-through corporation.* In the case of a foreign surviving corporation that is a look-through corporation, post-transaction distributions shall be first out of the look-through pool (as described in paragraph (d) of this section), second out of the non-look-through pool (as described in paragraph (e)(1) of this section), and third out of the pre-pooling annual layers (as described in paragraph (f)(1) of this section) under an annual last-in, first-out (LIFO) method.

(2) *If foreign surviving corporation is a non-look-through 10/50 corporation.* In the case of a foreign surviving corporation that is a non-look-through 10/50 corporation, post-transaction distributions shall be first out of the non-look-through pool (as described in paragraph (e)(2) of this section), and

second out of the pre-pooling annual layers (as described in paragraph (f)(1) of this section) under the LIFO method.

(3) *If foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation.* In the case of a foreign surviving corporation that is a less-than-10%-U.S.-owned corporation, post-transaction distributions shall be out of the pre-pooling annual layers (as described in paragraph (f)(2) of this section) under the LIFO method.

(d) *Look-through pool.* If the foreign surviving corporation is a look-through corporation, then the look-through pool shall be determined under the rules of this paragraph (d).

(1) *In general*—(i) *Qualifying earnings and taxes.* The look-through pool shall consist of the post-1986 undistributed earnings and related post-1986 foreign income taxes of the foreign acquiring corporation and the foreign target corporation that were subject to the look-through provisions of section 904(d)(3) or section 904(d)(4) (as in effect for taxable years beginning after December 31, 2002 (the day before the effective date of section 1105(b) of Public Law 105–34 (111 Stat. 788)) and regulations thereunder.

(ii) *Carryover rule.* Subject to paragraph (d)(2) of this section, the amounts described in paragraph (d)(1)(i) of this section attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation and shall be combined on a separate category-by-separate category basis.

(2) *Hovering deficit.* The rules of this paragraph (d)(2) apply when the foreign acquiring corporation or the foreign target corporation has a deficit in one or more separate categories of post-1986 undistributed earnings described in paragraph (d)(1)(i) of this section immediately prior to the foreign 381 transaction. In the event both the foreign acquiring corporation and the foreign target corporation have a deficit in the same separate category of earnings and profits, such deficits and their related foreign income taxes shall be combined for purposes of applying this paragraph (d)(2). See also paragraphs (g)(1) and (4) of this section (describing other rules applicable to a deficit described in this paragraph (d)(2)).

(i) *Offset rule.* A deficit in a separate category of earnings and profits described in this paragraph (d)(2) shall offset only earnings and profits accumulated by the foreign surviving corporation after the foreign 381 transaction (post-transaction earnings) in the same separate category of earnings and profits.

(ii) *Related taxes.* Foreign income taxes that are related to a deficit in a separate category of earnings and profits described in this paragraph (d)(2) shall be added to the foreign surviving corporation's post-1986 foreign income taxes related to that separate category of earnings and profits only after post-transaction earnings in the same separate category have been offset by and exceed the entire amount of the deficit.

(3) *Examples.* The following examples illustrate the rules of this paragraph (d). The examples presume the following facts: Foreign corporations A and B were both incorporated after December 31, 1986, always have been controlled foreign corporations, and always have had calendar taxable years. None of the shareholders of foreign corporations A and B are required to include any amount in income under § 1.367(b)–4 as a result of the foreign 381 transaction. Foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency. Finally, unless otherwise stated, any earnings and profits described in section 904(d)(1)(D) and 904(d)(1)(E) (shipping income and 10/50 dividends, respectively) qualified for the high tax exception from subpart F income under section 954(b)(4), and all United States shareholders elected to exclude such earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). The examples are as follows:

Example 1—(i) *Facts.* (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E & P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
10/50 dividends from FC1, a noncontrolled section 902 corporation	100u	$40
General	300u	60
	400u	100
Foreign Corporation B:		
Separate Category:		
Shipping	200u	40
10/50 dividends from FC2, a noncontrolled section 902 corporation	50u	20
General	300u	70
	550u	130

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a controlled foreign corporation (CFC).

(ii) *Result.* Under the rules described in paragraph (d)(1) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
Shipping	200u	$40
General	600u	130
10/50 dividends from FC1	100u	40
10/50 dividends from FC2	50u	20
	950u	230

(iii) *Post-transaction distribution.* (A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 475u to its shareholders. Under the rules described in § 1.902–1(d)(1) and paragraph (c)(1) of this section, the distribution is out of separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
Shipping	100u	$20
General	300u	65
10/50 dividends from FC1	50u	20
10/50 dividends from FC2	25u	10
	475u	115

(B) The foreign income taxes available to foreign surviving corporation shareholders upon the distribution are subject to the generally applicable rules and limitations, such as those of sections 902 and 904(d).

(C) Immediately after the distribution, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
Shipping	100u	$20
General	300u	65
10/50 dividends from FC1	50u	20
10/50 dividends from FC2	25u	10
	475u	115

Example 2.—(i) *Facts.* (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
Shipping	(100u)	$5
10/50 dividends	400u	160
General	(200u)	25
	100u	190
Foreign Corporation B:		
Separate Category:		
Shipping	100u	20
General	300u	60
	400u	80

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a CFC.

(ii) *Result.* Under the rules described in paragraphs (d)(1) and (2) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

Separate category	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Shipping	100u	(100u)	$20	$5
10/50 dividends	400u	0u	160	0
General	300u	(200u)	60	25
	800u	(300u)	240	30

(iii) *Post-transaction distribution.* (A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 400u to its shareholders. Under the rules described in section 904(d)(3) and paragraph (c)(1) of this section, the distribution is out of separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
Shipping	50u	$10
10/50 dividends	200u	80
General	150u	30
	400u	120

(B) The foreign income taxes available to foreign surviving corporation shareholders upon the distribution are subject to the generally applicable rules and limitations, such as those of sections 902 and 904(d).

(C) Immediately after the distribution, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

Separate category	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Shipping	50u	(100u)	$10	$5
10/50 dividends	200u	0u	80	0
General	150u	(200u)	30	25
	400u	(300u)	120	30

(iv) *Post-transaction earnings.* (A) In its taxable year ending on December 31, 2003, foreign surviving corporation accumulates earnings and profits and pays related foreign income taxes as follows:

Separate category	E&P	Foreign taxes
Shipping	105u	$20
General	100u	20
	205u	40

(B) None of foreign surviving corporation's earnings and profits for its 2003 taxable year qualify as subpart F income as defined in section 952(a). Under the rules described in paragraphs (d)(2)(i) and (ii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts on December 31, 2003:

Separate category	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Shipping	55u	0u	$35	$0
10/50 dividends	200u	0u	80	0
General	150u	(100u)	50	25
	405u	(100u)	165	25

Example 3—(i) *Facts.* The facts are the same as *Example 2* (i), (ii), (iii), and (iv)(A), except that the 105u in the section 904(d)(1)(D) shipping separate category accumulated by foreign surviving corporation during 2003 qualify as subpart F income, all of which is included in income under section 951(a) by United States shareholders (as defined in section 951(b)).

(ii) *Result.* (A) Under the rule described in paragraph (g)(1) of this section, the 100u hovering deficit in the shipping separate category does not reduce foreign surviving corporation's current earnings and profits for purposes of determining subpart F income. Thus, foreign surviving corporation's United States shareholders include their pro rata shares of the 105u in taxable income for the year and are eligible for a deemed paid foreign tax credit under section 960, computed by reference to their pro rata shares of $20.32 (105u subpart F inclusion + (105u + 50u accumulated earnings and profits in the shipping category = 155u) = 0.68%, × $30 foreign income taxes in the shipping category = $20.32).

(B) Immediately after the subpart F inclusion and section 960 deemed paid taxes (and taking into account the taxable year 2003 earnings and profits and related taxes in the general category), foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

Separate category	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Shipping	50u	(100u)	$9.68	$5
10/50 dividends	200u	0u	80.00	0
General	150u	(100u)	50.00	25
	400u	(200u)	139.68	30

(C) The 105u included as subpart F income constitutes previously taxed earnings and profits under section 959.

(e) *Non-look-through pool*—(1) *If foreign surviving corporation is a look-through corporation.* If the foreign surviving corporation is a look-through corporation, then the non-look-through pool shall be determined under the rules of this paragraph (e)(1).

(i) *Qualifying earnings and taxes.* The non-look-through pool shall consist of the post-1986 undistributed earnings and related post-1986 foreign income taxes that were accumulated (or treated as accumulated) by the foreign target corporation or the foreign acquiring corporation while it was a non-look-through 10/50 corporation.

(ii) *Carryover rule.* Subject to paragraph (e)(1)(iii) of this section, the amounts described in pararaph (e)(1)(i) of this section attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation but shall not be combined. Thus, post-transaction distributions by the foreign surviving corporation out of the non-look-through pool shall be made from the separate amounts attributable to the foreign acquiring corporation and the foreign target corporation on a pro rata basis, and shall reduce a pro rata portion of any related foreign income taxes.

(iii) *Hovering deficit.* The rules of this paragraph (e)(1)(iii) apply when the foreign acquiring corporation or the foreign target corporation (or both) has a deficit in the post-1986 undistributed earnings described in paragraph (e)(1)(i) of this section immediately prior to the foreign 381 transaction. In the event that this paragraph (e)(1)(iii) applies to a deficit of both the foreign acquiring corporation and the foreign target corporation, the deficits shall not be combined and the rules of this paragraph (e)(1)(iii) shall be applied separately to each of such deficits on a pro rata basis. See also paragraphs (g)(1) and (g)(4) of this section (describing other rules applicable to a deficit described in this paragraph (e)(1)(iii)).

(A) *Offset rule.* A deficit described in this paragraph (e)(i)(iii) shall offset only post-transaction earnings. The deficit shall offset a pro rata portion of post-transaction earnings accumulated in each separate category of earnings and profits by the foreign surviving corporation.

(B) *Related taxes.* Foreign income taxes that are related to a deficit described in this paragraph (e)(1)(iii) shall be added to the foreign surviving corporation's post-1986 foreign income taxes (in the applicable segregated portion of the non-look-through pool) only after post-transaction earnings have been offset by and exceed the entire amount of the deficit.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (e)(1). The examples presume the following facts: Foreign corporation A was a non-look-through 10/50 corporation from its incorporation on January 1, 1995 until December 31, 1997; foreign corporation A became a CFC on January 1, 1998 and has been a CFC since that time. Foreign corporation B has been a non-look-through 10/50 corporation since its incorporation on January 1, 1993. Both foreign corporation A and foreign corporation B always have had calendar taxable years. None of the shareholders of foreign corporation A are required to include any amount in income under § 1.367(b)–4 as a result of the foreign 381 transaction. Foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency. Finally, any earnings and profits described in section 904(d)(1)(E) (10/50 dividends) qualified for the high tax exception from subpart F income under section 954(b)(4), and all United States shareholders elected to exclude such earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). The examples are as follows:

Example 1—(i) *Facts.* (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
10/50 dividends	100u	$40
General	300u	60
E&P Accumulated as Non-Look-Through 10/50 Corporation	400u	100
	800u	200
Foreign Corporation B:		
E&P Accumulated as Non-Look-Through 10/50 Corporation	200u	$40

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a CFC.

(ii) *Result.* Under the rules described in paragraphs (d)(1), (e)(1)(i), and (e)(1)(ii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Look-Through Pool Separate Category:		
10/50 dividends	100u	$40
General	300u	60
Two Side-by-Side Non-Look-Through Pool Amounts:		
Non-look-through pool amount #1 (from Corp A)	400u	100
Non-look-through pool amount #2 (from Corp B)	200u	40
	1,000u	240

(iii) *Post-transaction distribution.*—(A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 700u to its shareholders. Under the rules described in paragraphs (c)(1) and (e)(1)(ii) of this section, the distribution is first out of the look-through pool, then out of the non-look-through pool, as follows:

	E&P	Foreign taxes
Look-Through Pool Separate Category:		
10/50 dividends	100u	$40
General	300u	60
Non-Look-Through Pool Amounts:		
Non-look-through pool amount #1	200u	50
Non-look-through pool amount #2	100u	20
	700u	170

(B) The foreign income taxes available to foreign surviving corporation shareholders upon the distribution are subject to the generally applicable rules and limitations, such as those of sections 902 and 904(d).

(C) Immediately after the distribution, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Two Side-by-Side Non-Look-Through Pool Amounts:		
Non-look-through pool amount #1	200u	$50
Non-look-through pool amount #2	100u	20
	300u	70

Example 2—(i) *Facts.*—(A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Look-through Pool Separate Category:		
10/50 dividends	100u	$40
General	300u	60
E&P Accumulated as Non-Look-Through 10/50 Corporation	400u	100
	800u	200
Foreign Corporation B:		
E&P Accumulated as Non-Look-Through 10/50 Corporation	(200u)	5

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a CFC.

(ii) *Result.* Under the rules described in paragraphs (d)(1), (e)(1)(i), (e)(1)(ii), and (e)(1)(iii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings & profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Look-through Pool Separate Category:				
10/50 dividends	100u	.....	$40	.....
General	300u	.....	60	.....

	Earnings & profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Two Side-by-Side Non-Look-Through Pool Amounts:				
Non-look-through pool amount #1	400u		100	
Non-look-through pool amount #2		(200u)		$5
	800u	(200u)	200	5

(iii) *Post-transaction distribution.*—(A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 600u to its shareholders. Under the rules described in paragraphs (c)(1) and (e)(1)(ii) of this section, the distribution is first out of the look-through pool, then out of the non-look-through pool, as follows:

	E&P	Foreign taxes
Look-Through Pool Separate Category:		
10/50 dividends	100u	$40
General	300u	60
Non-Look-Through Pool Amount:		
Non-look-through pool amount #1	200u	50
	600u	150

(B) The foreign income taxes available to foreign surviving corporation shareholders upon the distribution are subject to the generally applicable rules and limitations, such as those of sections 902 and 904(d).

(C) Immediately after the distribution, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings & profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Two Side-by-Side Non-Look-Through Pool Amounts:				
Non-look-through pool amount #1	200u		$50	
Non-look-through pool amount #2		(200u)		$5
	200u	(200u)	50	5

(iv) *Post-transaction earnings.*—(A) In the taxable year ending on December 31, 2003, foreign surviving corporation accumulates earnings and profits and pays related foreign income taxes as follows:

	E&P	Foreign taxes
Separate Category:		
10/50 dividends	150u	$60
General	300u	60
	450u	120

(B) None of the earnings and profits qualify as subpart F income as defined in section 952(a). Under the rules described in paragraph (e)(1)(iii)(A) of this section, the 200u deficit in non-look-through pool amount #2 offsets a pro rata portion of the foreign surviving corporation's post-transaction earnings in each separate category. Thus, the 200u deficit offsets 66.66u of section 904(d)(1)(E) 10/50 dividends separate category earnings (33.33% of 200u) and offsets 133.34u of section 904(d)(1)(I) general separate category earnings (66.67% of 200u). Accordingly, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts as of December 31, 2002:

	E&P	Foreign taxes
Look-Through Pool Separate Category:		
10/50 dividends	83.34u	$60
General	166.66u	60

	E&P	Foreign taxes
Two Side-by-Side Non-Look-Through Pool Amounts:		
Non-look-through pool amount #1	200u	50
Non-look-through pool amount #2		5
	450u	175

(C) Under paragraph (e)(1)(iii)(B) of this section, the $5 of foreign income taxes associated with the non-look-through pool amount #2 hovering deficit are added to foreign surviving corporation's available foreign income taxes because post-transaction earnings have been offset by and exceed the deficit in the non-look-through pool. However, the $5 of foreign income taxes generally will not be reduced or deemed paid unless a foreign tax refund restores a positive balance to the associated earnings pursuant to section 905(c). and thus will be trapped.

(2) *If foreign surviving corporation is a non-look-through 10/50 corporation.* If the foreign surviving corporation is a non-look-through 10/50 corporation, then the non-look-through pool shall be determined under the rules of this paragraph (e)(2).

(i) *Qualifying earnings and taxes.* The non-look-through pool shall consist of the post-1986 undistributed earnings and related post-1986 foreign income taxes of the foreign acquiring corporation and the foreign target corporation.

(ii) *Carryover rule.* Subject to paragraph (e)(2)(iii) of this section, the amounts described in paragraph (e)(2)(i) of this section attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation and shall be combined as a single separate category of earnings and profits under section 904(d)(1)(E).

(iii) *Hovering deficit.* The rules of this paragraph (e)(2)(iii) apply when the foreign acquiring corporation or the foreign target corporation (or both) has an aggregate deficit in its post-1986 undistributed earnings described in paragraph (e)(2)(i) of this section immediately prior to the foreign 381 transaction. In the event that both the foreign acquiring corporation and the foreign target corporation have an aggregate deficit in post-1986 undistributed earnings, such deficits and their related foreign income taxes shall be combined for purposes of applying this paragraph (e)(2)(iii). See also paragraphs (g)(1) and (4) of this section (describing other rules applicable to a deficit described in this paragraph (e)(2)(iii)).

(A) *Offset rule.* A deficit described in this paragraph (e)(2)(iii) shall offset only post-transaction earnings accumulated by the foreign surviving corporation.

(B) *Related taxes.* Foreign income taxes that are related to a deficit described in this paragraph (e)(2)(iii) shall be added to the foreign surviving corporation's post-1986 foreign income taxes only after post-transaction earnings have been offset by and exceed the entire amount of the deficit.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (e)(2). The examples presume the following facts: Both foreign corporation A and foreign corporation B always have had calendar taxable years. Foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency. Finally, any earnings and profits described in section 904(d)(1)(E) (10/50 dividends) qualified for the high tax exception from subpart F income under section 954(b)(4), and all United States shareholders elected to exclude such earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). The examples are as follows:

Example 1— (i) *Facts.* (A) Foreign corporations A and B are and always have been non-look-through 10/50 corporations since they were incorporated in 1995. On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A: E&P accumulated as non-look-through 10/50 corporation	400u	$100
Foreign Corporation B: E&P accumulated as non-look-through 10/50 corporation	200u	40

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a non-look-through 10/50 corporation.

(ii) *Result.* Under the rules described in paragraphs (e)(2)(i) and (ii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Non-Look-Through Pool	600u	$140

Example 2—(i) *Facts.* (A) Foreign corporation A is and always has been a CFC since it was incorporated in 1995. Foreign corporation B is and always has been a non-look-through 10/50 corporation since it was incorporated in 1995. Immediately before the foreign 381 transaction (but after application of the rules of § 1.367(b)–4 to foreign corporation A and its shareholders), foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
Passive	(200u)	$10
10/50 dividends	100u	40

	E&P	Foreign taxes
General	300u	60
	(200u)	$110
Foreign Corporation B:		
E&P accumulated as non-look-through 10/50 corporation	200u	$30

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a non-look-through 10/50 corporation.

(ii) *Result.* Because neither foreign corporation A nor foreign corporation B has an aggregate deficit in post-1986 undistributed earnings, the rules described in paragraphs (e)(2)(i) and (ii) of this section apply, but the rules described in paragraph (e)(2)(iii) do not. Accordingly, foreign corporation A's net positive earnings and profits of 200u (300u + 100u + (200u)) and its aggregate foreign income taxes of $110 ($10 + $40 + $60) are combined with the earnings and profits and foreign income taxes of foreign corporation B, so that foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Non-Look-Through Pool	400u	$140

Example 3—(i) *Facts.* (A) Foreign corporation A is and always has been a CFC since it was incorporated in 1995. Foreign corporation B is and always has been a non-look-through 10/50 corporation since it was incorporated in 1995. On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
Passive	(200u)	$10
10/50 dividends	100u	40
General	(300u)	60
	(400u)	$110
Foreign Corporation B:		
E&P accumulated as non-look-through 10/50 corporation	200u	$30

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a non-look-through 10/50 corporation. (Assume that none of the shareholders of foreign corporation A are required to include an amount in income under § 1.367(b)–4 with regard to this transaction.)

(ii) *Result.* Because foreign corporation A has an aggregate deficit in post-1986 undistributed earnings, the rules of paragraph (e)(2)(iii) of this section apply. Accordingly, foreign corporation A's 400u aggregate deficit in earnings and profits ((200u) + 100u + (300u)) carries over as a hovering deficit to foreign surviving corporation, so that foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Non-Look-Through Pool	200u	(400u)	$30	$110

(iii) *Post-transaction earnings.* (A) In the taxable year ending on December 31, 2002, foreign surviving corporation accumulates earnings and profits and pays related foreign income taxes as follows:

	E&P	Foreign taxes
E&P accumulated as non-look-through 10/50 corporation	500u	$100

(B) Under the rule described in paragraph (e)(2)(iii)(A) of this section, the hovering deficit of 400u in the non-look-through pool offsets 400u of post-transaction earnings. Under the rules of paragraph (e)(2)(iii)(B) of this section, the foreign income taxes related to the hovering deficit are added to foreign surviving corporation's available foreign income taxes because post-transaction earnings have been offset by and exceed the deficit in the non-look-through pool. Accordingly, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts as of December 31, 2002:

	E&P	Foreign taxes
Non-Look-Through Pool	300u	$240

(f) *Pre-pooling annual layers*—(1) *If foreign surviving corporation is a look-through corporation or a non-look-through 10/50 corporation.* If the foreign surviving corporation is a look-through corporation or a non-look-through 10/50 corporation, the pre-pooling annual layers shall be determined under the rules of this paragraph (f)(1).

(i) *Qualifying earnings and taxes.* The pre-pooling annual layers shall consist of the pre-1987 accumulated profits and the pre-1987 foreign income taxes of the foreign acquiring corporation and the foreign target corporation.

(ii) *Carryover rule.* Subject to paragraph (f)(1)(iii) of this section, the amounts described in paragraph (f)(1)(i) of this section attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation but shall not be combined. Thus, when the foreign acquiring corporation and the foreign target corporation have pre-1987 accumulated profits in the same year and a distribution is made therefrom, the rules of § 1.902–1(b)(2)(ii) and (b)(3) shall apply separately to reduce pre-1987 accumulated profits and pre-1987 foreign income taxes of the foreign acquiring corporation and the foreign target corporation on a pro rata basis. For further guidance, see Rev. Rul. 68–351 (1968–2 C.B. 307); Rev. Rul. 70–373 (1970–2 C.B. 152) (see also § 601.601(d)(2) of this chapter); see also paragraph (g)(2) of this section (governing the reconciliation of taxable years).

(iii) *Deficits.* The rules of this paragraph (f)(1)(iii) apply when the foreign acquiring corporation or the foreign target corporation (or both) has a deficit in one or more years that comprise its pre-1987 accumulated profits immediately prior to the foreign 381 transaction (see also paragraphs (g)(1) and (g)(4) of this section. describing other rules applicable to a deficit described in this paragraph (f)(1)(iii)).

(A) *Aggregate positive earnings and profits.* If the foreign acquiring corporation or the foreign target corporation (or both) has an aggregate positive (or zero) amount of pre-1987 accumulated profits, but a deficit in one or more individual years, then the rules otherwise applicable to such deficits shall apply separately to the pre-1987 accumulated profits and related foreign income taxes of such corporation. For further guidance, see Rev. Rul. 74–550 (1974–2 C.B. 209) (see also § 601.601(d)(2) of this chapter); *Champion Int'l Corp.* v. *Commissioner,* 81 T.C. 424 (1983), acq. in result, 1987–2 C.B. 1; Rev. Rul. 87–72 (1987–2 C.B. 170) (see also § 601.601(d)(2) of this chapter). As a result, no amount in excess of the aggregate positive amount of pre-1987 accumulated profits shall be distributed from the pre-transaction earnings of the foreign acquiring corporation or the foreign target corporation.

(B) *Aggregate deficit in earnings and profits.* If the foreign acquiring corporation or the foreign target corporation (or both) has an aggregate deficit in pre-1987 accumulated profits, then the rules under § 1.902–2(b) shall apply to such deficit (and related foreign income taxes) immediately prior to the transaction, except that the aggregate deficit that is carried forward into the look-through pool (in the case of a foreign surviving corporation that is a look-through corporation) or non-look-through pool (in the case of a foreign surviving corporation that is a non-look-through 10/50 corporation) shall be available to offset only post-transaction earnings accumulated by the foreign surviving corporation.

(iv) *Pre-1987 section 960 earnings and profits and foreign income taxes.* The pre-1987 section 960 earnings and profits and pre-1987 section 960 foreign income taxes attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation but shall not be combined. The rules otherwise applicable to such amounts shall apply separately to the pre-1987 section 960 earnings and profits and pre-1987 section 960 foreign income taxes of the foreign acquiring corporation and the foreign target corporation on a pro rata basis. For further guidance, see Notice 88–70 (1988–2 C.B. 369) (see also § 601.601(d)(2) of this chapter).

(v) *Examples.* The following examples illustrate the rules of this paragraph (f)(1). The examples presume the following facts: foreign corporation A was incorporated in 1998 and was a less-than-10%-U.S.-owned foreign corporation through December 31, 1999. Foreign corporation A became a non-look-through 10/50 corporation on January 1, 2000 and, as a result, began to maintain a pool of post-1986 undistributed earnings on that date.

Foreign corporation B was incorporated in 1998 and always has been owned by foreign shareholders (and thus never has met the requirements of section 902(c)(3)(B)). Both foreign corporation A and foreign corporation B always have had calendar taxable years. Foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency. The examples are as follows:

Example 1—(i) *Facts.* (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
E&P accumulated as non-look-through 10/50 corporation	1,000u	$350
1999	400u	160u
1998	100u	5u
	1,500u	
Foreign Corporation B:		
2001	100u	20u
2000	150u	30u
1999	0u	50u
1998	50u	5u
	300u	105u

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a non-look-through 10/50 corporation.

(ii) *Result.* Under the rules described in paragraphs (e)(2)(i), (e)(2)(ii), (f)(1)(i), and (f)(1)(ii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Non-look-through pool	1,000u	$350
2001	100u	20u
2000	150u	30u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1 (from Corp A)	400u	160u
1999 layer #2 (from Corp B)	0u	50u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1 (from Corp A)	100u	5u
1998 layer #2 (from Corp B)	50u	5u
	1,800u	

(iii) *Post-transaction distribution.* (A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 1,700u to its shareholders. Under the rules of paragraph (c)(2) of this section, the distribution is first out of the non-look-through pool, and then out of the pre-pooling annual layers under the LIFO method, as follows:

Distribution	E&P	Foreign taxes
Non-look-through pool	1,000u	$350
2001	100u	20u
2000	150u	30u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1	400u	160u
1999 layer #2	0u	0u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1 (100u in layer ÷ 150u aggregate 1997 earnings = 66.67% × 50u distribution)	33.33u	1.67u
1998 layer #2 (50u in layer ÷ 150u aggregate 1997 earnings = 33.33% × 50u distribution)	16.67u	1.67u
	1,700u	

(B) The foreign income taxes available to foreign surviving corporation shareholders upon the distribution are subject to the generally applicable rules and limitations, such as those of sections 902 and 904(d).

(C) Immediately after the distribution, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
1999 layer #2	0.00u	50.00u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1	66.67u	3.33u
1998 layer #2	33.33u	3.33u
	100.00u	56.66u

(iv) *Post-transaction earnings.* For the taxable year ending on December 31, 2003, foreign surviving corporation accumulates 500u of current earnings and profits and pays $70 in foreign income taxes. As of the close of the 2003 taxable year, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	*Foreign taxes*
E&P accumulated as non-look-through 10/50 corporation	500.00u	$70.00
1999	0.00u	50.00u
Two Side-by-Side Layers of 1998 E&P:.		
1998 layer #1	66.67u	3.33u
1998 layer #2	33.33u	3.33u
	600u	

Example 2—(i) *Facts.* (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
E&P accumulated as non-look-though 10/50 corporation	1,000u	$350
1999	100u	20u
1998	(50u)	5u
	1,050u	
Foreign Corporation B:		
E&P Foreign Taxes.		
2001	100u	- 20u
2000	(50u)	5u
1999	0u	50u
1998	100u	10u
	150u	85u

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a non-look-through 10/50 corporation.

(ii) *Result.* Because foreign corporations A and B have aggregate positive amounts of pre-1987 accumulated profits with a deficit in one or more individual years, the rules of paragraph (f)(1)(iii)(A) of this section apply. Accordingly, after the foreign 381 transaction, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings and profits		Foreign taxes	
	Positive E&P	Deficit E&P	Foreign taxes available	Foreign taxes associated with deficit E&P
Non-Look-Through 10/50 Pool	1,000u		$350	
2001	100u		20u	
2000		(50u)		5u
Two Side-by-Side Layers of 1999 E&P:				
1999 layer #1 (from foreign corporation A)	100u		20u	
1999 layer #2 (from foreign corporation B)	0u		50u	
Two Side-by-Side Layers of 1998 E&P:				
1998 layer #1 (from foreign corporation A)		(50u)		5u
1998 layer #2 (from foreign corporation B)	100u		10u	
	1,300u	(100u)		10u

(iii) *Post-transaction distribution.* (A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 1,175u to its shareholders. Under the rules described in paragraphs (c)(2) and (f)(1)(iii)(A) of this section, the distribution is first out of the non-look-through pool, and then out of the pre-pooling annual layers, as follows:

Distribution	E&P	Foreign taxes
Non-Look-Through 10/50 Amount	1,000u	$350
2001	100u	20u
2000	0u	0u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1	50u	20u
1999 layer #2	0u	0u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1	0u	0u
1998 layer #2	25u	5u
	1,175u	

(B) Under the rules described in paragraph (f)(1)(iii)(A) of this section, the rules otherwise applicable when a foreign corporation has an aggregate positive (or zero) amount of pre-1987 accumulated profits, but a deficit in one or more individual years, apply separately to the pre-1987 accumulated profits and related foreign income taxes of foreign corporation A and foreign corporation B. As a result, distributions out of the pre-pooling annual layers of foreign corporation A and foreign corporation B can not exceed the aggregate positive amount of pre-1987 accumulated profits of each corporation. Accordingly, only 50u can be distributed from foreign corporation A's pre-pooling annual layers and is out of its 1999 layer #1. Under *Champion Int'l Corp.* v. *Commissioner,* 81 T.C. 424 (1983), the full 20u of taxes related to 1999 layer #1 is reduced or deemed paid ($20 × (50 ÷ 50)). Under Rev. Rul. 74–550 (1974–2 C.B. 209) (see also § 601.601(d)(2) of this chapter), 100u is distributed from foreign corporation B's 2001 annual layer. Foreign corporation B's deficit in 2000 is then rolled back to offset its 1998 annual layer to reduce

earnings in that layer to 50u, 25u of which is distributed (and reduces one-half of that year's foreign income taxes).

(C) The foreign income taxes available to foreign surviving corporation shareholders upon the distribution are subject to the generally applicable rules and limitations, such as those of sections 902 and 904(d).

(D) Immediately after the distribution foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
2000	0u	5u
1999 layer #2	0u	50u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1	0u	5u
1998 layer #2	25u	5u
	25u	65u

(E) Under the rules described in paragraph (f)(1)(iii)(A) of this section, the 5u, 50u, and 5u of foreign income taxes related to foreign surviving corporation's 2000 layer, 1999 layer #2, and 1998 layer #1, respectively, remain in those layers. These foreign income taxes generally will not be reduced or deemed paid unless a foreign tax refund restores a positive balance to the associated earnings pursuant to section 905(c), and thus will be trapped.

Example 3—(i) *Facts.* (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
E&P accumulated as non-look-through 10/50 corporation	1,000u	$350
1999	150u	20u
1998	100u	5u
	1,250u	
Foreign Corporation B:		
2001	100u	20u
2000	(250u)	5u
1999	0u	50u
1998	100u	10u
	(50u)	85u

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a non-look-through 10/50 corporation.

(ii) *Result.* (A) Because foreign corporation B has an aggregate deficit in pre-1987 accumulated profits, the rules of paragraph (f)(1)(iii)(B) of this section apply. Accordingly, § 1.902–2(b) applies immediately prior to the foreign 381 transaction, except that foreign corporation B's aggregate deficit in pre-1987 accumulated profits is carried forward into the post-1986 undistributed earnings pool and is available to offset only post-transaction earnings accumulated by foreign surviving corporation. Accordingly, after the foreign 381 transaction, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Non-Look-Through 10/50 Pool	1,000u	(50u)	$350	$0
2001	0u		20u	
2000	0u		5u	;
Two Side-by-Side Layers of 1999 E&P:				
1999 layer #1 (from Corp A)	150u		20u	
1999 layer #2 (from Corp B)	0u		50u	
Two Side-by-Side Layers of 1998 E&P:				
1998 layer #1 (from Corp A)	100u		5u	
1998 layer #2 (from Corp B)	0u		10u	
	1,250u	(50u)		0

(B) Under paragraph (f)(1)(iii)(B) of this section, the 20u, 5u, 50u, and 10u of foreign income taxes associated with foreign corporation B's earnings and profits for 2001, 2000, 1999 layer #2, and 1998 layer #2, respectively, remain in those layers. These foreign income taxes generally will not be reduced or deemed paid unless a foreign tax refund restores a positive balance to the associated earnings pursuant to section 905(c), and thus will be trapped.

(2) *If foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation.* If the foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation, then the pre-pooling annual layers shall be determined under the rules of this paragraph (f)(2).

(i) *Qualifying earnings and taxes.* The pre-pooling annual layers shall consist of the pre-1987 accumulated profits and the pre-1987 foreign income taxes of the foreign acquiring corporation and the foreign target corporation. If the foreign acquiring corporation or the foreign target corporation (or both) has post-1986 undistributed earnings or a deficit in post-1986 undistributed earnings, then those earnings or deficits and any related post-1986 foreign income taxes shall be recharacterized as pre-1987 accumulated profits or deficits and pre-1987 foreign income taxes of the foreign acquiring corporation or the foreign target corporation accumulated immediately prior to the foreign 381 transaction.

(ii) *Carryover rule.* Subject to paragraph (f)(2)(iii) of this section, the amounts described in paragraph (f)(2)(i) of this section attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation but shall not be combined. Thus, when the foreign acquiring corporation and the foreign target corporation have pre-1987 accumulated profits in the same year and a distribution is made therefrom, the principles of § 1.902–1(b)(2)(ii) and (3) shall apply separately to reduce pre-1987 accumulated profits and pre-1987 foreign income taxes of the foreign acquiring corporation and the foreign target corporation on a pro rata basis. For further guidance, see Rev. Rul. 68–351 (1968–2 C.B. 307); Rev. Rul. 70–373 (1970–2 C.B. 152) (see also § 601.601(d)(2) of this chapter); see also paragraph (g)(2) of this section (governing the reconciliation of taxable years).

(iii) *Deficits.* The rules of this paragraph (f)(2)(iii) apply when the foreign acquiring corporation or the foreign target corporation (or both) has a deficit in one or more years that comprise its pre-1987 accumulated profits immediately prior to the foreign 381 transaction (and after application of the last sentence of paragraph (f)(2)(i) of this section). See also paragraphs (g)(1) and (4) of this section (describing other rules applicable to a deficit described in this paragraph (f)(2)(iii)).

(A) *Aggregate positive earnings and profits.* If the foreign acquiring corporation or the foreign target corporation (or both) has an aggregate positive (or zero) amount of pre-1987 accumulated profits, but a deficit in one or more individual years, then the rules otherwise applicable to such deficits shall apply separately to the pre-1987 accumulated profits and related foreign income taxes of such corporation. For further guidance, see Rev. Rul. 74–550 (1974–2 C.B. 209) (see also § 601.601(d)(2) of this chapter); *Champion Int'l Corp.* v. *Commissioner*, 81 T.C. 424 (1983), acq. in result, 1987–2 C.B. 1; Rev. Rul. 87–72 (1987–2 C.B. 170) (see also § 601.601(d)(2) of this chapter). As a result, no amount in excess of the aggregate positive amount of pre-1987 accumulated profits shall be distributed from the pre-transaction earnings of the foreign acquiring corporation or the foreign target corporation.

(B) *Aggregate deficit in earnings and profits.* If the foreign acquiring corporation or the foreign target corporation (or both) has an aggregate deficit in pre-1987 accumulated profits, then the rules otherwise applicable to such deficits shall apply separately to the pre-transaction earnings and profits and related taxes of the applicable corporation. See, *e.g.*, sections 316(a) and 381(c)(2)(B). Thus, any aggregate net deficit shall be available to offset only post-transaction earnings accumulated by the foreign surviving corporation.

(iv) *Pre-1987 section 960 earnings and profits and foreign income taxes.* The pre-1987 section 960 earnings and profits and pre-1987 section 960 foreign income taxes attributable to the foreign acquiring corporation and the foreign target corporation shall carry over to the foreign surviving corporation but shall not be combined. The rules otherwise applicable to such amounts shall apply separately to the pre-1987 section 960 earnings and profits and pre-1987 section 960 foreign income taxes of the foreign acquiring corporation and the foreign target corporation on a pro rata basis. For further guidance, see Notice 88–70 (1988–2 C.B. 369) (see also § 601.601(d)(2) of this chapter).

(v) *Examples.* The following examples illustrate the rules of this paragraph (f)(2). The examples presume the following facts: Both foreign corporation A and foreign corporation B always have had calendar taxable years. Foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency. The examples are as follows:

Example 1—(i) *Facts.* (A) Foreign corporations A and B both were incorporated in 1998. Nine percent of the voting stock of foreign corporation A is owned by domestic corporate shareholder C. Nine percent of the voting stock of foreign corporation B is owned by domestic corporate shareholder D. Shareholders C and D are unrelated. The remaining 91% of the voting stock of each foreign corporation is owned by unrelated foreign shareholders. Thus, neither corporation meets the requirements of section 902(c)(3)(B). On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
2001	500u	350u
2000	400u	300u
1999	400u	160u
1998	100u	5u
	1,400u	815u
Foreign Corporation B:		
2001	100u	20u
2000	300u	60u
1999	0u	50u
1998	50u	5u
	450u	135u

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation that does not meet the requirements of section 902(c)(3)(B).

(ii) *Result.* Under the rules described in paragraphs (f)(2)(i) and (ii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Two Side-by-Side Layers of 2001 E&P:		
2001 layer #1 (from Corp A)	500u	350u
2001 layer #2 (from Corp B)	100u	20u
Two Side-by-Side Layers of 2000 E&P:		
2000 layer #1 (from Corp A)	400u	300u
2000 layer #2 (from Corp B)	300u	60u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1 (from Corp A)	400u	160u
1999 layer #2 (from Corp B)	0u	50u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1 (from Corp A)	100u	5u
1998 layer #2 (from Corp B)	50u	5u
	1,850u	950u

(iii) *Post-transaction distribution.* (A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 600u to its shareholders. Under the rules of paragraph (c)(3) of this section, the distribution is out of pre-pooling annual layers under the LIFO method as follows:

	E&P	Foreign taxes
Two Side-by-Side Layers of 2001 E&P:		
2001 layer #1 (from Corp A)	500u	350u
2001 layer #2 (from Corp B)	100u	20u
	600u	370u

(B) Foreign surviving corporation's foreign income tax accounts are reduced to reflect the distribution of earnings and profits, see § 1.902–1(a)(10)(iii), notwithstanding that no shareholders are eligible to claim deemed paid foreign income taxes under section 902.

(C) Immediately after the distribution, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Two Side-by-Side Layers of 2000 E&P:		
2000 layer #1 (from Corp A)	400u	300u
2000 layer #2 (from Corp B)	300u	60u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1 (from Corp A)	400u	160u
1999 layer #2 (from Corp B)	0u	50u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1 (from Corp A)	100u	5u
1998 layer #2 (from Corp B)	50u	5u
	1,250u	580u

Example 2—(i) *Facts.* (A) The facts are the same as in *Example 1* (i)(A), except that foreign corporation A met the requirements of section 902(c)(3)(B) on January 1, 2000, when U.S. corporate shareholder C acquired an additional 1% of voting stock for a total ownership interest of 10%; foreign corporation A thereby became a non-look-through 10/50 corporation. On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
E&P Accumulated as Non-Look-Through 10/50 Corporation	900u	$650
1999	400u	160u
1998	100u	5u
	1,400u	
Foreign Corporation B:		
2001	100u	20u
2000	300u	60u

	E&P	Foreign taxes
1999	0u	50u
1998	50u	5u
	450u	135u

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation that does not meet the requirements of section 902(c)(3)(B).

(ii) *Result.* Under the rules described in paragraphs (f)(2)(i) and (ii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Two Side-by-Side Layers of 2001 E&P:		
2001 layer #1 (from Corp A's pool)	900u	$650
2001 layer #2 (from Corp B's layer)	100u	20u
2000 (from Corp B):	300u	60u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1 (from Corp A)	400u	160u
1999 layer #2 (from Corp B)	0u	50u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1 (from Corp A)	100u	5u
1998 layer #2 (from Corp B)	50u	5u
	1,850u	

(iii) *Subsequent ownership change.* On January 1, 2007, USS (a domestic corporation) acquires 100% of the stock of foreign surviving corporation. Under the rules of paragraph (g)(3) of this section, foreign surviving corporation begins to pool its earnings and profits under section 902(c)(3) as of January 1, 2007. Foreign surviving corporation's earnings and profits and foreign income taxes accrued before January 1, 2007 retain their character as pre-1987 accumulated profits and pre-1987 foreign income taxes.

Example 3—(i) *Facts.* (A) The facts are the same as in *Example 2* (i)(A), except that on December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
E&P Accumulated as Non-Look-Through 10/50 Corporation:	1,000u	$500
1999	(200u)	10u
1998	400u	5u
	1,200u	
Foreign Corporation B:		
2001	300u	20u
2000	(100u)	60u
1999	0u	50u
1998	50u	5u
	250u	135u

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation that does not meet the requirements of section 902(c)(3)(B).

(ii) *Result.* Because foreign corporations A and B have aggregate positive amounts of pre-1987 earnings and profits with a deficit in one or more individuals years, the rules of paragraphs (f)(2)(iii)(A) of this section apply. Accordingly, after the foreign 381 transaction, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings and profits		Foreign taxes	
	Positive E&P	Deficit E&P	Foreign taxes available	Foreign taxes associated with deficit E&P
Two Side-by-Side Layers of 2001 E&P:				
2001 layer #1 (from Corp A's non-look-through 10/50 pool)	1,000u		$500	
2001 layer #2 (from Corp B's layer)	300u		20u	
2000 (from Corp B)		(100u)		60u

	Earnings and profits		Foreign taxes	
	Positive E&P	Deficit E&P	Foreign taxes available	Foreign taxes associated with deficit E&P
Two Side-by-Side Layers of 1999 E&P:				
1999 layer #1 (from Corp A)		(200u)		10u
1999 layer #2 (from Corp B)	0u		50u	
Two Side-by-Side Layers of 1998 E&P:				
1998 layer #1 (from Corp A)	400u		5u	
1998 layer #2 (from Corp B)	50u		5u	
	1,750u	(300u)		70u

(iii) *Post-transaction distribution.*—(A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 1,300u to its shareholders. Under the rules described in paragraphs (c)(3) and (f)(2)(iii)(A) of this section, the distribution is out of the pre-pooling annual layers, as follows:

	E&P	Foreign taxes paid
Two Side-by-Side Layers of 2001 E&P:		
2001 layer #1	1,000u	$500
2001 layer #2	250u	20u
1998 E&P:		
1998 layer #1	50u	*1.25u
	1,300u	

*25% of 5u taxes.

(B) Under the rules described in paragraph (f)(2)(iii)(A) of this section, the rules otherwise applicable when a foreign corporation has an aggregate positive (or zero) amount of pre-1987 accumulated profits, but a deficit in one or more individual years, apply separately to the pre-1987 accumulated profits and related foreign income taxes of foreign corporation A and foreign corporation B. As a result, distributions out of the pre-pooling annual layers of foreign corporation A and foreign corporation B cannot exceed the aggregate positive amount of pre-1987 accumulated profits of each corporation. Accordingly, only 1,200u and 250u can be distributed out of foreign corporation A's and foreign corporation B's pre-pooling annual layers, respectively. Thus, 1,250u of the distribution is out of 1,000u of foreign corporation A's 2001 layer #1 and 250u of foreign corporation B's 2001 layer #2. Under the principles of § 1.902–1(b)(3) and *Champion Int'l Corp.* v. *Commissioner*, 81 T.C. 424 (1983), all of the taxes in each of those respective layers are reduced. Applying Rev. Rul. 74–550 (1974–2 C.B. 209) (see also § 601.601(d)(2) of this chapter), the remaining 50u is distributed from foreign corporation A's 1998 layer #1 (after rolling back the 200u deficit in 1999 layer #1 to reduce earnings in 1998 layer #1 to 200u (400u–200u)). Thus, after the distribution, 150u remains in the 1998 layer #1 along with 3.75u of foreign income taxes (5u × (150u ÷ 200u)).

(C) Foreign surviving corporation's foreign income tax accounts are reduced to reflect the distribution of earnings and profits, see § 1.902–1(a)(10)(iii), notwithstanding that no shareholders are eligible to claim a credit for deemed paid foreign income taxes under section 902.

(D) Immediately after the distribution foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
2000	0u	60u
Two Side-by-Side Layers of 1999 E&P:		
1999 layer #1	0u	10u
1999 layer #2	0u	50u
Two Side-by-Side Layers of 1998 E&P:		
1998 layer #1	150u	3.75u
1998 layer #2	0u	5u
	150u	128.75u

(E) Under the rules described in paragraph (f)(2)(iii)(A) of this section, the 60u, 10u, 50u, and 5u of foreign income taxes related to foreign surviving corporation's 2000 layer, 1999 layer #1, 1999 layer #2, and 1998 layer #2, respectively, remain in those layers. These foreign income taxes generally will not be reduced or deemed paid unless a foreign tax refund restores a positive balance to the associated earnings pursuant to section 905(c), and thus will be trapped.

Example 4—(i) *Facts.* (A) The facts are the same as in *Example 2* (i)(A), except that on December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
E&P Accumulated as Non-Look-Through 10/50 Corporation:	(1,000u)	$20
1999	(200u)	10u
1998	400u	5u
	(800u)	
Foreign Corporation B:		
2001	100u	20u
2000	300u	60u
1999	0u	50u
1998	50u	5u
	450u	135u

(B) On January 1, 2002, foreign corporation A acquires the assets of foreign corporation B in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a less-than-10%-U.S.-owned foreign corporation.

(ii) *Result.* Because foreign corporation A has an aggregate deficit in pre-1987 earnings and profits, the rules of paragraph (f)(2)(iii)(B) of this section apply and the rules otherwise applicable apply separately to the pre-1987 accumulated profits that carry over to foreign surviving corporation from foreign corporation A. Accordingly, after the foreign 381 transaction, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings & profits		Foreign taxes	
	Positive E&P	Deficit E&P	Foreign taxes available	Foreign taxes associated with deficit E&P
Two Side-by-Side Layers of 2001 E&P:				
2001 layer #1 (from Corp A)		(1,000u)		$20
2001 layer #2 (from Corp B)	100u		20u	
2000	300u		60u	
Two Side-by-Side Layers of 1999 E&P:				
1999 layer #1 (from Corp A)		(200u)		10u
1999 layer #2 (from Corp B)	0u		50u	
Two Side-by-Side Layers of 1998 E&P:				
1998 layer #1 (from Corp A)	400u		5u	
1998 layer #2 (from Corp B)	50u		5u	
	850u	(1,200u)	140u	

(iii) *Post-transaction distribution.* (A) During 2002, foreign surviving corporation does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, foreign surviving corporation distributes 200u to its shareholders. Under the rules described in paragraph (f)(2)(iii)(B) of this section, no distribution can be made out of the pre-1987 accumulated profits of foreign corporation A (and the 800u aggregate deficit is available to offset only post-transaction earnings accumulated by foreign surviving corporation). Thus, the distribution is out of pre-pooling annual layers as follows:

	E&P	Foreign taxes paid
2001 layer #2	100u	20u
2000	100u	20u
	200u	40u

(B) Foreign surviving corporation's foreign income tax accounts are reduced to reflect the distribution of earnings and profits, see § 1.902–1(a)(10)(iii), notwithstanding that no shareholders are eligible to claim deemed paid foreign income taxes under section 902.

(g) *Special rules*—(1) *Treatment of deficit.* Any deficit described in paragraph (d)(2), (e)(1)(iii), (e)(2)(iii), (f)(1)(iii), or (f)(2)(iii) of this section shall not be taken into account in determining current or accumulated earnings and profits of a foreign surviving corporation, including for purposes of calculating—

(A) The earnings and profits limitation of section 952(c)(1)(A) and (c)(1)(C); and

(B) the amount of the foreign surviving corporation's subpart F income as defined in section 952(a).

(2) *Reconciling taxable years.* If a foreign acquiring corporation and a foreign target corporation had taxable years ending on different dates, then the pro rata distribution rules of paragraphs (f)(1)(ii) and (f)(2)(ii) of this section shall apply with respect to the taxable years that end within the same calendar year.

(3) *Post-transaction change of status.* If a foreign surviving corporation that is subject to the rules of paragraph (c)(2) of this section subsequently becomes a look-through corporation, or if a foreign surviving corporation that is subject to the rules of paragraph (c)(3) of this

section subsequently becomes a non-look-through 10/50 corporation or a look-through corporation, by reason, for example, of a reorganization, liquidation, or change of ownership, then post-1986 undistributed earnings and post-1986 foreign income taxes that have lost their look-through or pooling character by reason of this section shall not have such look-through or pooling character restored. See, *e.g.*, paragraph (f)(2)(v) *Example 2* of this section.

(4) *Ordering rule for offsetting multiple hovering deficits*—(i) *Rule.* A foreign surviving corporation shall apply the deficit rules of paragraphs (d)(2), (e)(1)(iii), (e)(2)(iii), (f)(1)(iii), and (f)(2)(iii) of this section in that order (in the event that more than one of such rules applies to the foreign surviving corporation).

(ii) *Example.* The following example illustrates the rules of this paragraph (g)(4). The examples presume the following facts: Foreign corporation A was a non-look-through 10/50 corporation from its incorporation on January 1, 1995 until December 31, 1997; foreign corporation A became a CFC on January 1, 1998 and has been a CFC since that time. Foreign corporation B has been a non-look-through 10/50 corporation since its incorporation on January 1, 1993. Foreign corporations A and B always have had calendar taxable years. Foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency. Finally, any earnings and profits described in section 904(d)(1)(E) (10/50 dividends) qualified for the high tax exception from subpart F income under section 954(b)(4), and all shareholders elected to exclude such earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). The example is as follows:

Example—(i) *Facts.* (A) On December 31, 2001, foreign corporations A and B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
10/50 dividends from FC1, a noncontrolled section 902 corporation	100u	$60
General	(300u)	25
E&P Accumulated as Non-Look-Through 10/50 Corporation	300u	100
	100u	185
Foreign Corporation B:		
E&P Accumulated as Non-Look-Through 10/50 Corporation	(200u)	50

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). Immediately following the foreign 381 transaction, foreign surviving corporation is a CFC.

(ii) *Result.* Under the rules described in paragraphs (d)(1), (d)(2), (e)(1)(i), (e)(1)(ii), and (e)(1)(iii) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts:

	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Look-Through Pool:				
10/50 dividends	100u		$60	
General		(300u)		$25
Two Side-by-Side Non-Look-Through Pool Amounts:				
Non-look-through pool amount #1 (from Corp A)	300u		100	
Non-look-through pool amount #2 (from Corp B)		(200u)		50
	400u	(500u)	160	75

(iii) *Post-transaction earnings.* (A) In the taxable year ending on December 31, 2002, foreign surviving corporation accumulates earnings and profits and pays related foreign income taxes as follows:

Separate category	E&P	Foreign taxes
10/50 dividends from FC1	150u	$40
General	400u	60
	550u	100

(B) None of the earnings and profits qualify as subpart F income as defined in section 952(a). Under the rules of paragraph (g)(4)(i) of this section, the rules of paragraph (d)(2) of this section apply before the rules of paragraph (e)(1)(iii) of this section. Accordingly, post-transaction earnings in a separate category are first offset by a hovering deficit in the same separate category in the look-through pool. Thus, foreign surviving corporation's 300u deficit in the section 904(d)(1)(I) general separate category offsets 300u of post-transaction general separate category earnings. After application of paragraph (d)(2) ofthis section, foreign surviving corporation has the following post-transaction earnings available for further offset by a hovering deficit: 150u in the section 904(d)(1)(E) 10/50 dividends separate category and 100u in the general separate category. Under paragraph (e)(1)(iii) of this section, a deficit in the non-look-through pool offsets a pro rata portion of post-transaction earnings in each separate

category. Thus, foreign surviving corporation's 200u deficit in non-look-through pool amount #2 offsets the remaining post-transaction earnings on a pro rata basis (200u × (150u ÷ 250u) = 120u against 10/50 dividends separate category earnings and 200u × (100u ÷ 250u) = 80u against general separate category earnings). Accordingly, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts at the end of 2002:

	E&P	Foreign taxes
Look-Through Pool Separate Category:		
10/50 dividends	130u	$100
General	20u	85
Two Side-by-Side Non-Look-Through Pool Amounts:		
Non-look-through pool amount #1	300u	100
Non-look-through pool amount #2	0u	50
	450u	335

(C) Under paragraph (d)(2)(ii) of this section, the $25 of foreign income taxes related to the 300u hovering deficit in the section 904(d)(1)(I) general separate category is added to foreign surviving corporation's post-1986 foreign income taxes in that separate category (because post-transaction earnings in the general separate category have been offset by and exceed the deficit in that category). Under paragraph (e)(1)(iii)(B) of this section, the $50 of foreign income taxes related to the 200u hovering deficit in non-look-through pool amount #2 is added to foreign surviving corporation's post-1986 foreign income taxes for non-look-through pool amount #2 (because post-transaction earnings have been offset by and exceed the deficit in the non-look-through pool). However, the $50 of foreign income taxes generally will not be reduced or deemed paid unless a foreign tax refund restores a positive balance to the associated earnings pursuant to section 905(c), and thus will be trapped.

(5) *Pro rata rule for earnings during transaction year.* For purposes of offsetting post-transaction earnings of a foreign surviving corporation under the rules described in paragraphs (d)(2), (e)(1)(iii), (e)(2)(iii), (f)(1)(iii), and (f)(2)(iii), the earnings and profits for the taxable year of the foreign surviving corporation in which the transaction occurs shall be deemed to have been accumulated after such transaction in an amount which bears the same ratio to the undistributed earnings and profits of the foreign surviving corporation for such taxable year (computed without regard to any earnings and profits carried over) as the number of days in the taxable year after the date of transaction bears to the total number of days in the taxable year. See, e.g., § 1.381(c)(2)–1(a)(7) *Example 2* (illustrating application of this rule with respect to domestic corporations).

(6) *Nonapplicability of hovering deficit rules to certain transactions*—(i) *Rule.* If a principal purpose of a foreign 381 transaction is to gain a tax benefit from affirmative use of the hovering deficit rule described in paragraph (d)(2), (e)(1)(iii), (e)(2)(iii), (f)(1)(iii), or (f)(2)(iii) of this section, then the Commissioner may exercise discretion to apply the principles of § 1.367(b)–9 to such transaction.

(ii) *Example.* The following example illustrates the rules of this paragraph (h)(6). The example is as follows:

Example—(i) *Facts.*—(A) Foreign corporations A and B are and always have been wholly owned subsidiaries of USP, a domestic corporation. Both foreign corporations A and B were incorporated in 1990, and both always have been CFCs using a calendar taxable year. Both foreign corporations A and B (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency and 1u = US$1 at all times. Any earnings and profits described in section 904(d)(1)(E) (10/50 dividends) qualified for the high tax exception from subpart F income under section 954(b)(4), and USP elected to exclude such earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). On December 31, 2001, foreign corporation A and foreign corporation B have the following earnings and profits and foreign income taxes accounts:

	E&P	Foreign taxes
Foreign Corporation A:		
Separate Category:		
Passive	(1,000u)	$5
General	200u	200
	(800u)	205
Foreign Corporation B:		
Separate Category:		
10/50 dividends	5u	3

(B) On January 1, 2002, foreign corporation B acquires the assets of foreign corporation A in a reorganization described in section 368(a)(1)(C). A principal purpose of the foreign 381 transaction is to gain a tax benefit from affirmative use of the hovering deficit rule described in paragraph (d)(2) of this section. Immediately following the foreign 381 transaction, foreign surviving corporation is a CFC.

(ii) *Result under general rules.* (A) If the rules of paragraphs (d) (1) and (2) of this section were to apply, foreign surviving corporation would have the following earnings and profits and foreign income taxes accounts immediately after the foreign 381 transaction:

	Earnings and profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Passive	.....	(1,000u)	.....	$5
10/50 dividends	5u	.....	$3	
General	200u	.....	200	.....
	205u	(1,000u)	203	5

(B) Accordingly, if the hovering deficit rules of paragraph (d)(2) of this section were to apply, foreign surviving corporation would be able to pay to USP a dividend of $205 that would carry deemed paid foreign income taxes of $203 under section 902.

(iii) *Result under this paragraph (g)(6).* Because a principal purpose of the foreign 381 transaction was to gain a tax benefit from affirmative use of the hovering deficit rule described in paragraph (d)(2) of this section, the Commissioner may exercise discretion to apply the principles of § 1.367(b)–9 to the transaction. Under the principles of § 1.367(b)–9, the earnings and profits and foreign income taxes accounts of foreign corporation A and foreign corporation B are combined under paragraph (d)(1) of this section without reference to the hovering deficit rule of paragraph (d)(2) of this section. Accordingly, foreign surviving corporation would have the following earnings and profits and foreign income taxes accounts immediately after the transaction:

Separate category	E&P	Foreign taxes
Passive	(1,000u)	$ 5
10/50 dividends	5u	3
General	200u	200
	(795u)	208

(h) *Effective date.* This section shall apply to section 367(b) exchanges that occur on or after the date 30 days after these regulations are published as final regulations in the **Federal Register**.

Par. 10. Section 1.367(b)–8 is added to read as follows:

§ 1.367(b)–8 Allocation of earnings and profits and foreign income taxes in certain foreign corporate separations.

(a) *Scope.* This section applies to distributions to which section 355 (or so much of section 356 as relates to section 355) applies, whether or not in connection with a section 368(a)(1)(D) reorganization (D reorganization), in which the distributing corporation or the controlled corporation (or both) is a foreign corporation (foreign divisive transaction). For purposes of this section, the terms distributing corporation and controlled corporation have the same meaning as used in section 355 and the regulations thereunder. Paragraph (b) of this section provides general rules governing the allocation and reduction of a distributing corporation's earnings and profits and foreign income taxes (pre-transaction earnings and pre-transaction taxes, respectively) in foreign divisive transactions. Paragraphs (c), (d), and (e) of this section describe special rules for the application of paragraph (b) of this section to specific situations, depending upon whether the distributing corporation or the controlled corporation (or both the distributing and the controlled corporation) is a foreign corporation.

(b) *General rules*—(1) *Application of § 1.312–10*—(i) *In general.* Pre-transaction earnings of a distributing corporation shall be allocated between the distributing corporation and the controlled corporation in accordance with the rules of § 1.312–10(a) and shall be reduced in accordance with the rules of § 1.312–10(b), except to the extent otherwise provided in this section.

(ii) *Special rules for application of § 1.312–10(b)*—(A) *Distributing corporation.* The pre-transaction earnings of a distributing corporation shall be reduced without taking into account § 1.312–10(b)(2).

(B) *Controlled corporation.* Section 1.312–10(b) shall not apply to increase or replace the earnings and profits of a controlled corporation by the amount of any decrease in the pre-transaction earnings of a distributing corporation.

(iii) *Net deficit in pre-transaction earnings.* Nothing in this section shall permit any portion of the pre-transaction earnings of a distributing corporation that has a net deficit in pre-transaction earnings to be allocated or reduced under paragraph (b)(1)(i) of this section. See § 1.312–10(c). Compare paragraph (b)(2) of this section (requiring an allocation or reduction of a pro rata portion of deficits in statutory groupings of earnings and profits when a distributing corporation has a net positive amount of pre-transaction earnings).

(iv) *Use of net bases.* All allocations and reductions described in paragraph (b)(1)(i) of this section shall be determined in accordance with the net bases in assets. Net basis shall have the same meaning as under § 1.312–10(a).

(v) *Gain recognized by distributing corporation.* The pre-transaction earnings that are subject to allocation or reduction under paragraph (b)(1)(i) of this section shall include any increase in earnings and profits from gain recognized or income included by the distributing corporation as a result of the foreign divisive transaction. See, for example, section 367 (a) and (e), section 1248(f), and § 1.367(b)–5(b).

(vi) *Coordination with branch profits tax.* An allocation or reduction in a distributing corporation's pre-transaction earnings under paragraph (b)(1)(i) of this section shall not be out of or reduce effectively connected earnings and profits or non-previously taxed accumulated effectively connected earnings and profits, as defined in section 884. See also § 1.884–2T(d)(5)(iii) (providing that such earnings and profits are not subject to reduction under § 1.312–10(b)).

(2) *Cross-section of earnings and profits.* Except to the extent provided in paragraphs (b)(1)(iii), (b)(1)(vi), (d)(2)(ii), (d)(4), and (e)(4) of this section and other than any portion attributable to an inclusion under § 1.367(b)–5 or

paragraph (d)(2)(i) of this section, an allocation or reduction of pre-transaction earnings described in paragraph (b)(1)(i) of this section shall decrease, on a pro rata basis, the statutory groupings of earnings and profits (or deficits in statutory groupings of earnings and profits) of the distributing corporation. Thus, for example, a pro rata portion of a foreign distributing corporation's separate categories, post-1986 undistributed earnings, and annual layers of pre-1987 accumulated profits and pre-1987 section 960 earnings and profits shall be allocated or reduced.

(3) *Foreign income taxes.* Pre-transaction taxes of a distributing corporation shall be ratably allocated or reduced only to the extent described in paragraphs (d)(3) and (e)(3) of this section. Thus, a distributing corporation's excess foreign taxes described in section 904(c) shall not be allocated or reduced under this section.

(4) *Divisive D reorganization with a preexisting controlled corporation.* In the case of a foreign divisive transaction that includes a D reorganization with a controlled corporation that is not newly created (a preexisting controlled corporation), paragraph (b)(1)(i) of this section shall apply in the following manner:

(i) *Calculation of earnings and profits of distributing corporation.* The pre-transaction earnings of a distributing corporation shall be reduced by the sum of—

(A) The amount of the reduction in the pre-transaction earnings of the distributing corporation as described in § 1.312–10(a) (as determined under this section); and

(B) The amount of the reduction in the pre-transaction earnings of the distributing corporation as described in § 1.312–10(b) (as determined under this section).

(ii) *Calculation of earnings and profits of controlled corporation.* The amount of earnings and profits of the controlled corporation immediately after the foreign divisive transaction shall equal the sum of—

(A) The amount described in paragraph (b)(4)(i)(A) of this section (except to the extent such amounts are included in income as a deemed dividend pursuant to the foreign divisive transaction or are subject to the rule of § 1.367(b)–3(f)); and

(B) The amount of earnings and profits of the controlled corporation immediately before the foreign divisive transaction.

(c) *Foreign divisive transactions involving a domestic distributing corporation and a foreign controlled corporation*—(1) *Scope.* The rules of this paragraph (c) apply to a foreign divisive transaction involving a domestic distributing corporation and a foreign controlled corporation.

(2) *Earnings and profits allocated to a foreign controlled corporation.* Pre-transaction earnings of a domestic distributing corporation that are allocated to a foreign controlled corporation under the rules described in paragraph (b)(1)(i) of this section shall not be included in the foreign controlled corporation's post-1986 undistributed earnings, pre-1987 accumulated profits, or pre-1987 section 960 earnings and profits. In addition, if a distribution by the domestic distributing corporation out of pre-transaction earnings immediately before the foreign divisive transaction would have been treated as a U.S. source dividend under section 861(a)(2)(A) that would not be exempt from tax under section 871(i)(2)(B) or 881(d), a distribution out of such earnings and profits by the foreign controlled corporation shall be treated as a U.S. source dividend under section 904(g) and for purposes of Chapter 3 of subtitle A of the Internal Revenue Code. See *Georday Enterprises* v. *Commissioner,* 126 F.2d 384 (4th Cir. 1942). See also sections 243(e) and 861(a)(2)(C) and § 1.367(b)–2(j) for other rules that may apply.

(3) *Examples.* The following examples illustrate the application of the rules of this section to transactions described in paragraph (c)(1) of this section. The examples presume the following facts: USD is a domestic corporation engaged in manufacturing and shipping activities through Business A and Business B, respectively. FC is a foreign corporation that is wholly owned by USD. USD and FC use calendar taxable years. FC (and all of its qualified business units as defined in section 989) maintains a "u" functional currency and, except as otherwise specified, 1u = US$1 at all times. The examples are as follows:

Example 1—(i) *Facts.* The stock of USD is owned in equal parts by three shareholders, USP (a domestic corporation), USI (a United States citizen), and FP (a foreign corporation). USD owns assets with total net bases of $260 (including $100 attributable to the Business B shipping assets, which have a $160 fair market value). USD has $500 of earnings and profits (that it accumulated). The entire $500 would have been treated as a U.S. source dividend under section 861(a)(2)(A) that would not be exempt from tax under sections 871(i)(2)(B) or 881(d) if distributed by USD immediately before the foreign divisive transaction. On January 1, 2002, USD incorporates FC and transfers to FC the Business B shipping assets. USD then distributes the FC stock pro rata to USP, USI, and FP. The transaction meets the requirements of sections 368(a)(1)(D) and 355.

(ii) *Result*—(A) *Gain Recognition.* Under section 367(a)(5), USD recognizes gain equal to the difference between the fair market value and USD's adjusted basis in the Business B shipping assets ($160 − $100 = $60).

(B) *Calculation of USD's earnings and profits.* Under paragraph (b)(1)(v) of this section, USD's pre-transaction earnings include any gain recognized or income included as a result of the foreign divisive transaction. As described in this *Example 1* (ii)(A), USD recognizes $60 of gain as a result of the foreign divisive transaction. Accordingly, USD has $560 of pre-transaction earnings ($500 + $60). Under paragraph (b)(1)(i) of this section, USD's pre-transaction earnings are reduced by an amount equal to its pre-transaction earnings times the net bases of the assets transferred to FC divided by the net bases of the assets held by USD immediately before the foreign divisive transaction ($560 × ($160 + $320) = $280). Following this reduction, USD has $280 of earnings and profits ($560 − $280).

(C) *Calculation of FC's earnings and profits.* Under paragraph (b)(1)(i) of this section, the $280 reduction in USD's pre-transaction earnings is allocated to FC. Under § 1.367(b)–2(j)(1), the $280 is translated into "u" at the spot rate on January 1, 2002, to 280u. Under paragraph (c)(2) of this section, the 280u is not included as part of FC's post-1986 undistributed earnings, pre-1987 accumulated profits, or section 960 earnings and profits.

(iii) *Post-transaction distribution.* During 2002, FC does not accumulate any earnings and profits or pay or accrue any foreign income taxes. On December 31, 2002, at a time when US$1 = 0.5u, FC distributes 180u (or $360) to its shareholders. Thus, FP, USP, and USI each receive a $120 dividend. See section 989(b)(1). Under paragraph (c)(2) of this section and § 1.367(b)–2(j)(4), $93.33 of the distribution to FP is subject to withholding under Chapter 3 of subtitle A of the Internal Revenue Code ($280 ÷ 3 = $93.33). Under section 243(e) and § 1.367(b)–2(j)(3), $93.33 of the distribution to USP is eligible for the dividends received deduction. See also section 861(a)(2)(C). Under paragraph (c)(2) of this section, the remaining $26.67 distribution to USP is treated as U.S. source under section 904(g) (and is not eligible for the dividends received deduction under section 243(e)). Under paragraph (c)(2) of this section, the $120 dividend distribution to USI is treated as U.S. source under section 904(g).

Example 2—(i) Facts. The stock of USD is owned by the following unrelated persons: 20 percent by USP (a domestic corporation), 20 percent by USI (a United States citizen), and 60 percent by FP (a foreign corporation). FC is a preexisting controlled corporation that was incorporated in 1995 and USD always has owned all of the FC stock. USD owns assets with total net bases of $320 (including $160 attributable to the FC stock), and USD has $500 of earnings and profits. FC has 150u of earnings and profits in the section 904(d)(1)(D) shipping separate

category and has $60 of related foreign income taxes. FC's earnings and profits qualified for the high tax exception from subpart F income under section 954(b)(4), and USD elected to exclude the earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). On January 1, 2002, USD distributes the stock of FC to its shareholders in a transaction that meets the requirements of section 355. FC is not a controlled foreign corporation after the foreign divisive transaction. On the date of the foreign divisive transaction, the FC stock has a $460 fair market value.

(ii) *Result*—(A) *Gain Recognition.* Under § 1.367(b)–5(b)(1)(ii), USD recognizes gain equal to the difference between the fair market value and USD's adjusted basis in the FC stock distributed to USI. Under § 1.367(e)–1(b)(1), USD recognizes gain equal to the difference between the fair market value and USD's adjusted basis in the FC stock distributed to FP. As a result of the transfers to USI and FP, USD recognizes gain of $240 (⅔ × ($460 − $160)), $120 of which is included in USD's income as a dividend under section 1248(a) and (f)(1) (⅔ × 150u, translated at the spot rate under section 989(b)(2)). Under section 1248(a) and (f)(1), USD includes as a dividend the difference between the fair market value and its adjusted basis in the FC stock distributed to USP to the extent of FC's earnings and profits attributable to the distributed stock. For further guidance, see also Notice 87–64 (1987–2 C.B. 375) (see also § 601.601(d)(2) of this chapter). As a result of this transfer, USD includes a $30 dividend under section 1248(a) and (f)(1) (⅓ × 150u). USD qualifies for a section 902 deemed paid foreign tax credit with respect to its $150 of section 1248 dividends.

(B) *Calculation of USD's earnings and profits.* Under paragraph (b)(1)(v) of this section, USD's pre-transaction earnings include any gain recognized or income included as a result of the foreign divisive transaction. As described in this *Example 2* (ii)(A), USD recognizes and includes a total of $270 of gain and dividend income as a result of the foreign divisive transaction. Accordingly, USD has $770 of pre-transaction earnings ($500 + $270). Under paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, USD's pre-transaction earnings are reduced by the amount of the reduction that would have been required if USD had transferred the stock of FC to a new corporation in a D reorganization. Thus, USD's pre-transaction earnings are reduced by an amount equal to its pre-transaction earnings times its net basis in the FC stock divided by the net bases of the assets held by USD immediately before the foreign divisive transaction ($770 × ($430 ÷ $590) = $561.19). Following this reduction, USD has $208.81 of earnings and profits ($770 − $561.19).

(C) *Calculation of FC's earnings and profits.* Under paragraph (b)(1)(ii)(B) of this section, FC's earnings and profits are not increased (or replaced) as a result of the foreign divisive transaction.

Example 3—(i) Facts. USP, a domestic corporation, owns all of the stock of USD. FC is a preexisting controlled corporation and USD has owned all of the FC stock since FC was incorporated in 1995. USD owns assets with total net bases of $320 (including $100 attributable to the FC stock and $160 attributable to the Business B shipping assets). USD has $500 of pre-transaction earnings. FC has 150u of earnings and profits in the section 904(d)(1)(D) shipping separate category and has $60 of related foreign income taxes. FC's earnings and profits qualified for the high tax exception from subpart F income under section 954(b)(4), and USD elected to exclude the earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). On January 1, 2002, USD transfers to FC the Business B shipping assets. USD then distributes the FC stock to USP. The transaction meets the requirements of sections 368(a)(1)(D) and 355. USD's transfer of the Business B shipping assets to FC falls within the active trade or business exception to section 367(a)(1) described in § 1.367(a)–2T. Immediately after the foreign divisive transaction, the FC stock has a $460 fair market value. USP and USD meet and comply with the requirements of section 367(a)(5) and 1248(f)(2) (and any regulations thereunder). (Sections 1.367(b)–5(b)(1)(ii) and 1.367(e)–1(b)(1) do not apply with respect to the foreign divisive transaction because the distributee, USP, is a domestic corporation.)

(ii) *Result*—(A) *Calculation of USD's earnings and profits.* Under paragraph (b)(4)(i) of this section, USD's pre-transaction earnings are reduced by the sum of the amounts described in paragraphs (b)(4)(i)(A) and (b)(4)(i)(B) of this section. Under paragraph (b)(4)(i)(A) of this section, USD's pre-transaction earnings are reduced by an amount equal to USD's pre-transaction earnings times the net bases of the assets transferred to FC divided by the total net bases of the assets held by USD immediately before the foreign divisive transaction ($500 × ($160 ÷ $320) = $250). Under paragraph (b)(4)(i)(B) of this section, USD's pre-transaction earnings are reduced by an amount equal to USD's pre-transaction earnings times USD's net basis in the stock of FC (immediately before USD's transfer of the shipping assets) divided by the total net bases of the assets held by USD immediately before the foreign divisive transaction ($500 × ($100 ÷ $320) = $156.25). The sum of the amounts described in paragraphs (b)(4)(i) (A) and (B) of this section is $406.25 ($250 + $156.25). Following the reduction described in paragraph (b)(4)(i) of this section, USD has $93.75 of earnings and profits ($500 − $406.25).

(B) *Calculation of FC's earnings and profits.* Under paragraphs (b)(4)(ii) of this section, the earnings and profits of FC immediately after the foreign divisive transaction are increased by the amount of the reduction in USD's pre-transaction earnings described in paragraph (b)(4)(i)(A) of this section ($250). Under § 1.367(b)–2(j)(1), this $250 is translated into "u" at the spot rate on January 1, 2002, to 250u. Under paragraph (c)(2) of this section, the 250u is not included as part of FC's post-1986 undistributed earnings. FC has 400u in earnings and profits (250u + 150u) immediately after the foreign divisive transaction.

(iii) *Post-transaction distribution.* FC does not accumulate any earnings and profits or pay or accrue any foreign income taxes during 2002. On December 31, 2002, FC distributes 100u as a dividend to USP, which has remained its sole shareholder. Under section 989(b)(1), the 100u distribution is translated into US$ at the spot rate on December 31, 2002, to $100. Proportionate parts of the $100 dividend are attributable to the pre-transaction earnings of FC ($37.50 = $100 × (150 ÷ 400)) and USD ($62.50 = $100 × (250 ÷ 400)). See sections 243(e) and 245. Thus, under sections 243(e) and § 1.367(b)–2(j)(3), $62.50 of the distribution is eligible for the dividends received deduction. See also section 861(a)(2)(C). The remaining $37.50 of the distribution (and $15 of related foreign income taxes) is subject to the generally applicable rules concerning dividends paid by foreign corporations.

(d) *Foreign divisive transactions involving a foreign distributing corporation and a domestic controlled corporation*—(1) *Scope.* The rules of this paragraph (d) apply to a foreign divisive transaction involving a foreign distributing corporation and a domestic controlled corporation.

(2) *Coordination with § 1.367(b)–3*—(i) *In general.* In the case of a foreign divisive transaction that includes a D reorganization, the rules of § 1.367(b)–3 are applicable with respect to the pre-transaction earnings of a foreign distributing corporation that are allocable to a domestic controlled corporation under paragraph (b)(1)(i) of this section.

(ii) *Determination of all earnings and profits amount.* An all earnings and profits amount inclusion under paragraph (d)(2)(i) of this section shall be computed with respect to the pre-transaction earnings that are allocable to the domestic controlled corporation, without regard to the parenthetical phrase in paragraph (b)(4)(ii)(A) of this section.

(iii) *Interaction with section 358 and § 1.367(b)–2(e)(3)(ii).* The basis increase provided in § 1.367(b)–2(e)(3)(ii) shall apply to an all earnings and profits amount inclusion under paragraph (d)(2)(i) of this section, subject to the following rules—

(A) Section 358 shall apply to determine the distributee's basis in the foreign distributing and domestic controlled corporation without regard to the all earnings and profits amount inclusion;

(B) After application of the rule in paragraph (d)(2)(iii)(A) of this section, the basis increase provided in § 1.367(b)–2(e)(3)(ii) shall be applied in a manner that attributes such basis increase solely to the exchanging

shareholder's stock in the domestic controlled corporation; and

(C) the rule of paragraph (d)(2)(iii)(B) of this section shall apply prior to § 1.367(b)–5(c)(4) and (d)(4).

(iv) *Coordination with § 1.367(b)–3(c).* In applying the rule of § 1.367(b)–3(c)(2), an exchanging shareholder described in § 1.367(b)–3(c)(1) shall recognize gain with respect to the stock of the domestic controlled corporation after the foreign divisive transaction.

(v) *Special rule for U.S. persons that own foreign distributing corporation stock after a non pro rata distribution.* [Reserved]

(3) *Foreign income taxes.* Pre-transaction taxes related to a foreign distributing corporation's pre-transaction earnings that are allocable or are reduced under the rules described in paragraph (b)(1)(i) of this section shall be ratably reduced. Pre-transaction taxes related to a foreign distributing corporation's pre-transaction earnings that are allocable to a domestic controlled corporation under the rules described in paragraph (b)(1)(i) of this section shall not carry over to the domestic controlled corporation. Nothing in this paragraph (d)(3) shall affect the deemed paid taxes that otherwise would accompany an inclusion under § 1.367(b)–5 or paragraph (d)(2)(i) of this section.

(4) *Previously taxed earnings and profits.* [Reserved]

(5) *Coordination with § 1.367(b)–5.* See also § 1.367(b)–5(c) and (d) for other rules that may apply to a foreign divisive transaction described in paragraph (d)(1) of this section.

(6) *Examples.* The following examples illustrate the application of the rules of this section to transactions described in paragraph (d)(1) of this section. The examples presume the following facts: FD is a foreign corporation engaged in manufacturing and shipping activities through Business A and Business B, respectively. Any earnings and profits of FD described in section 904(d)(1)(D) (shipping income) qualified for the high tax exception from subpart F income under section 954(b)(4), and FD's United States shareholders elected to exclude the earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(5). USC is a domestic corporation that is wholly owned by FD. FD and USC use calendar taxable years. FD (and all of its qualified business units as defined in section 989) maintains a "u" functional currency, and 1u = US$1 at all times. The examples are as follows:

Example 1—(i) *Facts.* (A) USP, a domestic corporation, has owned all of the stock of FD since FD's incorporation in 1995. USP's adjusted basis in the FD stock is $100, and the FD stock has a fair market value of $800. FD owns assets with total net bases of 320u (including 160u attributable to the Business B shipping assets), and has the following pre-transaction earnings and pre-transaction taxes accounts:

Separate category	E&P	Foreign taxes
General	300u	$60
Shipping	200u	80
	500u	140

(B) On January 1, 2002, FD incorporates USC and transfers to USC the Business B shipping assets. FD then distributes the USC stock to USP. The transaction meets the requirements of sections 368(a)(1)(D) and 355. Immediately after the foreign divisive transaction, the FD stock and the USC stock each have a fair market value of $400.

(ii) *Results*—(A) *Calculation of FD's earnings and profits.* Under paragraph (b)(1)(i) of this section, FD's pre-transaction earnings are reduced by an amount equal to its pre-transaction earnings times the net bases of the assets transferred to USC divided by the net bases of the assets held by FD immediately before the foreign divisive transaction (500u × (160u + 320u) = 250u). Following this reduction, FD has 250u of earnings and profits (500u—250u).

(B) *All earnings and profits amount inclusion.* Under § 1.367(b)–3 and paragraph (d)(2)(i) of this section, USP includes in income as an all earnings and profits amount the pre-transaction earnings of FD that are allocable to USC under paragraph (b)(1)(i) of this section. Thus, USP's all earnings and profits amount inclusion is $250. See also section 989(b)(1) and paragraph (d)(2)(ii) of this section. Under § 1.367(b)–3(b)(3)(i) and § 1.367(b)–2(e), USP includes the all earnings and profits amount as a deemed dividend received from FD immediately before the foreign divisive transaction. Because the requirements of section 902 are met, USP qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FD. Under § 1.902–1(d)(1), the $250 deemed dividend is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	150u	$30
Shipping	100u	40
	250u	70

(C) *Calculation of USP's basis in USC and USC's earnings and profits.* Under paragraph (d)(2)(iii) of this section, the § 1.367(b)–2(e)(3)(ii) basis increase applies with respect to USP's all earnings and profits amount inclusion from FD and is attributed solely to USP's basis in USC (after application of section 358). Accordingly, USP has a $300 basis in the USC stock ($50 section 358 basis, determined by reference to the relative values of USP's FD and USC stock: $100 pre-transaction basis × ($400 ÷ $800) + $250 § 1.367(b)–2(e)(3)(ii) basis increase = $300). Because USP included in income as a deemed dividend under § 1.367(b)–3 and paragraph (d)(2) of this section the pre-transaction earnings of FD that are allocable to USC under paragraph (b)(1)(i) of this section, such earnings and profits are not available to increase USC's earnings and profits. As a result, USC has zero earnings and profits immediately after the foreign divisive transaction.

(D) *Application of § 1.367(b)–5(c).* The basis adjustment and income inclusion rules of § 1.367(b)–5(c)(2) apply if USP's postdistribution amount with respect to FD stock is less than its predistribution amount with respect to FD stock. Under § 1.367(b)–5(e)(1), USP's predistribution amount with respect to FD stock is USP's section 1248 amount attributable to such stock computed immediately before the distribution but after taking into account the allocation of earnings and profits as a result of the D reorganization. Thus, USP's predistribution amount with respect to FD stock is $250 (500u–250u). See also section 989(b)(2). Under section 358, USP allocates its $100 basis in FD stock between FD stock and USC stock according to the stock blocks' relative values, yielding a $50 ($100 x ($400 ÷ $800)) basis in FD stock. See also paragraph (d)(2)(iii) of this section. Under § 1.367(b)–5(e)(2), USP's postdistribution amount with respect to FD

stock is USP's section 1248 amount with respect to such stock, computed immediately after the distribution. Accordingly, USP's postdistribution amount with respect to FD stock is $250. Because USP's postdistribution amount with respect to FD stock is not less than its predistribution amount, USP is not required to make any basis adjustment or include any income under § 1.367(b)–5(c).

(E) *FD's earnings and profits after the foreign divisive transaction.* Following the reduction described in this *Example 1* (ii)(A) and (B), FD has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
General	150u	$30
Shipping	100u	40
	250u	70

Example 2—(i) *Facts.* (A) USP, a domestic corporation, has owned all of the stock of FD since FD's incorporation in 1995. USP's adjusted basis in the FD stock is $400 and the FD stock has a fair market value of $800. USC is a preexisting controlled corporation. FD owns assets with net total bases of 320u (including 160u attributable to the USC stock), and has the following pre-transaction earnings and pre-transaction taxes accounts:

Separate category	E&P	Foreign taxes
General	300u	$60
Shipping	200u	80
	500u	140

(B) On January 1, 2002, FD distributes the USC stock to USP in a transaction that meets the requirements of section 355. Immediately after the foreign divisive transaction, the FD stock and the USC stock each have a $400 fair market value.

(ii) *Results*—(A) *Calculation of FD's earnings and profits.* Under paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, FD's pre-transaction earnings are reduced by the amount of the reduction that would have been required if FD had transferred the stock of USC to a new corporation in a D reorganization. Thus, FD's pre-transaction earnings are reduced by an amount equal to its pre-transaction earnings times its net basis in the USC stock divided by the net bases of the assets held by FD immediately before the foreign divisive transaction (500u×(160u+320u)=250u). Following this reduction, FD has 250u of earnings and profits (500u − 250u).

(B) *Calculation of USC's earnings and profits.* Under paragraph (b)(1)(ii)(B) of this section, USC's earnings and profits are not increased (or replaced) as a result of the foreign divisive transaction. As a result, USP is not required to include an amount in income under paragraph (d)(2)(i) of this section.

(C) *Application of § 1.367(b)–5(c).* The basis adjustment and income inclusion rules of § 1.367(b)–5(c)(2) apply if USP's postdistribution amount with respect to FD stock is less than its predistribution amount with respect to FD stock. Under § 1.367(b)–5(e)(1), USP's predistribution amount with respect to FD stock is USP's section 1248 amount attributable to such stock computed immediately before the distribution. Thus, USP's predistribution amount with respect to FD stock is $400 (the predistribution amount is limited to USP's built-in gain in FD stock immediately before the distribution ($800 − $400)). See also section 989(b)(2). Under section 358, USP allocates its $400 basis in FD stock between FD stock and USC stock according to the stock blocks' relative values, yielding a $200 ($400×($400+$800)) basis in each block. Under § 1.367(b)–5(e)(2), USP's postdistribution amount with respect to FD stock is USP's section 1248 amount with respect to such stock, computed immediately after the distribution. Accordingly, USP's postdistribution amount with respect to FD stock is $200 (the postdistribution amount is limited to USP's built-in gain in FD stock immediately after the distribution ($400 − $200)). Because USP's postdistribution amount with respect to FD stock is $200 less than its predistribution amount with respect to such stock ($400 − $200), § 1.367(b)–5(c)(2)(i) and (ii) require USP to reduce its basis in FD stock by the $200 difference, but only to the extent such reduction increases USP's section 1248 amount with respect to the FD stock. As a result, USP reduces its basis in the FD stock from $200 to $150 and includes $150 in income as a deemed dividend from FD. Because the requirements of section 902 are met, USP qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FD. Under § 1.902–1(d)(1), the $150 deemed dividend is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	90u	$18
Shipping	60u	24
	150u	42

(D) Basis adjustment. Under § 1.367(b)–5(c)(3), USP does not increase its basis in FD stock as a result of USP's $150 deemed dividend from FD. Under § 1.367(b)–5(c)(4), USP increases its basis in the USC stock by the amount by which it decreased its basis in the FD stock, as well as by the amount of its deemed dividend inclusion. The § 1.367(b)–5(c)(4) basis increase applies in full because USP's basis in the USC stock is not increased above the fair market value of such stock. Thus, USP increases its basis in USC stock to $400 ($200+$50+$150).

(E) *Reduction in FD's statutory groupings of earnings and profits.* Under paragraph (b)(2) of this section, the reduction in FD's pre-transaction earnings that is not attributable to USP's inclusion under § 1.367(b)–5 decreases FD's statutory groupings of earnings and profits on a pro rata basis. Under paragraph (d)(3) of this section, FD's pre-transaction taxes also are ratably reduced. As described in this *Example 2* (ii)(A), the reduction in FD's pre-transaction earnings is 250u. As described in this *Example 2* (ii)(C), 150u of the 250u reduction is attributable to an inclusion under § 1.367(b)–5. As a result, under paragraphs (b)(2) and (d)(3) of this section the remaining 100u reduction in FD's pre-transaction earnings is out of the following separate categories of earnings and profits and foreign income taxes:

Separate category	E&P	Foreign taxes
General	60u	$12
Shipping	40u	16
	100u	28

(F) *FD's earnings and profits after the foreign divisive transaction.* After the reductions described in this *Example 2* (ii)(C) and (E), FD has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
General	150u	$30
Shipping	100u	40
	250u	70

Example 3—(i) *Facts.* (A) USP, a domestic corporation, has owned all of the stock of FD since FD's incorporation in 1995. USP's adjusted basis in the FD stock is $400 and the FD stock has a fair market value of $800. USC is a preexisting controlled corporation. FD owns assets with total net bases of 320u (including 160u attributable to the USC stock and 80u attributable to the Business B shipping assets), and has the following pre-transaction earnings and pre-transaction taxes accounts:

Separate category	E&P	Foreign taxes
General	300u	$ 60
Shipping	200u	80
	500u	140

(B) On January 1, 2002, FD transfers to USC the Business B shipping assets. FD then distributes the USC stock to USP. The transaction meets the requirements of sections 368(a)(1)(D) and 355. Immediately after the foreign divisive transaction, the FD stock has a $200 fair market value and the USC stock has a $600 fair market value.

(ii) *Results*—(A) *Calculation of FD's earnings and profits.* Under paragraph (b)(4)(i) of this section, FD's pre-transaction earnings are reduced by the sum of the amounts described in paragraphs (b)(4)(i)(A) and (B) of this section. Under paragraph (b)(4)(i)(A) of this section, FD's pre-transaction earnings are reduced by an amount equal to FD's pre-transaction earnings times the net bases of the Business B shipping assets transferred to USC divided by the total net bases of the assets held by FD immediately before the foreign divisive transaction (500u × (80u + 320u) = 125u). Under paragraph (b)(4)(i)(B) of this section, FD's pre-transaction earnings are reduced by an amount equal to FD's pre-transaction earnings times FD's net basis in the stock of USC divided by the total net bases of the assets held by FD immediately before the foreign divisive transaction (500u × (160u + 320u) = 250u). The sum of the amounts described in paragraphs (b)(4)(i)(A) and (B) of this section is 375u (125u + 250u).

(B) *All earnings and profits amount inclusion.* Under § 1.367(b)–3 and paragraph (d)(2)(i) of this section, USP is required to include in income as an all earnings and profits amount the pre-transaction earnings of FD that are allocable to USC under paragraph (b)(1)(i) of this section. Under paragraph (b)(4)(ii)(A) of this section, the 125u of pre-transaction earnings described in paragraph (b)(4)(i)(A) are allocable to USC. Thus, the all earnings and profits amount is $125. See also section 989(b)(1) and paragraph (d)(2)(ii) of this section. Under §§ 1.367(b)–3(b)(3)(i) and 1.367(b)–2(e), USP includes the all earnings and profits amount as a deemed dividend received from FD immediately before the foreign divisive transaction. Because the requirements of section 902 are met, USP qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FD. Under § 1.902–1(d)(1), the $125 deemed dividend is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	75u	$15
Shipping	50u	20
	125u	35

(C) *Calculation of USP's basis in USC and USC's earnings and profits.* Under paragraph (d)(2)(iii) of this section, the § 1.367(b)–2(e)(3)(ii) basis increase applies with respect to USP's all earnings and profits amount inclusion and is attributed solely to USP's basis in USC (after application of section 358). Accordingly, USP has a $425 basis in the USC stock ($300 section 358 basis, determined by reference to the relative values of USP's FD and USC stock: $400 pre-transaction basis × ($600 ÷ $800) + $125 § 1.367(b)–2(e)(3)(ii) basis increase = $425). Because USP included in income as a deemed dividend under § 1.367(b)–3 and paragraph (d)(2) of this section the pre-transaction earnings of FD that are allocable to USC under paragraph (b)(1)(i) of this section, such earnings and profits are not available to increase USC's earnings and profits. As a result, USC's earnings and profits are not increased as a result of the foreign divisive transaction.

(D) *Application of § 1.367(b)–5(c).* The basis adjustment and income inclusion rules of § 1.367(b)–5(c)(2) apply if USP's postdistribution amount with respect to FD stock is less than its predistribution amount with respect to FD stock. Under § 1.367(b)–5(e)(1) and (3), USP's predistribution amount with respect to FD stock is USP's section 1248 amount attributable to such stock computed immediately before the distribution, after the allocation of FD's pre-transaction earnings described in paragraphs (b)(4)(i)(A) and (ii)(A) of this section, but without regard to the reduction in FD's pre-transaction earnings described in paragraph (b)(4)(i)(B) of this section. Thus, USP's predistribution amount with respect to FD stock is $375 ($500—$125). See also section 989(b)(2). Under section 358, USP allocates its $400 basis in FD stock between FD stock and USC stock according to the stock blocks' relative values, yielding a $100 ($400 × ($200

+ $800)) basis in FD stock. See also paragraph (d)(2)(iii) of this section. Under § 1.367(b)–5(e)(2), USP's postdistribution amount with respect to FD stock is USP's section 1248 amount with respect to such stock, computed immediately after the distribution. Accordingly, USP's postdistribution amount with respect to FD stock is $100. (While FD has earnings and profits of 125u immediately after the foreign divisive transaction, USP's postdistribution amount is limited to its built-in gain in FD stock immediately after the distribution ($200—$100).) Because USP's postdistribution amount with respect to FD stock is $275 less than its predistribution amount with respect to such stock ($375—$100), § 1.367(b)–5(c)(2)(i) and (ii) require USP to reduce its basis in FD stock, but only to the extent such reduction increases USP's section 1248 amount with respect to the FD stock. As a result, USP reduces its basis in the FD stock from $100 to $75 and includes $250 in income as a deemed dividend from FD. Because the requirements of section 902 are met, USP qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FD. Under § 1.902–1(d)(1), the $250 deemed dividend is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	150u	$30
Shipping	100u	20
	250u	50

(E) *Basis adjustment.* Under § 1.367(b)–5(c)(3), USP does not increase its basis in FD stock as a result of USP's $250 deemed dividend from FD. Under § 1.367(b)–5(c)(4), USP increases its basis in the USC stock by the amount by which it decreased its basis in the FD stock, as well as by the amount of its deemed dividend inclusion, but only up to the fair market value of USP's USC stock. As described in this *Example 3* (ii)(C), USP has already increased its basis in the USC stock to $525. Because the fair market value of FD's USC stock is $600, USP's basis increase under § 1.367(b)–5(c)(4) is limited to $75. See also paragraph (d)(2)(iii)(C) of this section. Thus, USP has a $600 basis in the USC stock immediately after the foreign divisive transaction.

(F) *Reduction in FD's statutory groupings of earnings and profits.* Under paragraph (b)(2) of this section, the reduction in FD's pre-transaction earnings that is not attributable to USP's inclusion under paragraph (d)(2)(i) of this section or § 1.367(b)–5 decrease FD's statutory groupings of earnings and profits on a pro rata basis. Under paragraph (d)(3) of this section, FD's pre-transaction taxes are also ratably reduced. As described in this *Example 3* (ii)(A), the reduction in FD's pre-transaction earnings is 375u. As described in this *Example 3* (ii)(B) and (D), the entire 375u reduction was subject to inclusion as a deemed dividend by USP under paragraph (d)(2)(i) of this section or § 1.367(b)–5. Thus, none of FD's pre-transaction earnings remain to be reduced under paragraph (b)(2) of this section.

(G) *FD's earnings and profits after the foreign divisive transaction.* After the reductions described in this *Example 3* (ii)(B) and (D), FD has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
General	75u	$15
Shipping	50u	20
	125u	35

(e) *Foreign divisive transactions involving a foreign distributing corporation and a foreign controlled corporation—*

(1) *Scope.* The rules of this paragraph (e) apply to a foreign divisive transaction involving a foreign distributing corporation and a foreign controlled corporation.

(2) *Earnings and profits of foreign controlled corporation—*(i) *In general.* Except to the extent specified in paragraph (e)(2)(ii) of this section, pre-transaction earnings of a foreign distributing corporation that are allocated to a foreign controlled corporation under the rules described in paragraphs (b)(1)(i) and (4) of this section shall carry over to the foreign controlled corporation in accordance with the rules described in § 1.367(b)–7.

(ii) *Special rule for pre-transaction earnings allocated to a newly created controlled corporation.* Section 1.367(b)–9 shall apply to pre-transaction earnings that are allocated from a foreign distributing corporation to a newly created foreign controlled corporation under the rules described in paragraph (b)(1)(i) of this section.

(3) *Foreign income taxes.* Pre-transaction taxes related to a foreign distributing corporation's pre-transaction earnings that are allocated or reduced under the rules described in paragraph (b)(1)(i) of this section shall be ratably reduced. Pre-transaction taxes related to a foreign distributing corporation's pre-transaction earnings that are allocated to a foreign controlled corporation under the rules described in paragraph (b)(1)(i) of this section shall carry over to the foreign controlled corporation in accordance with the rules of § 1.367(b)–7. Section 1.367(b)–9 shall apply to pre-transaction taxes that are allocated from a foreign distributing corporation to a newly created foreign controlled corporation under the rules described in paragraph (b)(1)(i) of this section.

(4) *Previously taxed earnings and profits.* [Reserved]

(5) *Coordination with § 1.367(b)–5.* See also § 1.367(b)–5(c) and (d) for other rules that may apply to a foreign divisive transaction described in paragraph (e)(1) of this section.

(6) *Examples.* The following examples illustrate the application of the rules of this section to transactions described in paragraph (e)(1) of this section. The examples presume the following facts: FD is a foreign corporation engaged in manufacturing and shipping activities through Business A and Business B, respectively. FC is a foreign corporation that is wholly owned by FD. Any earnings and profits of FD or FC described in section 904(d)(1)(D) (shipping income) qualified for the high tax exception from subpart F income under section 954(b)(4), and FD's and FC's United States shareholders elected to exclude the earnings and profits from subpart F income under section 954(b)(4) and § 1.954–1(d)(1). FD and FC have calendar taxable years. FD and FC (and all of their respective qualified business units as defined in section 989) maintain a "u" functional currency, and 1u = US$1 at all times. The examples are as follows:

Example 1—(i) *Facts.* (A) USP, a domestic corporation, has owned all of the stock of FD since FD's incorporation in 1995. USP's adjusted basis in the FD stock is $400 and the FD stock has a fair market value of $800. FD owns assets with total net bases of 320u (including 160u attributable to the Business B shipping assets), and has the following pre-transaction earnings and pre-transaction taxes accounts:

Separate category	E&P	Foreign taxes
General	300u	$60
Shipping	200u	80
	500u	140

(B) On January 1, 2002, FD incorporates FC and transfers to FC the Business B shipping assets. FD then distributes the FC stock to USP. The transaction meets the requirements of sections 368(a)(1)(D) and 355. Immediately after the foreign divisive transaction, the FD stock and the FC stock each have a $400 fair market value.

(ii) *Result*—(A) *Calculation of FD's earnings and profits.* Under paragraph (b)(1)(i) of this section, FD's pre-transaction earnings are reduced by an amount equal to its pre-transaction earnings times the net bases of the assets transferred to FC divided by the net bases of the assets held by FD immediately before the foreign divisive transaction (500u × (160u ÷ 320u) = 250u). Following this reduction, FD has 250u of earnings and profits (500u–250u).

(B) *Application of § 1.367(b)–5(c).* The basis adjustment and income inclusion rules of § 1.367(b)–5(c)(2) apply if USP's postdistribution amount with respect to FD or FC stock is less than its predistribution amount with respect to such stock. Under § 1.367(b)–5(e)(1), USP's predistribution amount with respect to FD or FC stock is USP's section 1248 amount attributable to such stock computed immediately before the distribution but after taking into account the allocation of earnings and profits as a result of the D reorganization. Thus, USP's predistribution amounts with respect to FD and FC stock are both $200. See also section 989(b)(2) and § 1.1248–1(d)(3). Under section 358, USP allocates its $400 basis in FD stock between FD stock and FC stock according to the stock blocks' relative values, yielding a $200 ($400 × ($400 ÷ $800)) basis in each block. Under § 1.367(b)–5(e)(2), USP's postdistribution amount with respect to FD or FC stock is USP's section 1248 amount with respect to such stock, computed immediately after the distribution. Accordingly, USP's postdistribution amounts with respect to FD and FC stock are both $200. Because USP's postdistribution amounts with respect to FD and FC stock are not less than USP's respective predistribution amounts, USP is not required to make any basis adjustment or include any income under § 1.367(b)–5(c).

(C) *Reduction in FD's statutory groupings of earnings and profits.* Under paragraph (b)(2) of this section, the 250u reduction in FD's pre-transaction earnings decreases FD's statutory groupings of earnings and profits on a pro rata basis. Under paragraph (e)(3) of this section, FD's pre-transaction taxes also are ratably reduced. Accordingly, FD's pre-transaction earnings and pre-transaction taxes are reduced by the following amounts:

Separate category	E&P	Foreign taxes
General	150u	$30
Shipping	100u	40
	250u	70

(D) *Calculation of FC's earnings and profits.* Under paragraph (e)(2) of this section, the pre-transaction earnings of FD that are allocated to FC under paragraph (b)(1)(i) of this section carry over to FC in accordance with the rules of § 1.367(b)–7, subject to the rule of § 1.367(b)–9. Under paragraph (e)(3) of this section, FD's pre-transaction taxes related to the pre-transaction earnings that are allocated to FC similarly carry over to FC in accordance with the rules of § 1.367(b)–7, subject to the rule of § 1.367(b)–9. As a result, under § 1.367(b)–7(d), FC has the following earnings and profits and foreign income taxes accounts immediately after the foreign divisive transaction:

Separate category	E&P	Foreign taxes
General	150u	$30
Shipping	100u	40
	250u	70

Example 2—(i) *Facts.* (A) USP, a domestic corporation, has owned all of the stock of FD since FD's incorporation in 1995. USP's adjusted basis in the FD stock is $300 and the FD stock has a fair market value of $1,500. FC is a preexisting controlled corporation and FD has always owned all of the FC stock. FD owns assets with total net bases of 320u (including 160u attributable to the FC stock). FD and FC have the following earnings and profits and foreign income taxes accounts:

FD	E&P	Foreign taxes
Separate Category:		
General	400u	$ 50
Passive	(100u)	6
Shipping	200u	80
	500u	136

FC	E&P	Foreign taxes
Separate Category:		
General	600u	$100
Passive	(50u)	6
Shipping	100u	40
	650u	146

(B) On January 1, 2002, FD distributes the FC stock to USP in a transaction that meets the requirements of section 355. Immediately after the foreign divisive transaction, the FD stock and the FC stock each have a $750 fair market value.

(ii) *Result*—(A) *Calculation of FD's earnings and profits.* Under paragraph (b)(1)(i) and (ii)(A) of this section, FD's pre-transaction earnings are reduced by the amount of the reduction that would have been required if FD had transferred the stock of FC to a new corporation in a D reorganization. Thus, FD's pre-transaction earnings are reduced by an amount equal to its pre-transaction earnings times its net basis in the FC stock divided by the net bases of the assets held by FD immediately before the foreign divisive transaction (500u × (160u + 320u) = 250u). Following this reduction, FD has 250u of earnings and profits (500u–250u).

(B) *Application of § 1.367(b)–5(c).* The basis adjustment and income inclusion rules of § 1.367(b)–5(c) apply if USP's postdistribution amount with respect to FD or FC stock is less than its predistribution amount with respect to such stock. Under § 1.367(b)–5(e)(1), USP's predistribution amount with respect to FD or FC stock is USP's section 1248 amount attributable to such stock computed immediately before the distribution. Thus, USP's predistribution amounts with respect to FD and FC stock are $500 and $650, respectively. See also section 989(b)(2). Under section 358, USP allocates its $300 basis in FD stock between FD stock and FC stock according to the stock blocks' relative values, yielding a $150 ($300 × ($750 + $1,500)) basis in each block. Under § 1.367(b)–5(e)(2), USP's postdistribution amount with respect to FD or FC stock is USP's section 1248 amount with respect to such stock, computed immediately after the distribution. Accordingly, USP's postdistribution amount with respect to FD stock is $250 (500u –250u), and its postdistribution amount with respect to FC stock is $600 (while FC has 650u of earnings and profits immediately after the foreign divisive transaction, USP's postdistribution amount is limited to its built-in gain in FC stock immediately after the distribution ($750–$150)). USP's postdistribution amount with respect to both the FD and FC stock is less than its predistribution amount with respect to such stock. This difference is $50 with respect to FC ($650–$600), and $250 with respect to FD ($500–$250). Under § 1.367(b)–5(c)(2)(i) and (ii), USP is required to reduce its basis in the FD and FC stock, but only to the extent such reductions increase USP's section 1248 amount with respect to the stock. Accordingly, USP reduces its basis in the FC stock by $50, and thereafter USP has a $100 basis in such stock ($150–$100). Because a reduction in USP's basis in FD stock would not increase any of USP's section 1248 amount with respect to such stock, USP includes the entire $250 difference between its predistribution and postdistribution amounts with respect to the FD stock as a deemed dividend from FD. Because the requirements of section 902 are met, USP qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FD. Under § 1.960–1(i)(4), the 100u deficit in the section 904(d)(1)(A) passive separate category is allocated proportionately against the other separate categories for purposes of computing the deemed paid credit on the distribution. Thus, there are 333.33u (400u–(100u × (400u + 600u))) of available earnings in the section 904(d)(1)(I) general separate category (along with $50 of foreign income taxes) and 166.67u (200u–(100u × (200u + 600u))) of available earnings in the section 904(d)(1)(D) shipping separate category (along with $50 of foreign income taxes) and 166.67u (200u—(100u × (200u + 600u))) of available earnings in the section 904(d)(1)(D) shipping separate category (along with $80 of foreign income taxes). Under § 1.902–1(d)(1), the $250 deemed dividend is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	166.67u	$25
Passive	0u	0
Shipping	83.33u	40
	250u	65

(C) *Basis adjustments.* Under § 1.367(b)–5(c)(3), USP does not increase its basis in FD stock as a result of USP's $250 deemed dividend from FD. Under § 1.367(b)–5(c)(4), USP increases its basis in the FD and FC stock by the amount of its basis decrease or deemed dividend inclusion with respect to the other corporation, but only to the extent such basis increase does not diminish USP's postdistribution amount with respect to that other corporation and only to the extent of the other corporation's fair market value. Under these rules, USP increases its basis in the FD stock by the full amount by which it decreased its basis in FC ($150 + $50 = $200). USP does not increase its basis in the FC stock as a result of its deemed dividend from FD because any increase in the FC stock basis would diminish USP's postdistribution amount with respect to such stock.

(D) *FD's earnings and profits after the foreign divisive transaction.* Because the entire $250 reduction in FD's pre-transaction earnings was subject to inclusion under § 1.367(b)–5 (as described in this *Example 2* (ii)(B)), paragraph (b)(2) of this section does not apply. FD has the following earnings and profits and foreign income taxes accounts immediately after the foreign divisive transaction (see § 1.960–1(i)(4)):

Separate category	E&P	Foreign taxes
General	233.33u	$25
Passive	(100u)	6
Shipping	116.67u	40
	250u	71

(E) *Calculation of FC's earnings and profits.* Under paragraph (b)(1)(ii)(B) of this section, FC's earnings and profits are not increased (or replaced) as a result of the foreign divisive transaction. FC's earnings and profits also are not reduced because USP was not required to include a deemed dividend out of FC under § 1.367(b)–5.

Example 3—(i) *Facts.*—(A) USP, a domestic corporation, has owned all of the stock of FD since FD's incorporation in 1995. USP's adjusted basis in the FD stock is $100 and the FD stock has a fair market value of $2,000. FC is a preexisting controlled corporation and FD has always owned all of the FC stock. FD owns assets with total net bases of 320u (including 100u attributable to the FC stock and 160u attributable to the Business B shipping assets). FD and FC have the following earnings and profits and foreign income taxes accounts:

FD	E&P	Foreign taxes
Separate Category:		
General	300u	$50
10/50 dividends from FC1, a noncontrolled section 902 corporation	100u	6
Shipping	200u	80
	600u	136

FC	E&P	Foreign taxes
Separate Category:		
General	100u	$10
Passive	(50u)	6
Shipping	100u	40
	150u	56

(B) On January 1, 2002, FD transfers to FC the Business B shipping assets. FD then distributes the FC stock to USP. The transaction meets the requirements of sections 368(a)(1)(D) and 355. Immediately after the foreign divisive transaction, the FD stock and the FC stock each have a $1,000 fair market value.

(ii) *Result*—(A) *Calculation of FD's earnings and profits.* Under paragraph (b)(4)(i) of this section, FD's pre-transaction earnings are reduced by the sum of the amounts described in paragraphs (b)(4)(i)(A) and (B) of this section. Under paragraph (b)(4)(i)(A) of this section, FD's pre-transaction earnings are reduced by an amount equal to FD's pre-transaction earnings times the net bases of the Business B shipping assets transferred to FC divided by the total net bases in the assets held by FD immediately before the foreign divisive transaction (600u × (160u ÷ 320u) = 300u). Under paragraph (b)(4)(i)(B) of this section, FD's pre-transaction earnings are reduced by an amount equal to FD's pre-transaction earnings times FD's net bases in the stock of FC divided by the total net bases of the assets held by FD immediately before the foreign divisive transaction (600u × (100u ÷ 320u) = 187.50u). The sum of the amounts described in paragraphs (b)(4)(i)(A) and (B) of this section is 487.50u.

(B) *Application of § 1.367(b)–5(c).* The basis adjustment and income inclusion rules of § 1.367(b)–5(c)(2) apply if USP's postdistribution amount with respect to FD or FC stock is less than its predistribution amount with respect to such stock. Under § 1.367(b) –5(e)(1) and (3), USP's predistribution amount with respect to FD or FC stock is USP's section 1248 amount attributable to such stock computed immediately before the distribution, after the allocation of FD's pre-transaction earnings described in paragraphs (b)(4)(i)(A) and (ii)(A) of this section, but before the reduction in FD's pre-transaction earnings described in paragraph (b)(4)(i)(B) of this section. Thus, USP's predistribution amounts with respect to FD and FC stock are $300 (600u–300u) and $450 (150u + 300u), respectively. See also section 989(b)(2). Under section 358, USP allocates its $100 basis in FD stock between FD stock and FC stock according to the stock blocks' relative values, yielding a $50 ($100 × ($1,000 ÷ $2,000)) basis in each block. Under § 1.367(b)–5(e)(2), USP's postdistribution amount with respect to FD or FC stock is USP's section 1248 amount with respect to such stock, computed immediately after the distribution. Accordingly, USP's postdistribution amount with respect to FD stock is $112.50 (600u–300u—187.50u), and its postdistribution amount with respect to FC stock is $450 (150u + 300u). Because USP's postdistribution amount with respect to FC stock is not less than its predistribution amount with respect to such stock, the § 1.367(b)–5(c)(2) basis adjustment and income inclusion rules do not apply with respect to the FC stock. Because USP's postdistribution amount with respect to FD stock is $187.50 less than its predistribution amount with respect to such stock ($300 – $112.50), § 1.367(b)–5(c)(2)(i) and (ii) require USP to reduce its basis in FD stock, but only to the extent such reduction increases USP's section 1248 amount with respect to the FD stock. Because a reduction in USP's basis in the FD stock would not increase any of USP's section 1248 amount with respect to such stock, USP includes the entire $187.50 difference between its predistribution and postdistribution amounts with respect to the FD stock as a deemed dividend from FD. Because the requirements of section 902 are met, USP qualifies for a deemed paid foreign tax credit with respect to the deemed dividend that it receives from FD. Under § 1.902–1(d)(1), the $187.50 deemed dividend is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	93.75u	15.63
10/50 dividends from FC1	31.25u	1.88
Shipping	62.50u	25
	187.50u	42.51

(C) *Basis adjustment.* Under § 1.367(b)–5(c)(3), the basis increase provided in § 1.367(b)–2(e)(3)(ii) does not apply with respect to USP's $187.50 deemed dividend from FD. Under § 1.367(b)–5(c)(4), USP increases its basis in the FC stock by the amount of its deemed dividend inclusion from FD, but only to the extent such basis increase does not diminish USP's postdistribution amount with respect to FC stock and only up to the fair market value of the FC stock. Under these rules, USP increases its basis in the FC stock by the full amount of its deemed dividend from FD ($50 + $187.50 = $237.50).

(D) *Reduction in FD's statutory groupings of earnings and profits.* Under paragraph (b)(2) of this section, the reduction in FD's pre-transaction earnings that is not attributable to USP's inclusion under § 1.367(b)–5 decreases FD's statutory groupings of earnings and profits on a pro rata basis. Under paragraph (e)(3) of this section, FD's pre-transaction taxes are also ratably reduced. As described in this *Example 3* (ii)(A), the reduction in FD's pre-transaction earnings is 487.50u. As described in this *Example 3* (ii)(B), 187.50u of the 487.50u reduction is attributable to a deemed dividend inclusion by USP under § 1.367(b)–5. Thus, under paragraphs (b)(2) and (e)(3) of this section, the remaining 300u reduction in FD's pre-transaction earnings and related pre-transaction taxes is out of FD's separate categories and reduces foreign income taxes as follows:

Separate category	E&P	Foreign taxes
General	150u	$25
10/50 dividends from FC1	50u	3
Shipping	100u	40
	300u	68

(E) *Calculation of FC's earnings and profits.* Under paragraph (b)(4)(ii) of this section, FC's earnings and profits immediately after the foreign divisive transaction equal the sum of FC's earnings and profits immediately before the foreign divisive transaction, plus the amount of the reduction in FD's earnings and profits described in paragraph (b)(4)(i)(A) of this section, except to the extent such amount was included in income as a deemed dividend pursuant to the foreign divisive transaction. The reduction in FD's earnings and profits described in paragraph (b)(4)(i)(A) of this section is 300u, none of which was included in income by USP as a deemed dividend pursuant to the foreign divisive transaction. Under paragraphs (e)(2) and (3) of this section, the 300u of pre-transaction earnings and related pre-transaction taxes carry over to FC and combine with FC's earnings and profits and foreign income taxes accounts in accordance with the rules described in § 1.367(b)–7. Under § 1.367(b)–7(d), FC has the following earnings and profits and foreign income taxes accounts immediately after the foreign divisive transactions

Separate category	E&P	Hovering deficit	Taxes	Taxes associated w/hovering deficit
General	250u		$35	
10/50 dividends from FC1	50u		3	
Passive		(50u)		$6
Shipping	200u		$80	
	500u	(50u)	118	6

(F) *FD's earnings and profits after the foreign divisive transaction.* Following the reductions described in this *Example 3* (ii)(B) and (D), FD has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
General	56.25u	$9.37
10/50 dividends from FC1	18.75u	1.12
Shipping	37.50u	15
	112.50u	25.49

(f) *Effective date.* This section shall apply to section 367(b) exchanges that occur on or after the date 30 days after these regulations are published as final regulations in the **Federal Register**.

Par. 11. Section 1.367(b)–9 is added to read as follows:

§ 1.367(b)–9 Special rule for F reorganizations and similar transactions.

(a) *Scope.* This section applies to any foreign 381 transaction (as described in § 1.367(b)–7(a)) described in section 368(a)(1)(F) or in which either the foreign target corporation or the foreign acquiring corporation is newly created. This section also applies to any foreign divisive transaction (as described in § 1.367(b)–8(a)) that is described in § 1.367(b)–8(e)(1) and that involves a newly created foreign distributing or foreign controlled corporation.

(b) *Hovering deficit rules inapplicable.* If a transaction is described in paragraph (a) of this section, a foreign surviving corporation or a newly created controlled corporation shall succeed to earnings and profits, deficits in earnings and profits, and foreign income taxes without regard to the hovering deficit rules of § 1.367(b)–7(d)(2), (e)(1)(iii), (e)(2)(iii), (f)(1)(iii), and (f)(2)(iii). In the case of a foreign divisive transaction, nothing in this section shall affect the application of § 1.367(b)–8(b)(iii).

(c) *Example.* The following example illustrates the rules of this section:

Example—(i) *Facts.* (A) Foreign corporation A is and always has been a wholly owned subsidiary of USP, a domestic corporation. Foreign corporation A was incorporated in 1990, and always has been a controlled foreign corporation using a calendar taxable year. Foreign corporation A (and all of its respective qualified business units as defined in section 989) maintains a "u" functional currency, and 1u = US$1 at all times. On December 31, 2001, foreign corporation A has the following earnings and profits and foreign income taxes accounts:

Separate category	E&P	Foreign taxes
Passive	(1,000u)	$5
General	200u	200
	(800u)	205

(B) On January 1, 2002, foreign corporation A moves its place of incorporation from Country 1 to Country 2 in a reorganization described in section 368(a)(1)(F).

(ii) *Result.* Under § 1.367(b)–7(d), as modified by paragraph (b) of this section, foreign surviving corporation has the following earnings and profits and foreign income taxes accounts immediately after the foreign 381 transaction:

Separate category	E&P	Foreign taxes
Passive	(1,000u)	$ 5
General	200u	200
	(800u)	205

(d) *Effective date.* This section shall apply to section 367(b) exchanges that occur on or after the date 30 days after these regulations are published as final regulations in the **Federal Register**.

Par. 12. In § 1.367(e)–1, paragraph (a) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 1.367(e)–1 Distributions described in section 367(e)(1).

(a) * * * See § 1.367(b)–8(c)(3) for an example illustrating the interaction of § 1.367(e)–1 with other sections of the Internal Revenue Code (such as sections 367(b) and 1248).

* * * * *

Par. 13. In § 1.381(a)–1, paragraph (c) is revised to read as follows:

§ 1.381(a)–1 General rule relating to carryovers in certain corporate acquisitions.

* * * * *

(c) *Foreign corporations.* For additional rules involving foreign corporations see §§ 1.367(b)–7 and 1.367(b)–9.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

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Part IV

Department of Labor

Office of the Secretary

Delegation of Authority and Assignment of Equal Opportunity Responsibility for Department of Labor External Programs and Conducted Programs; Notice

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 4–2000]

Delegation of Authority and Assignment of Equal Opportunity Responsibility for Department of Labor External Programs and Conducted Programs

1. *Purpose.* To (1) assign responsibility for the enforcement of equal opportunity and nondiscrimination laws, executive orders and statutes relating to programs or activities financially assisted or conducted by the Department of Labor (DOL); (2) delegate responsibility assigned to the Department of Labor by the Department of Justice to implement subpart F of Title 28 CFR part 35; [1] and (3) provide notification that the Directorate of Civil Rights within OASAM is now the Civil Rights Center (CRC).

2. *Directives Affected.* Secretary's Order 2–81 is canceled. The provisions of section 5(a) of this Order supersede sections 4(a)(7), (15), (17), and (30) of Secretary's Order 4–75 and section 4(a)(7) of Secretary's Order 2–85. This directive does not affect Secretary's Order 3–96.

3. *Policy.* It is the policy of DOL to promote equal opportunity in programs or activities it financially assists or conducts, and to ensure full compliance with all constitutional, statutory, and regulatory equal opportunity and nondiscrimination provisions in all such programs or activities. Additionally, it is the policy of DOL to ensure full compliance with the statutory provisions of the Americans with Disabilities Act of 1990, as amended, and its implementing regulations among the public entities assigned to DOL by the Department of Justice.

4. *Background.* Secretary's Order 8–80, issued on October 28, 1980, established the Office of Civil Rights (OCR) within the Office of the Secretary, and gave that office responsibility for enforcing Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972, as amended; and the Age Discrimination Act of 1975, as amended, in programs or activities financially assisted by DOL. Secretary's Order 2–81, issued on June 1, 1981, canceled Secretary's Order 8–80, and transferred OCR to the Office of the Assistant Secretary for Administration and Management. On June 18, 1985, Secretary's Order 2–85 assigned to the Assistant Secretary, OASAM, working through OCR, responsibility for the enforcement of Section 167 of the Job Training Partnership Act. Effective October 14, 1986, OCR underwent an organizational change, and its name changed to the Directorate of Civil Rights. On December 10, 1995, the name of the Directorate of Civil Rights became the Civil Rights Center (CRC).

5. *Delegation of Authority and Assignment of Responsibilities*

a. Through the Assistant Secretary (OASAM), the Director (CRC) is delegated authority and assigned responsibility for:

(1) Developing, implementing, and monitoring DOL's civil rights enforcement program under all equal opportunity and nondiscrimination requirements applicable to programs or activities financially assisted or conducted by DOL, including:

(a) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d *et seq.*);

(b) Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. 794);

(c) Section 508(f) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d);

(d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*);

(e) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 *et seq.*);

(f) Section 167 of the Job Training Partnership Act, as amended (29 U.S.C. 1577) [2];

(g) Section 188 of the Workforce Investment Act of 1998 (29 U.S.C. 2938);

(h) Executive Order 13160 (65 Fed. Reg. 39,773 (June 23, 2000)) [3];

(i) Executive Order 13166 (65 Fed. Reg. 50,121 (August 11, 2000)) [4]; and,

(j) other similarly related laws, executive orders and statutes.

(2) Implementing subpart F of Title 28 CFR part 35, which describes the compliance procedures that apply to public entities subject to Title IIA of the Americans with Disabilities Act of 1990 for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in all programs, services, and regulatory activities relating to labor and the workforce.

(3) Establishing and formulating all policies, standards, and procedures for, as well as issuing rules and regulations governing, the civil rights enforcement programs under the laws, executive orders and statutes referred to in 5.a (1) (a) through (j).

(4) Achieving compliance through pre-approval and post-approval reviews, complaint investigations and other compliance monitoring techniques, negotiations, mediations, and other alternative dispute resolution techniques, conciliation proceedings, and the application of appropriate sanctions and remedies.

(5) Cooperating and coordinating with DOL Agencies, the Office of the Inspector General, the Department of Justice, the Department of Health and Human Services, the Equal Employment Opportunity Commission, and other agencies in connection with the administration of nondiscrimination and equal opportunity laws.

(6) Developing and conducting training and providing technical assistance for CRC staff, as well as for DOL Agency program staffs, recipients of Federal financial assistance from DOL, and beneficiaries of that assistance, programs or activities conducted by DOL.

(7) Developing, implementing, and maintaining a management information and case tracking system that can be used to assess the effectiveness of the DOL Civil Rights program.

(8) Issuing subpoenas for the purpose of any investigation or hearing conducted under section 188 of WIA, as authorized by section 183(c) of WIA, and pursuant to the provisions of section 9 of the Federal Trade Commission Act (15 U.S.C. 49).

b. *The Assistant Secretary for Administration and Management and the Director, Civil Rights Center (CRC),* are delegated authority and assigned responsibility for:

(1) Invoking all appropriate claims of privilege, arising from the functions of the Office of the Assistant Secretary for Administration and Management or the Civil Rights Center, following his/her personal consideration of the matter and in accordance with the following guidelines:

(i) *Informant's Privilege* (to protect from disclosure the identity of any person who has provided information to

[1] Title 28 CFR part 35 effectuates Title IIA of the Americans with Disabilities Act of 1990.

[2] Title 29 CFR part 34, which implements the nondiscrimination and equal opportunity provisions of the JTPA, refers to the Civil Rights Center by its previous name, the Directorate of Civil Rights (DCR).

[3] Executive Order 13160 forbids discrimination in Federally conducted education and training programs and activities on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent.

[4] The purpose of Executive Order 13166 is to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP).

OASAM in cases arising under authority delegated or assigned to OASAM or CRC in subparagraph 5(b) of this Order): A claim of privilege may be asserted where the Assistant Secretary, OASAM or the Director, CRC has determined that disclosure of the privileged matter may: Interfere with an investigation or enforcement action taken by OASAM under authority delegated or assigned to OASAM in subparagraph 5(a) of this Order; adversely affect persons who have provided information to OASAM; or deter other persons from reporting violations of the statute or other authority.

(ii) *Deliberative Process Privilege* (to withhold information which may disclose predecisional intra-agency or inter-agency deliberations, including: the analysis and evaluation of facts; written summaries of factual evidence; and recommendations, opinions or advice on legal or policy matters; in cases arising under authority delegated or assigned to OASAM in section 5(a) of this Order): A claim of privilege may be asserted where the Assistant Secretary, OASAM or the Director, CRC has determined that disclosure of the privileged matter would have an inhibiting effect on the agency's decision-making processes.

(iii) *Privilege for Investigative Files* compiled for law enforcement purposes (to withhold information which may reveal OASAM's confidential investigative techniques and procedures): The investigative files privilege may be asserted where the Assistant Secretary, OASAM or the Director, CRC has determined that disclosure of the privileged matter may have an adverse impact upon OASAM's enforcement of an authority delegated or assigned to OASAM in subparagraph 5(a) of this Order, by: Disclosing investigative techniques and methodologies; deterring persons from providing information to OASAM; prematurely revealing the facts of OASAM's case; or disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(iv) Prior to filing a formal claim of privilege, the Assistant Secretary, OASAM or the Director, CRC shall personally review: All the documents sought to be withheld (or, in cases where the volume is so large that all of the documents cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents); and a description or summary of the litigation in which the disclosure is sought.

(v) In asserting a claim of governmental privilege, the Assistant Secretary, OASAM or the Director, CRC shall ask the Solicitor of Labor or the Solicitor's representative to file any necessary legal papers or documents.

c. *Agency heads* are delegated authority and assigned responsibility for:

(1) Promoting and instituting measures to assure that equality of opportunity is a reality in all programs or activities financially assisted or conducted by their Agencies;

(2) Assuring that equal opportunity and nondiscrimination requirements are incorporated into all regulations, procedures, and other guidelines and references covering programs or activities financially assisted or conducted by their Agencies; and

(3) Maintaining close liaison with, and cooperating with, the Assistant Secretary, OASAM, and the Director, CRC, in all civil rights and equal opportunity matters affecting programs or activities financially assisted or conducted by their Agencies.

d. *The Solicitor of Labor* shall have the responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor. The authorities established in Secretary's Order 2–90 concerning the Office of Inspector General and the representation of the Inspector General are not affected by this paragraph.

6. *Redelegation and Reassignment.* The responsibility herein assigned through the Assistant Secretary, OASAM, to the Director, CRC by section 5(a) of this Order may be further redelegated and reassigned, to the extent permitted by applicable regulations.

7. *Effective Date.* This delegation of authority and assignment of responsibility shall be effective immediately.

Dated: November 7, 2000.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 00–29095 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Wednesday,
November 15, 2000

Part V

Department of Labor

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice of Annual List of Labor Surplus Areas for All States Except Michigan; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice of the Annual List of Labor Surplus Areas for All States Except Michigan

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: The annual list of labor surplus areas is effective October 1, 2000 for all States except Michigan. In Michigan Fiscal Year 2000 classifications, effective October 1, 1999, remain in effect temporarily pending receipt of revised data.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas for Fiscal Year 2001.

FOR FURTHER INFORMATION CONTACT: Steven Aaronson, Leader, ES Operations Team Office of Workforce Security, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4518, Washington, DC 20210. Telephone: 202–219–9092, ext. 151.

SUPPLEMENTARY INFORMATION: The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is hereby publishing the annual list of labor surplus areas.

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas listed below have been classified by the Assistant Secretary as labor surplus areas pursuant to 20 CFR 654.5(b)(48 FR 15615 April 12, 1983) effective October 1, 2000, except for Michigan where Fiscal Year 2001 classifications will be issued at a later date.

Signed at Washington, DC, on October 24, 2000.

Raymond L. Bramucci,

Assistant Secretary.

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001

Eligible labor surplus areas	Civil jurisdictions included
ALABAMA	
ANNISTON CITY	ANNISTON CITY IN CALHOUN COUNTY
BIBB COUNTY	BIBB COUNTY
BULLOCK COUNTY	BULLOCK COUNTY
BUTLER COUNTY	BUTLER COUNTY
CHOCTAW COUNTY	CHOCTAW COUNTY
CLARKE COUNTY	CLARKE COUNTY
COLBERT COUNTY	COLBERT COUNTY
CONECUH COUNTY	CONECUH COUNTY
COVINGTON COUNTY	COVINGTON COUNTY
CRENSHAW COUNTY	CRENSHAW COUNTY
DALLAS COUNTY	DALLAS COUNTY
ESCAMBIA COUNTY	ESCAMBIA COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FLORENCE CITY	FLORENCE CITY IN LAUDERDALE COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
GADSDEN CITY	GADSDEN CITY IN ETOWAH COUNTY
GENEVA COUNTY	GENEVA COUNTY
GREENE COUNTY	GREENE COUNTY
HALE COUNTY	HALE COUNTY
JACKSON COUNTY	JACKSON COUNTY
LAMAR COUNTY	LAMAR COUNTY
LOWNDES COUNTY	LOWNDES COUNTY
MACON COUNTY	MACON COUNTY
MARENGO COUNTY	MARENGO COUNTY
MARION COUNTY	MARION COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MONROE COUNTY	MONROE COUNTY
PERRY COUNTY	PERRY COUNTY
PICKENS COUNTY	PICKENS COUNTY
PRICHARD CITY	PRICHARD CITY IN MOBILE COUNTY
SUMTER COUNTY	SUMTER COUNTY
WALKER COUNTY	WALKER COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WILCOX COUNTY	WILCOX COUNTY
ALASKA	
ALEUTIAN ISLAND WEST CENSUS AREA	ALEUTIAN ISLAND WEST CENSUS AREA
BETHEL CENSUS AREA	BETHEL CENSUS AREA
BRISTOL BAY BOROUGH DIV	BRISTOL BAY BOROUGH DIV
DENALI BOROUGH	DENALI BOROUGH
DILLINGHAM CENSUS AREA	DILLINGHAM CENSUS AREA
FAIRBANKS CITY	FAIRBANKS CITY IN FAIRBANKS NORTH STAR BOROUGH

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
HAINES BOROUGH	HAINES BOROUGH
KENAI PENINSULA BOROUGH	KENAI PENINSULA BOROUGH
KETCHIKAN GATEWAY BOROUGH	KETCHIKAN GATEWAY BOROUGH
KODIAK ISLAND BOROUGH	KODIAK ISLAND BOROUGH
LAKE AND PENINSULA BOROUGH	LAKE AND PENINSULA BOROUGH
MATANUSKA-SUSITNA BOROUGH	MATANUSKA-SUSITNA BOROUGH
NOME CENSUS AREA	NOME CENSUS AREA
NORTH SLOPE BOROUGH	NORTH SLOPE BOROUGH
NORTHWEST ARCTIC BOROUGH	NORTHWEST ARCTIC BOROUGH
PRINCE OF WALES OUTER KETCHIKAN	PRINCE OF WALES OUTER KETCHIKAN
SKAGWAY-HOONAH-ANGOON CEN AREA	SKAGWAY-HOONAH-ANGOON CEN AREA
SOUTHEAST FAIRBANKS CENSUS AREA	SOUTHEAST FAIRBANKS CENSUS AREA
VALDEZ CORDOVA CENSUS AREA	VALDEZ CORDOVA CENSUS AREA
WADE HAMPTON CENSUS AREA	WADE HAMPTON CENSUS AREA
WRANGELL-PETERSBURG CENSUS AREA	WRANGELL-PETERSBURG CENSUS AREA
YAKUTAT BOROUGH	YAKUTAT BOROUGH
YUKON-KOYUKUK CENSUS AREA	YUKON-KOYUKUK CENSUS AREA
ARIZONA	
APACHE COUNTY	APACHE COUNTY
BALANCE OF COCHISE COUNTY	COCHISE COUNTY LESS SIERRA VISTA CITY
BALANCE OF COCONINO COUNTY	COCONINO COUNTY LESS FLAGSTAFF CITY
GILA COUNTY	GILA COUNTY
GRAHAM COUNTY	GRAHAM COUNTY
GREENLEE COUNTY	GREENLEE COUNTY
LA PAZ COUNTY	LA PAZ COUNTY
NAVAJO COUNTY	NAVAJO COUNTY
SANTA CRUZ COUNTY	SANTA CRUZ COUNTY
YUMA CITY	YUMA CITY IN YUMA COUNTY
BALANCE OF YUMA COUNTY	YUMA COUNTY LESS YUMA CITY
ARKANSAS	
ASHLEY COUNTY	ASHLEY COUNTY
BOONE COUNTY	BOONE COUNTY
BRADLEY COUNTY	BRADLEY COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHICOT COUNTY	CHICOT COUNTY
CLAY COUNTY	CLAY COUNTY
CLEVELAND COUNTY	CLEVELAND COUNTY
COLUMBIA COUNTY	COLUMBIA COUNTY
CONWAY COUNTY	CONWAY COUNTY
CROSS COUNTY	CROSS COUNTY
DALLAS COUNTY	DALLAS COUNTY
DESHA COUNTY	DESHA COUNTY
DREW COUNTY	DREW COUNTY
HEMPSTEAD COUNTY	HEMPSTEAD COUNTY
JACKSON COUNTY	JACKSON COUNTY
BALANCE OF JEFFERSON COUNTY	JEFFERSON COUNTY LESS PINE BLUFF CITY
LAFAYETTE COUNTY	LAFAYETTE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEE COUNTY	LEE COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
LITTLE RIVER COUNTY	LITTLE RIVER COUNTY
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY
MONROE COUNTY	MONROE COUNTY
NEVADA COUNTY	NEVADA COUNTY
NEWTON COUNTY	NEWTON COUNTY
OUACHITA COUNTY	OUACHITA COUNTY
PERRY COUNTY	PERRY COUNTY
PHILLIPS COUNTY	PHILLIPS COUNTY
PINE BLUFF CITY	PINE BLUFF CITY IN JEFFERSON COUNTY
POINSETT COUNTY	POINSETT COUNTY
PRAIRIE COUNTY	PRAIRIE COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
SEARCY COUNTY	SEARCY COUNTY
ST. FRANCIS COUNTY	ST. FRANCIS COUNTY
UNION COUNTY	UNION COUNTY
VAN BUREN COUNTY	VAN BUREN COUNTY
WOODRUFF COUNTY	WOODRUFF COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
CALIFORNIA	
ALPINE COUNTY	ALPINE COUNTY
AZUSA CITY	AZUSA CITY IN LOS ANGELES COUNTY
BAKERSFIELD CITY	BAKERSFIELD CITY IN KERN COUNTY
BALDWIN PARK CITY	BALDWIN PARK CITY IN LOS ANGELES COUNTY
BANNING CITY	BANNING CITY IN RIVERSIDE COUNTY
BELL CITY	BELL CITY IN LOS ANGELES COUNTY
BELL GARDENS CITY	BELL GARDENS CITY IN LOS ANGELES COUNTY
BALANCE OF BUTTE COUNTY	BUTTE COUNTY LESS CHICO CITY; PARADISE CITY
CALAVERAS COUNTY	CALAVERAS COUNTY
CALEXICO CITY	CALEXICO CITY IN IMPERIAL COUNTY
CARSON CITY	CARSON CITY IN LOS ANGELES COUNTY
CERES CITY	CERES CITY IN STANISLAUS COUNTY
CHICO CITY	CHICO CITY IN BUTTE COUNTY
CLOVIS CITY	CLOVIS CITY IN FRESNO COUNTY
COLTON CITY	COLTON CITY IN SAN BERNARDINO COUNTY
COLUSA COUNTY	COLUSA COUNTY
COMPTON CITY	COMPTON CITY IN LOS ANGELES COUNTY
DEL NORTE COUNTY	DEL NORTE COUNTY
DELANO CITY	DELANO CITY IN KERN COUNTY
EL CENTRO CITY	EL CENTRO CITY IN IMPERIAL COUNTY
EL MONTE CITY	EL MONTE CITY IN LOS ANGELES COUNTY
EUREKA CITY	EUREKA CITY IN HUMBOLDT COUNTY
FRESNO CITY	FRESNO CITY IN FRESNO COUNTY
BALANCE OF FRESNO COUNTY	FRESNO COUNTY LESS CLOVIS CITY, FRESNO CITY
GLENN COUNTY	GLENN COUNTY
HANFORD CITY	HANFORD CITY IN KINGS COUNTY
HEMET CITY	HEMET CITY IN RIVERSIDE COUNTY
HESPERIA CITY	HESPERIA CITY IN SAN BERNARDINO COUNTY
HIGHLAND CITY	HIGHLAND CITY IN SAN BERNARDINO COUNTY
HOLISTER CITY	HOLISTER CITY IN SAN BENITO COUNTY
BALANCE OF HUMBOLDT COUNTY	HUMBOLDT COUNTY LESS EUREKA CITY
HUNTINGTON PARK CITY	HUNTINGTON PARK CITY IN LOS ANGELES COUNTY
BALANCE OF IMPERIAL COUNTY	IMPERIAL COUNTY LESS CALEXICO CITY, EL CENTRO CITY
INDIO CITY	INDIO CITY IN RIVERSIDE COUNTY
INGLEWOOD CITY	INGLEWOOD CITY IN LOS ANGELES COUNTY
INYO COUNTY	INYO COUNTY
BALANCE OF KERN COUNTY	KERN COUNTY LESS BAKERSFIELD CITY, DELANO CITY, RIDGECREST CITY
BALANCE OF KINGS COUNTY	KINGS COUNTY LESS HANFORD CITY
LA PUENTE CITY	LA PUENTE CITY IN LOS ANGELES COUNTY
LAKE COUNTY	LAKE COUNTY
LAKE ELSINORE CITY	LAKE ELSINORE CITY IN RIVERSIDE COUNTY
LASSEN COUNTY	LASSEN COUNTY
LAWNDALE CITY	LAWNDALE CITY IN LOS ANGELES COUNTY
LODI CITY	LODI CITY IN SAN JOAQUIN COUNTY
LOS ANGELES CITY	LOS ANGELES CITY IN LOS ANGELES COUNTY
BALANCE OF LOS ANGELES COUNTY	LOS ANGELES COUNTY LESS AGOURA HILLS CITY, ALHAMBRA CITY, ARCADIA CITY, AZUSA CITY, BALDWIN PARK CITY, BELL CITY, BELL GARDENS CITY, BELLFLOWER CITY, BEVERLY HILLS CITY, BURBANK CITY, CARSON CITY, CERRITOS CITY, CLAREMONT CITY, COMPTON CITY, COVINA CITY, CULVER CITY, DIAMOND BAR CITY, DOWNEY CITY, EL MONTE CITY, GARDENA CITY, GLENDALE CITY, GLENDORA CITY, HAWTHORNE CITY, HUNTINGTON PARK CITY, INGLEWOOD CITY, LA MIRADA CITY, LA PUENTE CITY, LA VERNE CITY, LAKEWOOD CITY, LANCASTER CITY, LAWNDALE CITY, LONG BEACH CITY, LOS ANGELES CITY, LYNWOOD CITY, MANHATTAN BEACH CITY, MAYWOOD CITY, MONROVIA CITY, MONTEBELLO CITY, MONTEREY PARK CITY, NORWALK CITY, PALMDALE CITY, PARAMOUNT CITY, PASADENA CITY, PICO RIVERA CITY, POMONA CITY, RANCHO PALOS VERDES CITY, REDONDO BEACH CITY, ROSEMEAD CITY, SAN DIMAS CITY, SAN GABRIEL CITY, SANTA CLARITA CITY, SANTA MONICA CITY, SOUTH GATE CITY, TEMPLE CITY, TORRANCE CITY, WALNUT CITY, WEST COVINA CITY, WEST HOLLYWOOD CITY, WHITTIER CITY
LYNWOOD CITY	LYNWOOD CITY IN LOS ANGELES COUNTY
MADERA CITY	MADERA CITY IN MADERA COUNTY
BALANCE OF MADERA COUNTY	MADERA COUNTY LESS MADERA CITY
MANTECA CITY	MANTECA CITY IN SAN JOAQUIN COUNTY
MARINA CITY	MARINA CITY IN MONTEREY COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
MARIPOSA COUNTY	MARIPOSA COUNTY
MAYWOOD CITY	MAYWOOD CITY IN LOS ANGELES COUNTY
MENDOCINO COUNTY	MENDOCINO COUNTY
MERCED CITY	MERCED CITY IN MERCED COUNTY
BALANCE OF MERCED COUNTY	MERCED COUNTY LESS MERCED CITY
MODESTO CITY	MODESTO CITY IN STANISLAUS COUNTY
MODOC COUNTY	MODOC COUNTY
MONO COUNTY	MONO COUNTY
BALANCE OF MONTEREY COUNTY	MONTEREY COUNTY LESS MARINA CITY, MONTEREY CITY, SALINAS CITY, SEASIDE CITY
MORENO VALLEY CITY	MORENO VALLEY CITY IN RIVERSIDE COUNTY
NATIONAL CITY	NATIONAL CITY IN SAN DIEGO COUNTY
OAKLAND CITY	OAKLAND CITY IN ALAMEDA COUNTY
OXNARD CITY	OXNARD CITY IN VENTURA COUNTY
PARAMOUNT CITY	PARAMOUNT CITY IN LOS ANGELES COUNTY
PERRIS CITY	PERRIS CITY IN RIVERSIDE COUNTY
PICO RIVERA CITY	PICO RIVERA CITY IN LOS ANGELES COUNTY
PLUMAS COUNTY	PLUMAS COUNTY
POMONA CITY	POMONA CITY IN LOS ANGELES COUNTY
PORTERVILLE CITY	PORTERVILLE CITY IN TULARE COUNTY
REDDING CITY	REDDING CITY IN SHASTA COUNTY
RICHMOND CITY	RICHMOND CITY IN CONTRA COSTA COUNTY
RIDGECREST CITY	RIDGECREST CITY IN KERN COUNTY
RIVERSIDE CITY	RIVERSIDE CITY IN RIVERSIDE COUNTY
BALANCE OF RIVERSIDE COUNTY	RIVERSIDE COUNTY LESS BANNING CITY, CATHEDRAL CITY, CORONA CITY, HEMET CITY, INDIO CITY, LAKE ELSINORE CITY, MORENO VALLEY CITY, MURRIETA CITY, NORCO CITY, PALM DESERT CITY, PALM SPRINGS CITY, PERRIS CITY, RIVERSIDE CITY, TEMECULA CITY
ROSEMEAD CITY	ROSEMEAD CITY IN LOS ANGELES COUNTY
SALINAS CITY	SALINAS CITY IN MONTEREY COUNTY
BALANCE OF SAN BENITO COUNTY	SAN BENITO COUNTY LESS HOLISTER CITY
SAN BERNARDINO CITY	SAN BERNARDINO CITY IN SAN BERNARDINO COUNTY
BALANCE OF SAN JOAQUIN COUNTY	SAN JOAQUIN COUNTY LESS LODI CITY, MANTECA CITY, STOCKTON CITY, TRACEY CITY
SAN PABLO CITY	SAN PABLO CITY IN CONTRA COSTA COUNTY
SANTA CRUZ CITY	SANTA CRUZ CITY IN SANTA CRUZ COUNTY
SANTA MARIA CITY	SANTA MARIA CITY IN SANTA BARBARA COUNTY
SANTA PAULA CITY	SANTA PAULA CITY IN VENTURA COUNTY
SEASIDE CITY	SEASIDE CITY IN MONTEREY COUNTY
BALANCE OF SHASTA COUNTY	SHASTA COUNTY LESS REDDING CITY
SIERRA COUNTY	SIERRA COUNTY
SISKIYOU COUNTY	SISKIYOU COUNTY
SOUTH GATE CITY	SOUTH GATE CITY IN LOS ANGELES COUNTY
BALANCE OF STANISLAUS COUNTY	STANISLAUS COUNTY LESS CERES CITY, MODESTO CITY, TURLOCK CITY
STOCKTON CITY	STOCKTON CITY IN SAN JOAQUIN COUNTY
SUISON CITY	SUISON CITY IN SOLANO COUNTY
BALANCE OF SUTTER COUNTY	SUTTER COUNTY LESS YUBA CITY
TEHAMA COUNTY	TEHAMA COUNTY
TRACEY CITY	TRACEY CITY IN SAN JOAQUIN COUNTY
TRINITY COUNTY	TRINITY COUNTY
TULARE CITY	TULARE CITY IN TULARE COUNTY
BALANCE OF TULARE COUNTY	TULARE COUNTY LESS PORTERVILLE CITY, TULARE CITY, VISALIA CITY
TUOLUMNE COUNTY	TUOLUMNE COUNTY
TURLOCK CITY	TURLOCK CITY IN STANISLAUS COUNTY
VICTORVILLE CITY	VICTORVILLE CITY IN SAN BERNARDINO COUNTY
VISALIA CITY	VISALIA CITY IN TULARE COUNTY
WATSONVILLE CITY	WATSONVILLE CITY IN SANTA CRUZ COUNTY
WEST SACRAMENTO CITY	WEST SACRAMENTO CITY IN YOLO COUNTY
YUBA CITY	YUBA CITY IN SUTTER COUNTY
YUBA COUNTY	YUBA COUNTY
COLORADO	
ALAMOSA COUNTY	ALAMOSA COUNTY
CONEJOS COUNTY	CONEJOS COUNTY
COSTILLA COUNTY	COSTILLA COUNTY
DOLORES COUNTY	DOLORES COUNTY
HUERFANO COUNTY	HUERFANO COUNTY
PUEBLO CITY	PUEBLO CITY IN PUEBLO COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
RIO GRANDE COUNTY	RIO GRANDE COUNTY
SAGUACHE COUNTY	SAGUACHE COUNTY
SAN JUAN COUNTY	SAN JUAN COUNTY
CONNECTICUT	
BRIDGEPORT CITY	BRIDGEPORT CITY
HARTFORD CITY	HARTFORD CITY
KILLINGLY TOWN	KILLINGLY TOWN
VOLUNTOWN TOWN	VOLUNTOWN TOWN
DISTRICT OF COLUMBIA	
WASHINGTON DC CITY	WASHINGTON DC CITY IN DISTRICT OF COLUMBIA
FLORIDA	
CALHOUN COUNTY	CALHOUN COUNTY
DE SOTO COUNTY	DE SOTO COUNTY
DELRAY BEACH CITY	DELRAY BEACH CITY IN PALM BEACH COUNTY
FORT PIERCE CITY	FORT PIERCE CITY IN ST. LUCIE COUNTY
GLADES COUNTY	GLADES COUNTY
GULF COUNTY	GULF COUNTY
HAMILTON COUNTY	HAMILTON COUNTY
HARDEE COUNTY	HARDEE COUNTY
HENDRY COUNTY	HENDRY COUNTY
HIALEAH CITY	HIALEAH CITY IN MIAMI-DADE COUNTY
HIGHLANDS COUNTY	HIGHLANDS COUNTY
INDIAN RIVER COUNTY	INDIAN RIVER COUNTY
LAUDERDALE LAKES CITY	LAUDERDALE LAKES CITY IN BROWARD COUNTY
MIAMI BEACH CITY	MIAMI BEACH CITY IN MIAMI-DADE COUNTY
MIAMI CITY	MIAMI CITY IN MIAMI-DADE COUNTY
NORTH MIAMI CITY	NORTH MIAMI CITY IN MIAMI-DADE COUNTY
OKEECHOBEE COUNTY	OKEECHOBEE COUNTY
PANAMA CITY	PANAMA CITY IN BAY COUNTY
PORT ST. LUCIE CITY	PORT ST. LUCIE CITY IN ST. LUCIE COUNTY
RIVIERA BEACH CITY	RIVIERA BEACH CITY IN PALM BEACH COUNTY
BALANCE OF ST. LUCIE COUNTY	ST. LUCIE COUNTY LESS FORT PIERCE CITY, PORT ST. LUCIE CITY
TAYLOR COUNTY	TAYLOR COUNTY
WEST PALM BEACH CITY	WEST PALM BEACH CITY IN PALM BEACH COUNTY
GEORGIA	
ALBANY CITY	ALBANY CITY IN DOUGHERTY COUNTY
APPLING COUNTY	APPLING COUNTY
ATKINSON COUNTY	ATKINSON COUNTY
AUGUSTA CITY	AUGUSTA CITY IN RICHMOND COUNTY
BACON COUNTY	BACON COUNTY
BAKER COUNTY	BAKER COUNTY
BEN HILL COUNTY	BEN HILL COUNTY
BRANTLEY COUNTY	BRANTLEY COUNTY
BURKE COUNTY	BURKE COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHATTAHOOCHEE COUNTY	CHATTAHOOCHEE COUNTY
CLAY COUNTY	CLAY COUNTY
CRISP COUNTY	CRISP COUNTY
DOOLY COUNTY	DOOLY COUNTY
EARLY COUNTY	EARLY COUNTY
ELBERT COUNTY	ELBERT COUNTY
EMANUEL COUNTY	EMANUEL COUNTY
GLASCOCK COUNTY	GLASCOCK COUNTY
GRADY COUNTY	GRADY COUNTY
GREENE COUNTY	GREENE COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HINESVILLE CITY	HINESVILLE CITY IN LIBERTY COUNTY
JEFF DAVIS COUNTY	JEFF DAVIS COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
LA GRANGE CITY	LA GRANGE CITY IN TROUP COUNTY
LAURENS COUNTY	LAURENS COUNTY
BALANCE OF LIBERTY COUNTY	LIBERTY COUNTY LESS HINESVILLE CITY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
LINCOLN COUNTY	LINCOLN COUNTY
MACON CITY	MACON CITY IN BIBB COUNTY
	JONES COUNTY
MACON COUNTY	MACON COUNTY
MC DUFFIE COUNTY	MC DUFFIE COUNTY
MITCHELL COUNTY	MITCHELL COUNTY
MONROE COUNTY	MONROE COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
PEACH COUNTY	PEACH COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
ROME CITY	ROME CITY IN FLOYD COUNTY
SCREVEN COUNTY	SCREVEN COUNTY
STEWART COUNTY	STEWART COUNTY
SUMTER COUNTY	SUMTER COUNTY
TALIAFERRO COUNTY	TALIAFERRO COUNTY
TAYLOR COUNTY	TAYLOR COUNTY
TELFAIR COUNTY	TELFAIR COUNTY
TERRELL COUNTY	TERRELL COUNTY
TOOMBS COUNTY	TOOMBS COUNTY
TREUTLEN COUNTY	TREUTLEN COUNTY
TURNER COUNTY	TURNER COUNTY
TWIGGS COUNTY	TWIGGS COUNTY
WARREN COUNTY	WARREN COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WAYNE COUNTY	WAYNE COUNTY
WHEELER COUNTY	WHEELER COUNTY
WILKES COUNTY	WILKES COUNTY
WILKINSON COUNTY	WILKINSON COUNTY
WORTH COUNTY	WORTH COUNTY
HAWAII	
HAWAII COUNTY	HAWAII COUNTY
KAUAI COUNTY	KAUAI COUNTY
MAUI COUNTY	MAUI COUNTY
IDAHO	
ADAMS COUNTY	ADAMS COUNTY
BENEWAH COUNTY	BENEWAH COUNTY
BOISE COUNTY	BOISE COUNTY
BONNER COUNTY	BONNER COUNTY
BOUNDARY COUNTY	BOUNDARY COUNTY
CARIBOU COUNTY	CARIBOU COUNTY
CASSIA COUNTY	CASSIA COUNTY
CLEARWATER COUNTY	CLEARWATER COUNTY
COEUR D ALENE CITY	COEUR D ALENE CITY
CUSTER COUNTY	CUSTER COUNTY
ELMORE COUNTY	ELMORE COUNTY
FREMONT COUNTY	FREMONT COUNTY
GEM COUNTY	GEM COUNTY
IDAHO COUNTY	IDAHO COUNTY
BALANCE OF KOOTENAI COUNTY	KOOTENAI COUNTY LESS COEUR D ALENE CITY
LEMHI COUNTY	LEMHI COUNTY
LEWIS COUNTY	LEWIS COUNTY
MINIDOKA COUNTY	MINIDOKA COUNTY
BALANCE OF NEZ PERCE COUNTY	NEZ PERCE COUNTY LESS LEWISTON CITY
PAYETTE COUNTY	PAYETTE COUNTY
POWER COUNTY	POWER COUNTY
SHOSHONE COUNTY	SHOSHONE COUNTY
VALLEY COUNTY	VALLEY COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
ILLINOIS	
ALEXANDER COUNTY	ALEXANDER COUNTY
ALTON CITY	ALTON CITY IN MADISON COUNTY
BELLEVILLE CITY	BELLEVILLE CITY IN ST. CLAIR COUNTY
CARPENTERSVILLE CITY	CARPENTERSVILLE CITY IN KANE COUNTY
CHICAGO HEIGHTS CITY	CHICAGO HEIGHTS CITY IN COOK COUNTY
CICERO CITY	CICERO CITY IN COOK COUNTY
CLAY COUNTY	CLAY COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
CRAWFORD COUNTY	CRAWFORD COUNTY
DANVILLE CITY	DANVILLE CITY IN VERMILION COUNTY
DECATUR CITY	DECATUR CITY IN MACON COUNTY
DOLTON VILLAGE	DOLTON VILLAGE IN COOK COUNTY
EAST ST. LOUIS CITY	EAST ST. LOUIS CITY IN ST. CLAIR COUNTY
EDWARDS COUNTY	EDWARDS COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
FREEPORT CITY	FREEPORT CITY IN STEPHENSON COUNTY
FULTON COUNTY	FULTON COUNTY
GALLATIN COUNTY	GALLATIN COUNTY
GRANITE CITY	GRANITE CITY IN MADISON COUNTY
GRUNDY COUNTY	GRUNDY COUNTY
HAMILTON COUNTY	HAMILTON COUNTY
HARDIN COUNTY	HARDIN COUNTY
HARVEY CITY	HARVEY CITY IN COOK COUNTY
JASPER COUNTY	JASPER COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
JOLIET CITY	JOLIET CITY IN WILL COUNTY
KANKAKEE CITY	KANKAKEE CITY IN KANKAKEE COUNTY
LA SALLE COUNTY	LA SALLE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
MARION COUNTY	MARION COUNTY
MASON COUNTY	MASON COUNTY
MAYWOOD VILLAGE	MAYWOOD VILLAGE IN COOK COUNTY
MERCER COUNTY	MERCER COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
NORTH CHICAGO CITY	NORTH CHICAGO CITY IN LAKE COUNTY
PERRY COUNTY	PERRY COUNTY
POPE COUNTY	POPE COUNTY
PULASKI COUNTY	PULASKI COUNTY
RICHLAND COUNTY	RICHLAND COUNTY
ROCKFORD CITY	ROCKFORD CITY IN WINNEBAGO COUNTY
SALINE COUNTY	SALINE COUNTY
UNION COUNTY	UNION COUNTY
WABASH COUNTY	WABASH COUNTY
WAUKEGAN CITY	WAUKEGAN CITY IN LAKE COUNTY
WAYNE COUNTY	WAYNE COUNTY
WHITE COUNTY	WHITE COUNTY
WILLIAMSON COUNTY	WILLIAMSON COUNTY
INDIANA	
EAST CHICAGO CITY	EAST CHICAGO CITY IN LAKE COUNTY
GARY CITY	GARY CITY IN LAKE COUNTY
GREENE COUNTY	GREENE COUNTY
ORANGE COUNTY	ORANGE COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
KANSAS	
GEARY COUNTY	GEARY COUNTY
KANSAS CITY KN	KANSAS CITY KN IN WYANDOTTE COUNTY
LINN COUNTY	LINN COUNTY
KENTUCKY	
ADAIR COUNTY	ADAIR COUNTY
BOYD COUNTY	BOYD COUNTY
BREATHITT COUNTY	BREATHITT COUNTY
CARTER COUNTY	CARTER COUNTY
CASEY COUNTY	CASEY COUNTY
CLAY COUNTY	CLAY COUNTY
CRITTENDEN COUNTY	CRITTENDEN COUNTY
CUMBERLAND COUNTY	CUMBERLAND COUNTY
EDMONSON COUNTY	EDMONSON COUNTY
ELLIOTT COUNTY	ELLIOTT COUNTY
FLOYD COUNTY	FLOYD COUNTY
FULTON COUNTY	FULTON COUNTY
GRAYSON COUNTY	GRAYSON COUNTY
GREEN COUNTY	GREEN COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
GREENUP COUNTY	GREENUP COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HARLAN COUNTY	HARLAN COUNTY
HENDERSON CITY	HENDERSON CITY IN HENDERSON COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
KNOTT COUNTY	KNOTT COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LETCHER COUNTY	LETCHER COUNTY
LEWIS COUNTY	LEWIS COUNTY
MAGOFFIN COUNTY	MAGOFFIN COUNTY
MARTIN COUNTY	MARTIN COUNTY
MC CREARY COUNTY	MC CREARY COUNTY
MC LEAN COUNTY	MC LEAN COUNTY
MENIFEE COUNTY	MENIFEE COUNTY
MONROE COUNTY	MONROE COUNTY
MORGAN COUNTY	MORGAN COUNTY
MUHLENBERG COUNTY	MUHLENBERG COUNTY
OHIO COUNTY	OHIO COUNTY
PERRY COUNTY	PERRY COUNTY
PIKE COUNTY	PIKE COUNTY
RUSSELL COUNTY	RUSSELL COUNTY
TAYLOR COUNTY	TAYLOR COUNTY
UNION COUNTY	UNION COUNTY
WAYNE COUNTY	WAYNE COUNTY
WEBSTER COUNTY	WEBSTER COUNTY
LOUISIANA	
ACADIA PARISH	ACADIA PARISH
ALEXANDRIA CITY	ALEXANDRIA CITY IN RAPIDES PARISH
ALLEN PARISH	ALLEN PARISH
ASSUMPTION PARISH	ASSUMPTION PARISH
AVOYELLES PARISH	AVOYELLES PARISH
BEAUREGARD PARISH	BEAUREGARD PARISH
BIENVILLE PARISH	BIENVILLE PARISH
CALDWELL PARISH	CALDWELL PARISH
CATAHOULA PARISH	CATAHOULA PARISH
CLAIBORNE PARISH	CLAIBORNE PARISH
CONCORDIA PARISH	CONCORDIA PARISH
DE SOTO PARISH	DE SOTO PARISH
EAST CARROLL PARISH	EAST CARROLL PARISH
FRANKLIN PARISH	FRANKLIN PARISH
GRANT PARISH	GRANT PARISH
BALANCE OF IBERIA PARISH	IBERIA PARISH LESS NEW IBERIA CITY
IBERVILLE PARISH	IBERVILLE PARISH
JACKSON PARISH	JACKSON PARISH
JEFFERSON DAVIS PARISH	JEFFERSON DAVIS PARISH
LA SALLE PARISH	LA SALLE PARISH
LAKE CHARLES CITY	LAKE CHARLES CITY IN CALCASIEU PARISH
MADISON PARISH	MADISON PARISH
MONROE CITY	MONROE CITY IN OUACHITA PARISH
MOREHOUSE PARISH	MOREHOUSE PARISH
NEW IBERIA CITY	NEW IBERIA CITY IN IBERIA PARISH
POINTE COUPEE PARISH	POINTE COUPEE PARISH
RED RIVER PARISH	RED RIVER PARISH
RICHLAND PARISH	RICHLAND PARISH
SABINE PARISH	SABINE PARISH
ST. JAMES PARISH	ST. JAMES PARISH
ST. JOHN BAPTIST PARISH	ST. JOHN BAPTIST PARISH
ST. LANDRY PARISH	ST. LANDRY PARISH
ST. MARTIN PARISH	ST. MARTIN PARISH
ST. MARY PARISH	ST. MARY PARISH
TANGIPAHOA PARISH	TANGIPAHOA PARISH
TENSAS PARISH	TENSAS PARISH
VERMILION PARISH	VERMILION PARISH
VERNON PARISH	VERNON PARISH
WASHINGTON PARISH	WASHINGTON PARISH
WEBSTER PARISH	WEBSTER PARISH
WEST CARROLL PARISH	WEST CARROLL PARISH
WINN PARISH	WINN PARISH

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
MAINE	
AROOSTOOK COUNTY	AROOSTOOK COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
OXFORD COUNTY	OXFORD COUNTY
PISCATAQUIS COUNTY	PISCATAQUIS COUNTY
SOMERSET COUNTY	SOMERSET COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
MARYLAND	
ALLEGANY COUNTY	ALLEGANY COUNTY
BALTIMORE CITY	BALTIMORE CITY
DORCHESTER COUNTY	DORCHESTER COUNTY
GARRETT COUNTY	GARRETT COUNTY
SOMERSET COUNTY	SOMERSET COUNTY
WORCESTER COUNTY	WORCESTER COUNTY
MASSACHUSETTS	
FALL RIVER CITY	FALL RIVER CITY IN BRISTOL COUNTY
GAY HEAD TOWN	GAY HEAD TOWN IN DUKES COUNTY
HINSDALE TOWN	HINSDALE TOWN IN BERKSHIRE COUNTY
LAWRENCE CITY	LAWRENCE CITY IN ESSEX COUNTY
NEW BEDFORD CITY	NEW BEDFORD CITY IN BRISTOL COUNTY
PROVINCETOWN TOWN	PROVINCETOWN TOWN IN BARNSTABLE COUNTY
TRURO TOWN	TRURO TOWN IN BARNSTABLE COUNTY
WELLFLEET TOWN	WELLFLEET TOWN IN BARNSTABLE COUNTY
MICHIGAN	
ALCONA COUNTY	ALCONA COUNTY
ALGER COUNTY	ALGER COUNTY
ALPENA COUNTY	ALPENA COUNTY
ANTRIM COUNTY	ANTRIM COUNTY
ARENAC COUNTY	ARENAC COUNTY
BARAGA COUNTY	BARAGA COUNTY
BAY CITY	BAY CITY IN BAY COUNTY
BENZIE COUNTY	BENZIE COUNTY
BURTON CITY	BURTON CITY IN GENESEE COUNTY
CHEBOYGAN COUNTY	CHEBOYGAN COUNTY
CHIPPEWA COUNTY	CHIPPEWA COUNTY
CLARE COUNTY	CLARE COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
DELTA COUNTY	DELTA COUNTY
DETROIT CITY	DETROIT CITY IN WAYNE COUNTY
EMMET COUNTY	EMMET COUNTY
FLINT CITY	FLINT CITY IN GENESEE COUNTY
GLADWIN COUNTY	GLADWIN COUNTY
GOGEBIC COUNTY	GOGEBIC COUNTY
HIGHLAND PARK CITY	HIGHLAND PARK CITY IN WAYNE COUNTY
IOSCO COUNTY	IOSCO COUNTY
IRON COUNTY	IRON COUNTY
JACKSON CITY	JACKSON CITY IN JACKSON COUNTY
KALKASKA COUNTY	KALKASKA COUNTY
KEWEENAW COUNTY	KEWEENAW COUNTY
LAKE COUNTY	LAKE COUNTY
LUCE COUNTY	LUCE COUNTY
MACKINAC COUNTY	MACKINAC COUNTY
MANISTEE COUNTY	MANISTEE COUNTY
MASON COUNTY	MASON COUNTY
MENOMINEE COUNTY	MENOMINEE COUNTY
MISSAUKEE COUNTY	MISSAUKEE COUNTY
MONTCALM COUNTY	MONTCALM COUNTY
MONTMORENCY COUNTY	MONTMORENCY COUNTY
MOUNT MORRIS TOWNSHIP	MOUNT MORRIS TOWNSHIP IN GENESEE COUNTY
MUSKEGON CITY	MUSKEGON CITY IN MUSKEGON COUNTY
NEWAYGO COUNTY	NEWAYGO COUNTY
OCEANA COUNTY	OCEANA COUNTY
OGEMAW COUNTY	OGEMAW COUNTY
ONTONAGON COUNTY	ONTONAGON COUNTY
OSCEOLA COUNTY	OSCEOLA COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
OSCODA COUNTY	OSCODA COUNTY
PONTIAC CITY	PONTIAC CITY IN OAKLAND COUNTY
PORT HURON CITY	PORT HURON CITY IN ST. CLAIR COUNTY
PRESQUE ISLE COUNTY	PRESQUE ISLE COUNTY
ROSCOMMON COUNTY	ROSCOMMON COUNTY
SAGINAW CITY	SAGINAW CITY IN SAGINAW COUNTY
SCHOOLCRAFT COUNTY	SCHOOLCRAFT COUNTY
WEXFORD COUNTY	WEXFORD COUNTY
MINNESOTA	
AITKIN COUNTY	AITKIN COUNTY
CLEARWATER COUNTY	CLEARWATER COUNTY
ITASCA COUNTY	ITASCA COUNTY
KANABEC COUNTY	KANABEC COUNTY
KOOCHICHING COUNTY	KOOCHICHING COUNTY
MAHNOMEN COUNTY	MAHNOMEN COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MILLE LACS COUNTY	MILLE LACS COUNTY
PINE COUNTY	PINE COUNTY
RED LAKE COUNTY	RED LAKE COUNTY
MISSISSIPPI	
ADAMS COUNTY	ADAMS COUNTY
ALCORN COUNTY	ALCORN COUNTY
ATTALA COUNTY	ATTALA COUNTY
BENTON COUNTY	BENTON COUNTY
BOLIVAR COUNTY	BOLIVAR COUNTY
CHICKASAW COUNTY	CHICKASAW COUNTY
CHOCTAW COUNTY	CHOCTAW COUNTY
CLAIBORNE COUNTY	CLAIBORNE COUNTY
CLARKE COUNTY	CLARKE COUNTY
CLAY COUNTY	CLAY COUNTY
COAHOMA COUNTY	COAHOMA COUNTY
COLUMBUS CITY	COLUMBUS CITY IN LOWNDES COUNTY
COPIAH COUNTY	COPIAH COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
GEORGE COUNTY	GEORGE COUNTY
GREENE COUNTY	GREENE COUNTY
GREENVILLE CITY	GREENVILLE CITY IN WASHINGTON COUNTY
HOLMES COUNTY	HOLMES COUNTY
HUMPHREYS COUNTY	HUMPHREYS COUNTY
ISSAQUENA COUNTY	ISSAQUENA COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JEFFERSON DAVIS COUNTY	JEFFERSON DAVIS COUNTY
KEMPER COUNTY	KEMPER COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEFLORE COUNTY	LEFLORE COUNTY
MARION COUNTY	MARION COUNTY
MERIDIAN CITY	MERIDIAN CITY IN LAUDERDALE COUNTY
MONROE COUNTY	MONROE COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
NEWTON COUNTY	NEWTON COUNTY
NOXUBEE COUNTY	NOXUBEE COUNTY
PANOLA COUNTY	PANOLA COUNTY
PERRY COUNTY	PERRY COUNTY
PRENTISS COUNTY	PRENTISS COUNTY
QUITMAN COUNTY	QUITMAN COUNTY
SHARKEY COUNTY	SHARKEY COUNTY
SIMPSON COUNTY	SIMPSON COUNTY
SUNFLOWER COUNTY	SUNFLOWER COUNTY
TALLAHATCHIE COUNTY	TALLAHATCHIE COUNTY
TISHOMINGO COUNTY	TISHOMINGO COUNTY
TUNICA COUNTY	TUNICA COUNTY
BALANCE OF WASHINGTON COUNTY	WASHINGTON COUNTY LESS GREENVILLE CITY
WAYNE COUNTY	WAYNE COUNTY
WILKINSON COUNTY	WILKINSON COUNTY
WINSTON COUNTY	WINSTON COUNTY
YALOBUSHA COUNTY	YALOBUSHA COUNTY
YAZOO COUNTY	YAZOO COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
MISSOURI	
BENTON COUNTY	BENTON COUNTY
CALDWELL COUNTY	CALDWELL COUNTY
DENT COUNTY	DENT COUNTY
DOUGLAS COUNTY	DOUGLAS COUNTY
HICKORY COUNTY	HICKORY COUNTY
IRON COUNTY	IRON COUNTY
LINN COUNTY	LINN COUNTY
MADISON COUNTY	MADISON COUNTY
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY
NEW MADRID COUNTY	NEW MADRID COUNTY
PEMISCOT COUNTY	PEMISCOT COUNTY
PULASKI COUNTY	PULASKI COUNTY
ST LOUIS CITY	ST LOUIS CITY
ST. FRANCOIS COUNTY	ST. FRANCOIS COUNTY
STODDARD COUNTY	STODDARD COUNTY
STONE COUNTY	STONE COUNTY
TANEY COUNTY	TANEY COUNTY
TEXAS COUNTY	TEXAS COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WAYNE COUNTY	WAYNE COUNTY
WRIGHT COUNTY	WRIGHT COUNTY
MONTANA	
ANACONDA-DEER LODGE COUNTY	ANACONDA-DEER LODGE COUNTY
BIG HORN COUNTY	BIG HORN COUNTY
BLAINE COUNTY	BLAINE COUNTY
FLATHEAD COUNTY	FLATHEAD COUNTY
GLACIER COUNTY	GLACIER COUNTY
GOLDEN VALLEY COUNTY	GOLDEN VALLEY COUNTY
GRANITE COUNTY	GRANITE COUNTY
LAKE COUNTY	LAKE COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
MINERAL COUNTY	MINERAL COUNTY
MUSSELSHELL COUNTY	MUSSELSHELL COUNTY
PHILLIPS COUNTY	PHILLIPS COUNTY
RAVALLI COUNTY	RAVALLI COUNTY
RICHLAND COUNTY	RICHLAND COUNTY
ROOSEVELT COUNTY	ROOSEVELT COUNTY
ROSEBUD COUNTY	ROSEBUD COUNTY
SANDERS COUNTY	SANDERS COUNTY
WHEATLAND COUNTY	WHEATLAND COUNTY
NEBRASKA	
THURSTON COUNTY	THURSTON COUNTY
NEVADA	
CHURCHILL COUNTY	CHURCHILL COUNTY
ESMERALDA COUNTY	ESMERALDA COUNTY
HUMBOLDT COUNTY	HUMBOLDT COUNTY
LANDER COUNTY	LANDER COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
LYON COUNTY	LYON COUNTY
MINERAL COUNTY	MINERAL COUNTY
NORTH LAS VEGAS CITY	NORTH LAS VEGAS CITY IN CLARK COUNTY
NEW JERSEY	
ATLANTIC CITY	ATLANTIC CITY IN ATLANTIC COUNTY
BALANCE OF ATLANTIC COUNTY	ATLANTIC COUNTY LESS ATLANTIC CITY, EGG HARBOR TOWNSHIP, GALLOWAY TOWNSHIP
CAMDEN CITY	CAMDEN CITY IN CAMDEN COUNTY
CAPE MAY COUNTY	CAPE MAY COUNTY
CITY OF ORANGE TOWNSHIP	CITY OF ORANGE TOWNSHIP IN ESSEX COUNTY
BALANCE OF CUMBERLAND COUNTY	CUMBERLAND COUNTY LESS MILLVILLE CITY, VINELAND CITY
EAST ORANGE CITY	EAST ORANGE CITY IN ESSEX COUNTY
EGG HARBOR TOWNSHIP	EGG HARBOR TOWNSHIP IN ATLANTIC COUNTY
ELIZABETH CITY	ELIZABETH CITY IN UNION COUNTY
IRVINGTON TOWNSHIP	IRVINGTON TOWNSHIP IN ESSEX COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
JERSEY CITY	JERSEY CITY IN HUDSON COUNTY
LONG BRANCH CITY	LONG BRANCH CITY IN MONMOUTH COUNTY
MILLVILLE CITY	MILLVILLE CITY IN CUMBERLAND COUNTY
NEW BRUNSWICK CITY	NEW BRUNSWICK CITY IN MIDDLESEX COUNTY
NEWARK CITY	NEWARK CITY IN ESSEX COUNTY
NORTH BERGEN TOWNSHIP	NORTH BERGEN TOWNSHIP IN HUDSON COUNTY
PASSAIC CITY	PASSAIC CITY IN PASSAIC COUNTY
PATERSON CITY	PATERSON CITY IN PASSAIC COUNTY
PERTH AMBOY CITY	PERTH AMBOY CITY IN MIDDLESEX COUNTY
PLAINFIELD CITY	PLAINFIELD CITY IN UNION COUNTY
TRENTON CITY	TRENTON CITY IN MERCER COUNTY
UNION CITY	UNION CITY IN HUDSON COUNTY
VINELAND CITY	VINELAND CITY IN CUMBERLAND COUNTY
WEST NEW YORK TOWN	WEST NEW YORK TOWN IN HUDSON COUNTY
NEW MEXICO	
CARLSBAD CITY	CARLSBAD CITY IN EDDY COUNTY
CATRON COUNTY	CATRON COUNTY
BALANCE OF CHAVES COUNTY	CHAVES COUNTY LESS ROSWELL CITY
CIBOLA COUNTY	CIBOLA COUNTY
COLFAX COUNTY	COLFAX COUNTY
BALANCE OF DONA ANA COUNTY	DONA ANA COUNTY LESS LAS CRUCES CITY
BALANCE OF EDDY COUNTY	EDDY COUNTY LESS CARLSBAD CITY
GRANT COUNTY	GRANT COUNTY
GUADALUPE COUNTY	GUADALUPE COUNTY
HIDALGO COUNTY	HIDALGO COUNTY
HOBBS CITY	HOBBS CITY IN LEA COUNTY
LAS CRUCES CITY	LAS CRUCES CITY IN DONA ANA COUNTY
BALANCE OF LEA COUNTY	LEA COUNTY LESS HOBBS CITY
LUNA COUNTY	LUNA COUNTY
MC KINLEY COUNTY	MC KINLEY COUNTY
MORA COUNTY	MORA COUNTY
BALANCE OF OTERO COUNTY	OTERO COUNTY LESS ALAMOGORDO CITY
RIO ARRIBA COUNTY	RIO ARRIBA COUNTY
ROSWELL CITY	ROSWELL CITY IN CHAVES COUNTY
BALANCE OF SAN JUAN COUNTY	SAN JUAN COUNTY LESS FARMINGTON CITY
SAN MIGUEL COUNTY	SAN MIGUEL COUNTY
BALANCE OF SANDOVAL COUNTY	SANDOVAL COUNTY LESS RIO RANCHO CITY
TAOS COUNTY	TAOS COUNTY
NEW YORK	
ALLEGANY COUNTY	ALLEGANY COUNTY
AUBURN CITY	AUBURN CITY IN CAYUGA COUNTY
BRONX COUNTY	BRONX COUNTY
BUFFALO CITY	BUFFALO CITY IN ERIE COUNTY
CATTARAUGUS COUNTY	CATTARAUGUS COUNTY
CLINTON COUNTY	CLINTON COUNTY
CORTLAND COUNTY	CORTLAND COUNTY
ELMIRA CITY	ELMIRA CITY IN CHEMUNG COUNTY
ESSEX COUNTY	ESSEX COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
FULTON COUNTY	FULTON COUNTY
HAMILTON COUNTY	HAMILTON COUNTY
BALANCE OF JEFFERSON COUNTY	JEFFERSON COUNTY LESS WATERTOWN CITY
KINGS COUNTY	KINGS COUNTY
LEWIS COUNTY	LEWIS COUNTY
LOCKPORT CITY	LOCKPORT CITY IN NIAGARA COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
NEW YORK COUNTY	NEW YORK COUNTY
NEWBURGH CITY	NEWBURGH CITY IN ORANGE COUNTY
NIAGARA FALLS CITY	NIAGARA FALLS CITY IN NIAGARA COUNTY
OSWEGO COUNTY	OSWEGO COUNTY
QUEENS COUNTY	QUEENS COUNTY
RICHMOND COUNTY	RICHMOND COUNTY
ROCHESTER CITY	ROCHESTER CITY IN MONROE COUNTY
ST. LAWRENCE COUNTY	ST. LAWRENCE COUNTY
SULLIVAN COUNTY	SULLIVAN COUNTY
BALANCE OF WARREN COUNTY	WARREN COUNTY LESS QUEENSBURY TOWN
WATERTOWN CITY	WATERTOWN CITY IN JEFFERSON COUNTY
WYOMING COUNTY	WYOMING COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
NORTH CAROLINA	
ANSON COUNTY	ANSON COUNTY
ASHE COUNTY	ASHE COUNTY
BEAUFORT COUNTY	BEAUFORT COUNTY
CHEROKEE COUNTY	CHEROKEE COUNTY
COLUMBUS COUNTY	COLUMBUS COUNTY
DUPLIN COUNTY	DUPLIN COUNTY
BALANCE OF EDGECOMBE COUNTY	EDGECOMBE COUNTY LESS ROCKY MOUNT CITY
GRAHAM COUNTY	GRAHAM COUNTY
HALIFAX COUNTY	HALIFAX COUNTY
HOKE COUNTY	HOKE COUNTY
HYDE COUNTY	HYDE COUNTY
KINSTON CITY	KINSTON CITY IN LENOIR COUNTY
MARTIN COUNTY	MARTIN COUNTY
MITCHELL COUNTY	MITCHELL COUNTY
NORTHAMPTON COUNTY	NORTHAMPTON COUNTY
RICHMOND COUNTY	RICHMOND COUNTY
ROBESON COUNTY	ROBESON COUNTY
ROCKY MOUNT CITY	ROCKY MOUNT CITY IN EDGECOMBE COUNTY
	NASH COUNTY
SCOTLAND COUNTY	SCOTLAND COUNTY
SWAIN COUNTY	SWAIN COUNTY
TYRRELL COUNTY	TYRRELL COUNTY
VANCE COUNTY	VANCE COUNTY
WARREN COUNTY	WARREN COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WILSON CITY	WILSON CITY IN WILSON COUNTY
NORTH DAKOTA	
BENSON COUNTY	BENSON COUNTY
MC LEAN COUNTY	MC LEAN COUNTY
MERCER COUNTY	MERCER COUNTY
MOUNTRAIL COUNTY	MOUNTRAIL COUNTY
PEMBINA COUNTY	PEMBINA COUNTY
ROLETTE COUNTY	ROLETTE COUNTY
SHERIDAN COUNTY	SHERIDAN COUNTY
SIOUX COUNTY	SIOUX COUNTY
OHIO	
ADAMS COUNTY	ADAMS COUNTY
ASHTABULA COUNTY	ASHTABULA COUNTY
CANTON CITY	CANTON CITY IN STARK COUNTY
CLEVELAND CITY	CLEVELAND CITY IN CUYAHOGA COUNTY
DAYTON CITY	DAYTON CITY IN MONTGOMERY COUNTY
EAST CLEVELAND CITY	EAST CLEVELAND CITY IN CUYAHOGA COUNTY
GALLIA COUNTY	GALLIA COUNTY
GUERNSEY COUNTY	GUERNSEY COUNTY
HARRISON COUNTY	HARRISON COUNTY
HOCKING COUNTY	HOCKING COUNTY
HURON COUNTY	HURON COUNTY
JACKSON COUNTY	JACKSON COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LIMA CITY	LIMA CITY IN ALLEN COUNTY
LORAIN CITY	LORAIN CITY IN LORAIN COUNTY
MANSFIELD CITY	MANSFIELD CITY IN RICHLAND COUNTY
MEIGS COUNTY	MEIGS COUNTY
MERCER COUNTY	MERCER COUNTY
MONROE COUNTY	MONROE COUNTY
MORGAN COUNTY	MORGAN COUNTY
NOBLE COUNTY	NOBLE COUNTY
OTTAWA COUNTY	OTTAWA COUNTY
PERRY COUNTY	PERRY COUNTY
PIKE COUNTY	PIKE COUNTY
SANDUSKY CITY	SANDUSKY CITY IN ERIE COUNTY
SCIOTO COUNTY	SCIOTO COUNTY
TOLEDO CITY	TOLEDO CITY IN LUCAS COUNTY
VINTON COUNTY	VINTON COUNTY
WARREN CITY	WARREN CITY IN TRUMBULL COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
YOUNGSTOWN CITY	YOUNGSTOWN CITY IN MAHONING COUNTY
ZANESVILLE CITY	ZANESVILLE CITY IN MUSKINGUM COUNTY
OKLAHOMA	
ADAIR COUNTY	ADAIR COUNTY
CHOCTAW COUNTY	CHOCTAW COUNTY
COAL COUNTY	COAL COUNTY
GARVIN COUNTY	GARVIN COUNTY
HASKELL COUNTY	HASKELL COUNTY
HUGHES COUNTY	HUGHES COUNTY
BALANCE OF KAY COUNTY	KAY COUNTY LESS PONCA CITY
LATIMER COUNTY	LATIMER COUNTY
LE FLORE COUNTY	LE FLORE COUNTY
MC CURTAIN COUNTY	MC CURTAIN COUNTY
MC INTOSH COUNTY	MC INTOSH COUNTY
MURRAY COUNTY	MURRAY COUNTY
BALANCE OF MUSKOGEE COUNTY	MUSKOGEE COUNTY LESS MUSKOGEE CITY
OKFUSKEE COUNTY	OKFUSKEE COUNTY
OKMULGEE COUNTY	OKMULGEE COUNTY
OTTAWA COUNTY	OTTAWA COUNTY
PITTSBURG COUNTY	PITTSBURG COUNTY
PONCA CITY	PONCA CITY IN KAY COUNTY
PUSHMATAHA COUNTY	PUSHMATAHA COUNTY
SEMINOLE COUNTY	SEMINOLE COUNTY
SEQUOYAH COUNTY	SEQUOYAH COUNTY
STEPHENS COUNTY	STEPHENS COUNTY
OREGON	
ALBANY CITY	ALBANY CITY IN LINN COUNTY
BAKER COUNTY	BAKER COUNTY
COLUMBIA COUNTY	COLUMBIA COUNTY
COOS COUNTY	COOS COUNTY
CROOK COUNTY	CROOK COUNTY
CURRY COUNTY	CURRY COUNTY
BALANCE OF DESCHUTES COUNTY	DESCHUTES COUNTY LESS BEND CITY
DOUGLAS COUNTY	DOUGLAS COUNTY
GRANT COUNTY	GRANT COUNTY
HARNEY COUNTY	HARNEY COUNTY
HOOD RIVER COUNTY	HOOD RIVER COUNTY
BALANCE OF JACKSON COUNTY	JACKSON COUNTY LESS MEDFORD CITY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOSEPHINE COUNTY	JOSEPHINE COUNTY
KLAMATH COUNTY	KLAMATH COUNTY
LAKE COUNTY	LAKE COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
BALANCE OF LINN COUNTY	LINN COUNTY LESS ALBANY CITY
MALHEUR COUNTY	MALHEUR COUNTY
MEDFORD CITY	MEDFORD CITY IN JACKSON COUNTY
MORROW COUNTY	MORROW COUNTY
SALEM CITY	SALEM CITY IN MARION COUNTY, POLK COUNTY
SPRINGFIELD CITY	SPRINGFIELD CITY IN LANE COUNTY
UMATILLA COUNTY	UMATILLA COUNTY
UNION COUNTY	UNION COUNTY
WALLOWA COUNTY	WALLOWA COUNTY
WASCO COUNTY	WASCO COUNTY
WHEELER COUNTY	WHEELER COUNTY
PENNSYLVANIA	
ARMSTRONG COUNTY	ARMSTRONG COUNTY
BEDFORD COUNTY	BEDFORD COUNTY
BALANCE OF CAMBRIA COUNTY	CAMBRIA COUNTY LESS JOHNSTOWN CITY
CAMERON COUNTY	CAMERON COUNTY
CARBON COUNTY	CARBON COUNTY
CHESTER CITY	CHESTER CITY IN DELAWARE COUNTY
CLEARFIELD COUNTY	CLEARFIELD COUNTY
CLINTON COUNTY	CLINTON COUNTY
ELK COUNTY	ELK COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FOREST COUNTY	FOREST COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
GREENE COUNTY	GREENE COUNTY
HAZLETON CITY	HAZLETON CITY IN LUZERNE COUNTY
HUNTINGDON COUNTY	HUNTINGDON COUNTY
INDIANA COUNTY	INDIANA COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOHNSTOWN CITY	JOHNSTOWN CITY IN CAMBRIA COUNTY
JUNIATA COUNTY	JUNIATA COUNTY
BALANCE OF LUZERNE COUNTY	LUZERNE COUNTY LESS HAZLETON CITY, WILKES-BARRE CITY
MCKEESPORT CITY	MCKEESPORT CITY IN ALLEGHENY COUNTY
MIFFLIN COUNTY	MIFFLIN COUNTY
MONROE COUNTY	MONROE COUNTY
NEW CASTLE CITY	NEW CASTLE CITY IN LAWRENCE COUNTY
PHILADELPHIA CITY	PHILADELPHIA CITY IN PHILADELPHIA COUNTY
POTTER COUNTY	POTTER COUNTY
SCHUYLKILL COUNTY	SCHUYLKILL COUNTY
SOMERSET COUNTY	SOMERSET COUNTY
SULLIVAN COUNTY	SULLIVAN COUNTY
WAYNE COUNTY	WAYNE COUNTY
WILKES-BARRE CITY	WILKES-BARRE CITY IN LUZERNE COUNTY
WILLIAMSPORT CITY	WILLIAMSPORT CITY IN LYCOMING COUNTY
WYOMING COUNTY	WYOMING COUNTY
PUERTO RICO	
ADJUNTAS MUNICIPIO	ADJUNTAS MUNICIPIO
AGUADA MUNICIPIO	AGUADA MUNICIPIO
AGUADILLA MUNICIPIO	AGUADILLA MUNICIPIO
AGUAS BUENAS MUNICIPIO	AGUAS BUENAS MUNICIPIO
AIBONITO MUNICIPIO	AIBONITO MUNICIPIO
ANASCO MUNICIPIO	ANASCO MUNICIPIO
ARECIBO MUNICIPIO	ARECIBO MUNICIPIO
ARROYO MUNICIPIO	ARROYO MUNICIPIO
BARCELONETA MUNICIPIO	BARCELONETA MUNICIPIO
BARRANQUITAS MUNICIPIO	BARRANQUITAS MUNICIPIO
BAYAMON MUNICIPIO	BAYAMON MUNICIPIO
CABO ROJO MUNICIPIO	CABO ROJO MUNICIPIO
CAGUAS MUNICIPIO	CAGUAS MUNICIPIO
CAMUY MUNICIPIO	CAMUY MUNICIPIO
CANOVANAS MUNICIPIO	CANOVANAS MUNICIPIO
CAROLINA MUNICIPIO	CAROLINA MUNICIPIO
CATANO MUNICIPIO	CATANO MUNICIPIO
CAYEY MUNICIPIO	CAYEY MUNICIPIO
CEIBA MUNICIPIO	CEIBA MUNICIPIO
CIALES MUNICIPIO	CIALES MUNICIPIO
CIDRA MUNICIPIO	CIDRA MUNICIPIO
COAMO MUNICIPIO	COAMO MUNICIPIO
COMERIO MUNICIPIO	COMERIO MUNICIPIO
COROZAL MUNICIPIO	COROZAL MUNICIPIO
DORADO MUNICIPIO	DORADO MUNICIPIO
FAJARDO MUNICIPIO	FAJARDO MUNICIPIO
FLORIDA MUNICIPIO	FLORIDA MUNICIPIO
GUANICA MUNICIPIO	GUANICA MUNICIPIO
GUAYAMA MUNICIPIO	GUAYAMA MUNICIPIO
GUAYANILLA MUNICIPIO	GUAYANILLA MUNICIPIO
GURABO MUNICIPIO	GURABO MUNICIPIO
HATILLO MUNICIPIO	HATILLO MUNICIPIO
HORMIGUEROS MUNICIPIO	HORMIGUEROS MUNICIPIO
HUMACAO MUNICIPIO	HUMACAO MUNICIPIO
ISABELA MUNICIPIO	ISABELA MUNICIPIO
JAYUYA MUNICIPIO	JAYUYA MUNICIPIO
JUANA DIAZ MUNICIPIO	JUANA DIAZ MUNICIPIO
JUNCOS MUNICIPIO	JUNCOS MUNICIPIO
LAJAS MUNICIPIO	LAJAS MUNICIPIO
LARES MUNICIPIO	LARES MUNICIPIO
LAS MARIAS MUNICIPIO	LAS MARIAS MUNICIPIO
LAS PIEDRAS MUNICIPIO	LAS PIEDRAS MUNICIPIO
LOIZA MUNICIPIO	LOIZA MUNICIPIO
LUQUILLO MUNICIPIO	LUQUILLO MUNICIPIO
MANATI MUNICIPIO	MANATI MUNICIPIO
MARICAO MUNICIPIO	MARICAO MUNICIPIO
MAUNABO MUNICIPIO	MAUNABO MUNICIPIO
MAYAGUEZ MUNICIPIO	MAYAGUEZ MUNICIPIO

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
MOCA MUNICIPIO	MOCA MUNICIPIO
MOROVIS MUNICIPIO	MOROVIS MUNICIPIO
NAGUABO MUNICIPIO	NAGUABO MUNICIPIO
NARANJITO MUNICIPIO	NARANJITO MUNICIPIO
OROCOVIS MUNICIPIO	OROCOVIS MUNICIPIO
PATILLAS MUNICIPIO	PATILLAS MUNICIPIO
PENUELAS MUNICIPIO	PENUELAS MUNICIPIO
PONCE MUNICIPIO	PONCE MUNICIPIO
QUEBRADILLAS MUNICIPIO	QUEBRADILLAS MUNICIPIO
RINCON MUNICIPIO	RINCON MUNICIPIO
RIO GRANDE MUNICIPIO	RIO GRANDE MUNICIPIO
SABANA GRANDE MUNICIPIO	SABANA GRANDE MUNICIPIO
SALINAS MUNICIPIO	SALINAS MUNICIPIO
SAN GERMAN MUNICIPIO	DAN GERMAN MUNICIPIO
SAN JUAN MUNICIPIO	SAN JUAN MUNICIPIO
SAN LORENZO MUNICIPIO	SAN LORENZO MUNICIPIO
SAN SEBASTIAN MUNICIPIO	SAN SEBASTIAN MUNICIPIO
SANTA ISABEL MUNICIPIO	SANTA ISABEL MUNICIPIO
TOA ALTA MUNICIPIO	TOA ALTA MUNICIPIO
TOA BAJA MUNICIPIO	TOA BAJA MUNICIPIO
TRUJILLO ALTO MUNICIPIO	TRUJILLO ALTO MUNICIPIO
UTUADO MUNICIPIO	UTUADO MUNICIPIO
VEGA ALTA MUNICIPIO	VEGA ALTA MUNICIPIO
VEGA BAJA MUNICIPIO	VEGA BAJA MUNICIPIO
VIEQUES MUNICIPIO	VIEQUES MUNICIPIO
VILLALBA MUNICIPIO	VILLALBA MUNICIPIO
YABUCOA MUNICIPIO	YABUCOA MUNICIPIO
YAUCO MUNICIPIO	YAUCO MUNICIPIO
RHODE ISLAND	
CENTRAL FALLS CITY	CENTRAL FALLS CITY
NEW SHOREHAM TOWN	NEW SHOREHAM TOWN
SOUTH CAROLINA	
ALLENDALE COUNTY	ALLENDALE COUNTY
BAMBERG COUNTY	BAMBERG COUNTY
BARNWELL COUNTY	BARNWELL COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHESTER COUNTY	CHESTER COUNTY
CHESTERFIELD COUNTY	CHESTERFIELD COUNTY
CLARENDON COUNTY	CLARENDON COUNTY
DARLINGTON COUNTY	DARLINGTON COUNTY
DILLON COUNTY	DILLON COUNTY
FAIRFIELD COUNTY	FAIRFIELD COUNTY
GEORGETOWN COUNTY	GEORGETOWN COUNTY
GREENWOOD COUNTY	GREENWOOD COUNTY
LEE COUNTY	LEE COUNTY
MARION COUNTY	MARION COUNTY
MARLBORO COUNTY	MARLBORO COUNTY
MC CORMICK COUNTY	MC CORMICK COUNTY
ORANGEBURG COUNTY	ORANGEBURG COUNTY
UNION COUNTY	UNION COUNTY
WILLIAMSBURG COUNTY	WILLIAMSBURG COUNTY
SOUTH DAKOTA	
BUFFALO COUNTY	BUFFALO COUNTY
CORSON COUNTY	CORSON COUNTY
DAY COUNTY	DAY COUNTY
DEWEY COUNTY	DEWEY COUNTY
MELLETTE COUNTY	MELLETTE COUNTY
SHANNON COUNTY	SHANNON COUNTY
TODD COUNTY	TODD COUNTY
ZIEBACH COUNTY	ZIEBACH COUNTY
TENNESSEE	
BENTON COUNTY	BENTON COUNTY
CAMPBELL COUNTY	CAMPBELL COUNTY
CARROLL COUNTY	CARROLL COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
CLAY COUNTY	CLAY COUNTY
COCKE COUNTY	COCKE COUNTY
DE KALB COUNTY	DE KALB COUNTY
DECATUR COUNTY	DECATUR COUNTY
FENTRESS COUNTY	FENTRESS COUNTY
GIBSON COUNTY	GIBSON COUNTY
GREENE COUNTY	GREENE COUNTY
GRUNDY COUNTY	GRUNDY COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HARDEMAN COUNTY	HARDEMAN COUNTY
HARDIN COUNTY	HARDIN COUNTY
HAYWOOD COUNTY	HAYWOOD COUNTY
HENDERSON COUNTY	HENDERSON COUNTY
HENRY COUNTY	HENRY COUNTY
HICKMAN COUNTY	HICKMAN COUNTY
HOUSTON COUNTY	HOUSTON COUNTY
HUMPHREYS COUNTY	HUMPHREYS COUNTY
JACKSON COUNTY	JACKSON COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
LAKE COUNTY	LAKE COUNTY
LAUDERDALE COUNTY	LAUDERDALE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEWIS COUNTY	LEWIS COUNTY
MC MINN COUNTY	MC MINN COUNTY
MEIGS COUNTY	MEIGS COUNTY
MORGAN COUNTY	MORGAN COUNTY
OVERTON COUNTY	OVERTON COUNTY
PERRY COUNTY	PERRY COUNTY
PICKETT COUNTY	PICKETT COUNTY
RHEA COUNTY	RHEA COUNTY
SCOTT COUNTY	SCOTT COUNTY
SEVIER COUNTY	SEVIER COUNTY
STEWART COUNTY	STEWART COUNTY
TROUSDALE COUNTY	TROUSDALE COUNTY
VAN BUREN COUNTY	VAN BUREN COUNTY
WAYNE COUNTY	WAYNE COUNTY
TEXAS	
ANDREWS COUNTY	ANDREWS COUNTY
BALANCE OF ANGELINA COUNTY	ANGELINA COUNTY LESS LUFKIN CITY
BEAUMONT CITY	BEAUMONT CITY IN JEFFERSON COUNTY
BALANCE OF BOWIE COUNTY	BOWIE COUNTY LESS TEXARKANA CITY TEX
BALANCE OF BRAZORIA COUNTY	BRAZORIA COUNTY LESS LAKE JACKSON CITY, PEARLAND CITY
BROOKS COUNTY	BROOKS COUNTY
BROWNSVILLE CITY	BROWNSVILLE CITY IN CAMERON COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
BALANCE OF CAMERON COUNTY	CAMERON COUNTY LESS BROWNSVILLE CITY, HARLINGEN CITY
CAMP COUNTY	CAMP COUNTY
CASS COUNTY	CASS COUNTY
COLEMAN COUNTY	COLEMAN COUNTY
CORPUS CHRISTI CITY	CORPUS CHRISTI CITY IN, NUECES COUNTY
CRANE COUNTY	CRANE COUNTY
CROCKETT COUNTY	CROCKETT COUNTY
CROSBY COUNTY	CROSBY COUNTY
CULBERSON COUNTY	CULBERSON COUNTY
DAWSON COUNTY	DAWSON COUNTY
DEAF SMITH COUNTY	DEAF SMITH COUNTY
DEL RIO CITY	DEL RIO CITY IN VAL VERDE COUNTY
DIMMIT COUNTY	DIMMIT COUNTY
DUVAL COUNTY	DUVAL COUNTY
EAGLE PASS CITY	EAGLE PASS CITY IN MAVERICK COUNTY
BALANCE OF ECTOR COUNTY	ECTOR COUNTY LESS ODESSA CITY
EDINBURG CITY	EDINBURG CITY IN HIDALGO COUNTY
EDWARDS COUNTY	EDWARDS COUNTY
EL PASO CITY	EL PASO CITY IN EL PASO COUNTY CITY, SOCORRO CITY
BALANCE OF EL PASO COUNTY	EL PASO COUNTY LESS EL PASO CITY
FLOYD COUNTY	FLOYD COUNTY
FRIO COUNTY	FRIO COUNTY
GALVESTON CITY	GALVESTON CITY IN GALVESTON COUNTY
BALANCE OF GALVESTON COUNTY	GALVESTON COUNTY LESS, FRIENDSWOOD CITY, GALVESTON CITY, LEAGUE CITY, TEXAS CITY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
GARZA COUNTY	GARZA COUNTY
BALANCE OF GREGG COUNTY	GREGG COUNTY LESS LONGVIEW CITY
GRIMES COUNTY	GRIMES COUNTY
HALL COUNTY	HALL COUNTY
HARDIN COUNTY	HARDIN COUNTY
HARLINGEN CITY	HARLINGEN CITY IN CAMERON COUNTY
BALANCE OF HARRISON COUNTY	HARRISON COUNTY LESS LONGVIEW CITY
BALANCE OF HIDALGO COUNTY	HIDALGO COUNTY LESS EDINBURG CITY, MC ALLEN CITY, MISSION CITY, PHARR CITY, WESLACO CITY
HOCKLEY COUNTY	HOCKLEY COUNTY
HUTCHINSON COUNTY	HUTCHINSON COUNTY
JASPER COUNTY	JASPER COUNTY
JIM HOGG COUNTY	JIM HOGG COUNTY
JIM WELLS COUNTY	JIM WELLS COUNTY
KILLEEN CITY	KILLEEN CITY IN BELL COUNTY
KINGSVILLE CITY	KINGSVILLE CITY IN KLEBERG COUNTY
KINNEY COUNTY	KINNEY COUNTY
BALANCE OF KLEBERG COUNTY	KLEBERG COUNTY LESS KINGSVILLE CITY
LA SALLE COUNTY	LA SALLE COUNTY
LAMB COUNTY	LAMB COUNTY
LAREDO CITY	LAREDO CITY IN WEBB COUNTY
LEON COUNTY	LEON COUNTY
LIBERTY COUNTY	LIBERTY COUNTY
LONGVIEW CITY	LONGVIEW CITY IN GREGG COUNTY, HARRISON COUNTY
LOVING COUNTY	LOVING COUNTY
MARION COUNTY	MARION COUNTY
MATAGORDA COUNTY	MATAGORDA COUNTY
BALANCE OF MAVERICK COUNTY	MAVERICK COUNTY LESS EAGLE PASS CITY
MC ALLEN CITY	MC ALLEN CITY IN HIDALGO COUNTY
MISSION CITY	MISSION CITY IN HIDALGO COUNTY
MITCHELL COUNTY	MITCHELL COUNTY
MORRIS COUNTY	MORRIS COUNTY
NEWTON COUNTY	NEWTON COUNTY
NOLAN COUNTY	NOLAN COUNTY
BALANCE OF NUECES COUNTY	NUECES COUNTY LESS CORPUS CHRISTI CITY
ODESSA CITY	ODESSA CITY IN ECTOR COUNTY
ORANGE COUNTY	ORANGE COUNTY
PANOLA COUNTY	PANOLA COUNTY
PARIS CITY	PARIS CITY IN LAMAR COUNTY
PECOS COUNTY	PECOS COUNTY
PHARR CITY	PHARR CITY IN HIDALGO COUNTY
PORT ARTHUR CITY	PORT ARTHUR CITY IN JEFFERSON COUNTY
PRESIDIO COUNTY	PRESIDIO COUNTY
REAGAN COUNTY	REAGAN COUNTY
REEVES COUNTY	REEVES COUNTY
SABINE COUNTY	SABINE COUNTY
SAN AUGUSTINE COUNTY	SAN AUGUSTINE COUNTY
SAN PATRICIO COUNTY	SAN PATRICIO COUNTY
SCURRY COUNTY	SCURRY COUNTY
SHELBY COUNTY	SHELBY COUNTY
SOCORRO CITY	SOCORRO CITY IN EL PASO COUNTY
SOMERVELL COUNTY	SOMERVELL COUNTY
STARR COUNTY	STARR COUNTY
TERRY COUNTY	TERRY COUNTY
TEXARKANA CITY TEX	TEXARKANA CITY TEX IN BOWIE COUNTY
TEXAS CITY	TEXAS CITY IN GALVESTON COUNTY
TITUS COUNTY	TITUS COUNTY
TYLER COUNTY	TYLER COUNTY
UPSHUR COUNTY	UPSHUR COUNTY
UPTON COUNTY	UPTON COUNTY
UVALDE COUNTY	UVALDE COUNTY
BALANCE OF VAL VERDE COUNTY	VAL VERDE COUNTY LESS DEL RIO CITY
WARD COUNTY	WARD COUNTY
BALANCE OF WEBB COUNTY	WEBB COUNTY LESS LAREDO CITY
WESLACO CITY	WESLACO CITY IN HIDALGO COUNTY
WILLACY COUNTY	WILLACY COUNTY
WINKLER COUNTY	WINKLER COUNTY
YOAKUM COUNTY	YOAKUM COUNTY
ZAPATA COUNTY	ZAPATA COUNTY
ZAVALA COUNTY	ZAVALA COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
UTAH	
CARBON COUNTY	CARBON COUNTY
DUCHESNE COUNTY	DUCHESNE COUNTY
EMERY COUNTY	EMERY COUNTY
GARFIELD COUNTY	GARFIELD COUNTY
GRAND COUNTY	GRAND COUNTY
OGDEN CITY	OGDEN CITY IN WEBER COUNTY
SAN JUAN COUNTY	SAN JUAN COUNTY
UINTAH COUNTY	UINTAH COUNTY
WAYNE COUNTY	WAYNE CCUNTY
VERMONT	
ESSEX COUNTY	ESSEX COUNTY
ORLEANS COUNTY	ORLEANS COUNTY
VIRGINIA	
ACCOMACK COUNTY	ACCOMACK COUNTY
BUCHANAN COUNTY	BUCHANAN COUNTY
CARROLL COUNTY	CARROLL COUNTY
COVINGTON CITY	COVINGTON CITY
DANVILLE CITY	DANVILLE CITY
DICKENSON COUNTY	DICKENSON COUNTY
GILES COUNTY	GILES COUNTY
HALIFAX COUNTY	HALIFAX COUNTY
LANCASTER COUNTY	LANCASTER COUNTY
LEE COUNTY	LEE COUNTY
MARTINSVILLE CITY	MARTINSVILLE CITY
NORTHUMBERLAND COUNTY	NORTHUMBERLAND COUNTY
NORTON CITY	NORTON CITY
RUSSELL COUNTY	RUSSELL COUNTY
SCOTT COUNTY	SCOTT COUNTY
SURRY COUNTY	SURRY COUNTY
TAZEWELL COUNTY	TAZEWELL COUNTY
WISE COUNTY	WISE COUNTY
WASHINGTON	
ADAMS COUNTY	ADAMS COUNTY
BALANCE OF BENTON COUNTY	BENTON COUNTY LESS KENNEWICK CITY RICHLAND CITY
BREMERTON CITY	BREMERTON CITY IN KITSAP COUNTY
CHELAN COUNTY	CHELAN COUNTY
CLALLAM COUNTY	CLALLAM COUNTY
COLUMBIA COUNTY	COLUMBIA COUNTY
BALANCE OF COWLITZ COUNTY	COWLITZ COUNTY LESS LONGVIEW CITY
DOUGLAS COUNTY	DOUGLAS COUNTY
FERRY COUNTY	FERRY COUNTY
GRANT COUNTY	GRANT COUNTY
GRAYS HARBOR COUNTY	GRAYS HARBOR COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
KENNEWICK CITY	KENNEWICK CITY IN BENTON COUNTY
KLICKITAT COUNTY	KLICKITAT COUNTY
LAKEWOOD CITY	LAKEWOOD CITY IN PIERCE COUNTY
LEWIS COUNTY	LEWIS COUNTY
LONGVIEW CITY	LONGVIEW CITY IN COWLITZ COUNTY
MASON COUNTY	MASON COUNTY
OKANOGAN COUNTY	OKANOGAN COUNTY
PACIFIC COUNTY	PACIFIC COUNTY
PASCO CITY	PASCO CITY IN FRANKLIN COUNTY
PEND OREILLE COUNTY	PEND OREILLE COUNTY
SKAGIT COUNTY	SKAGIT COUNTY
SKAMANIA COUNTY	SKAMANIA COUNTY
STEVENS COUNTY	STEVENS COUNTY
WAHKIAKUM COUNTY	WAHKIAKUM COUNTY
WALLA WALLA CITY	WALLA WALLA CITY IN WALLA WALLA COUNTY
YAKIMA CITY	YAKIMA CITY IN YAKIMA COUNTY
BALANCE OF YAKIMA COUNTY	YAKIMA COUNTY LESS YAKIMA CITY
WEST VIRGINIA	
BARBOUR COUNTY	BARBOUR COUNTY

LABOR SURPLUS AREAS OCTOBER 1, 2000 THROUGH SEPTEMBER 30, 2001—Continued

Eligible labor surplus areas	Civil jurisdictions included
BOONE COUNTY	BOONE COUNTY
BRAXTON COUNTY	BRAXTON COUNTY
BROOKE COUNTY	BROOKE COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CLAY COUNTY	CLAY COUNTY
DODDRIDGE COUNTY	DODDRIDGE COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
GILMER COUNTY	GILMER COUNTY
GRANT COUNTY	GRANT COUNTY
GREENBRIER COUNTY	GREENBRIER COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HARRISON COUNTY	HARRISON COUNTY
HUNTINGTON CITY	HUNTINGTON CITY IN CABELL COUNTY, WAYNE COUNTY
JACKSON COUNTY	JACKSON COUNTY
LEWIS COUNTY	LEWIS COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
LOGAN COUNTY	LOGAN COUNTY
MARION COUNTY	MARION COUNTY
BALANCE OF MARSHALL COUNTY	MARSHALL COUNTY LESS WHEELING CITY
MASON COUNTY	MASON COUNTY
MC DOWELL COUNTY	MC DOWELL COUNTY
MINERAL COUNTY	MINERAL COUNTY
MINGO COUNTY	MINGO COUNTY
NICHOLAS COUNTY	NICHOLAS COUNTY
PARKERSBURG CITY	PARKERSBURG CITY IN WOOD COUNTY
PLEASANTS COUNTY	PLEASANTS COUNTY
POCAHONTAS COUNTY	POCAHONTAS COUNTY
PRESTON COUNTY	PRESTON COUNTY
RALEIGH COUNTY	RALEIGH COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
RITCHIE COUNTY	RITCHIE COUNTY
ROANE COUNTY	ROANE COUNTY
SUMMERS COUNTY	SUMMERS COUNTY
TAYLOR COUNTY	TAYLOR COUNTY
TUCKER COUNTY	TUCKER COUNTY
TYLER COUNTY	TYLER COUNTY
UPSHUR COUNTY	UPSHUR COUNTY
BALANCE OF WAYNE COUNTY	WAYNE COUNTY LESS HUNTINGTON CITY
WEBSTER COUNTY	WEBSTER COUNTY
WETZEL COUNTY	WETZEL COUNTY
WIRT COUNTY	WIRT COUNTY
WYOMING COUNTY	WYOMING COUNTY
WISCONSIN	
ASHLAND COUNTY	ASHLAND COUNTY
BAYFIELD COUNTY	BAYFIELD COUNTY
FLORENCE COUNTY	FLORENCE COUNTY
FOREST COUNTY	FOREST COUNTY
IRON COUNTY	IRON COUNTY
JUNEAU COUNTY	JUNEAU COUNTY
MENOMINEE COUNTY	MENOMINEE COUNTY
PRICE COUNTY	PRICE COUNTY
RACINE CITY	RACINE CITY IN RACINE COUNTY
WYOMING	
BIG HORN COUNTY	BIG HORN COUNTY
FREMONT COUNTY	FREMONT COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
BALANCE OF NATRONA COUNTY	NATRONA COUNTY LESS CASPER CITY
UINTA COUNTY	UINTA COUNTY
WASHAKIE COUNTY	WASHAKIE COUNTY

[FR Doc. 00–28838 Filed 11–14–00; 8:45 am]

BILLING CODE 4510–30–P

Federal Register

Wednesday,
November 15, 2000

Part VI

Environmental Protection Agency

40 CFR Part 763
Asbestos Worker Protection; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPPTS–62125B; FRL–6751–3]

RIN 2070–AC66

Asbestos Worker Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this Final Rule, EPA is amending both the Asbestos Worker Protection Rule (WPR) and the Asbestos-in-Schools Rule. The WPR amendment protects State and local government employees from the health risks of exposure to asbestos to the same extent as private sector workers by adopting for these employees the Asbestos Standards of the Occupational Safety and Health Administration (OSHA). The WPR's coverage is extended to State and local government employees who are performing construction work, custodial work, and automotive brake and clutch repair work. This final rule cross-references the OSHA Asbestos Standards for Construction and for General Industry, so that future amendments to these OSHA standards are directly and equally effective for employees covered by the WPR. EPA also amends the Asbestos-in-Schools Rule to provide coverage under the WPR for employees of public local education agencies who perform operations, maintenance, and repair activities. EPA is issuing this final rule under section 6 of the Toxic Substances Control Act (TSCA).

DATES: This final rule is effective December 15, 2000.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Cindy Fraleigh, Attorney-Advisor, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1537; fax number: (202) 260–1724; e-mail address: fraleigh.cindy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a State or local government entity whose employees work with or near asbestos-containing material. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Educational services	61	Public educational institutions, including school districts, not subject to an OSHA-approved State asbestos plan or a State asbestos worker protection plan that EPA has determined is exempt from the requirements of the WPR.
Public administration	92	State or local government employers not subject to an OSHA-approved State asbestos plan or a State asbestos worker protection plan that EPA has determined is exempt from the requirements of the WPR.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR 763.121. If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about asbestos, go directly to the Asbestos Home Page for the Office of Pollution Prevention and Toxics at http://www.epa.gov/asbestos/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–62125B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The record also contains any experience, as reflected in this preamble and the preamble to the proposed rule, that the Agency has gained over the years in implementing the WPR and the Asbestos-in-Schools Rule. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Background

A. What is the Agency's Authority for Taking this Action?

Under TSCA section 6(a), if EPA finds that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture, or any combination of these activities, presents, or will present, an unreasonable risk of injury to health or the environment, EPA shall by rule apply requirements to the substance or

mixture to the extent necessary to protect adequately against the risk. Asbestos is a chemical substance or mixture that falls within the scope of this authority. In deciding whether to promulgate this rule under TSCA section 6(a), EPA considered the health effects of asbestos; the magnitude of human exposure to asbestos; the environmental effects of asbestos and the magnitude of the exposure of the environment to asbestos; the benefits of asbestos for various uses and the availability of substitutes for those uses; the reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health; and the social impacts of the rule. See 15 U.S.C. 2601(c) and 2605(c)(1). EPA did not change its consideration of any of these factors based upon comments received on the proposed rule. The following is a summary of EPA's evaluation, and the Economic Analysis contains additional information on many of these factors (Ref. 5).

1. *Health effects of asbestos.* The primary route of human exposure is through the respiratory system, where asbestos fibers may cause carcinoma of the lung, malignant mesothelioma of the pleura and peritoneum, asbestosis, and other illnesses.

2. *Human exposure to asbestos.* Asbestos is found in building products such as insulation, ceiling and floor tiles, spackling tape for drywall, and roofing products. In general, asbestos-containing materials in good condition do not pose a risk of exposure, but, if the matrix of asbestos fibers is disturbed or deteriorates, fibers may be released into the air. Workers may be exposed to asbestos during new construction, asbestos abatement, renovation, building maintenance, custodial activities, and brake and clutch repair work. Building occupants, including school children, may be exposed to asbestos fibers as a result of activity taking place in their building. As a result of this regulation, EPA estimates that worker exposures during these activities will decrease by at least one order of magnitude, while building occupant exposures will decrease by 50%.

3. *Environmental effects of asbestos.* This rule is directed at risks posed by asbestos in the workplace, not in the ambient environment. EPA therefore did not consider the environmental effects of asbestos.

4. *The benefits of asbestos for various uses and the availability of substitutes for those uses.* This rule does not require asbestos-containing building material to be removed and replaced with non-asbestos substitutes. Since this rule only applies once a decision has been made to disturb asbestos-containing material, EPA did not consider the benefits of asbestos for various uses and the availability of substitutes for those uses.

5. *Economic consequences of this rule.* The Economic Analysis for this final rule provides a detailed analysis of the economic benefits of the reduced incidence of cancer and other diseases among workers and building occupants attributable to this rule. EPA estimates that sixty-five years of exposure reduction under this rule will reduce the number of lung cancer and mesothelioma cases among exposed workers and building occupants by 71.58 cases. According to EPA's analysis, this rule will also result in approximately 65.65 avoided cases of cancer among individuals exposed as school children. EPA also found that this rule is likely to result in other benefits, such as asbestosis cases avoided among workers, avoided medical costs associated with non-fatal diseases, and reduced exposures to worker families from asbestos fibers brought home on clothing, but EPA was unable to reliably quantify these benefits.

The Economic Analysis also evaluates the incremental costs to State and local governments of complying with this rule. EPA estimates that this rule will impose first-year compliance costs of $63.34 million. Over the 65-year time frame of exposure reduction, the present value of compliance costs is estimated to be $1.12 billion.

6. *Other effects.* TSCA section 6(c)(1)(D) also requires EPA, when considering the economic consequences of the rule, to take other factors into account, including the effects on the national economy, small business, technological innovation, the environment, and public health. EPA has already summarized its evaluation of the effects on public health and the environment above. EPA's consideration of the effects on the national economy, small government entities, and technological innovation are discussed in Unit IV.

7. *Social and other qualitative effects.* TSCA section 2 requires EPA, when taking any action under TSCA, to consider the social as well as environmental and economic impacts of the action. One important social consequence of this rule is the elimination of inequitable legal protection for classes of persons based solely upon the identity and location of their employers. This rule, by ensuring that all public and private sector workers are entitled to the same level of protection from asbestos exposures, serves important equity and environmental justice concerns. In addition, having a uniform set of standards for construction and brake and clutch repair employees will also ease implementation burdens, by allowing employers to use the excellent guidance materials developed by OSHA and reducing confusion and mistakes caused by two different standards.

Having considered these factors, EPA finds under TSCA section 6 that the current exposure to asbestos among unprotected State and local government employees during use or disposal in construction work, custodial work, and brake and clutch repair work presents an unreasonable risk of injury to human health, and that this rule is necessary to provide adequate protection against that risk.

B. What Action is the Agency Taking?

In 1985, EPA first determined that exposure to asbestos poses an unreasonable risk of harm to unprotected State and local government employees who conduct asbestos abatement projects. EPA's 1987 Asbestos Worker Protection Rule (WPR) requires certain work practices, personal protective equipment, and training for State and local government employees who perform asbestos abatement projects and who are not covered by a State Plan approved by the Occupational Safety and Health Administration (OSHA) (40 CFR part 763, subpart G). There are 27 States that do not have approved OSHA State Plans. On April 27, 2000, EPA published a proposal to amend the WPR to provide the same level of protection to State and local government employees not covered by an OSHA-approved State plan as non-government employees and State and local government employees covered by an OSHA-approved State plan. EPA proposed to provide this protection by incorporating OSHA's Asbestos Standards for Construction and for General Industry set out at 29 CFR 1926.1101 and 29 CFR 1910.1001 respectively in the WPR (Ref. 1, p. 24806).

By actually cross-referencing the OSHA Asbestos Standards in the WPR, future amendments to the OSHA General Industry or Construction Standard would also effect a change in the requirements under the WPR (Ref. 1, pp. 24808, 24822). EPA also proposed to expand the scope of the WPR from asbestos abatement projects to all

construction, custodial, and automotive brake and clutch repair work. Finally, EPA proposed to amend the Asbestos-in-Schools Rule, 40 CFR part 763, subpart E, to reflect the fact that public school employees performing operations and maintenance activities would now be covered by the WPR by modifying 40 CFR 763.91(b) and removing appendix B to subpart E (Ref. 1, p. 24814).

1. *What comments did EPA receive on the proposed rule*? EPA received comments on its proposal from the American Federation of State, County and Municipal Employees; the American Industrial Hygiene Association; the Laborers' International Union of North America; the Texas A & M University System; the Safe Buildings Alliance; the Asbestos Information Association; the Board of Certified Safety Professionals; the Resilient Floor Covering Institute; the Service Employees International Union; the American Society of Safety Engineers; and the International Brotherhood of Teamsters. With the exception of Texas A & M, all of the commenters generally supported the proposal and encouraged EPA to be as consistent as possible with the OSHA Asbestos Standards. The following discussion addresses all material issues raised by the commenters, EPA's response to those comments, and how these comments affected the outcome of this final rule. Comments raising each issue are identified in parentheses by docket control number.

Texas A & M expressed concern with the proposed extension of WPR coverage to building custodians (Docket #62125A, C-004). The University believes that it might have to survey all of its buildings for asbestos in order to comply with the requirements to determine the presence, location, and quantity of asbestos-containing material (ACM) and presumed asbestos-containing material (PACM) in custodial work sites, post signs at the entrances to mechanical rooms containing asbestos, and provide information and training to custodians who work in areas that contain asbestos. EPA recommends that employers conduct full building inspections, using accredited inspectors, to determine the presence, location, and quantity of asbestos in their buildings. However, as discussed in the preamble to the proposed amendments, State and local government employers may comply with these requirements merely by identifying three types of building materials (thermal system insulation, surfacing material, and resilient floor covering) and assuming that these materials contain asbestos, so long as there is no specific reason to suspect that other materials in the work site or mechanical room contain asbestos (Ref. 1, p. 24810).

Texas A & M also believes that annual training for custodians, and the associated recordkeeping, is "excessive" and "cumbersome " for employers with large numbers of custodial employees. However, EPA believes that the annual educational requirements for custodians are minimal, consisting of at least 2 hours of awareness training on topics such as the health effects of asbestos, how to work around asbestos-containing materials safely, and where asbestos-containing materials are located in the building (Ref. 1, pp. 24813–24814). Texas A & M did not dispute EPA's incremental cost estimate of $49.79 per full-time equivalent employee per year for custodial training, including the associated recordkeeping costs (Ref. 5, pp. 4–29). EPA continues to believe that the benefits of protecting custodians under this regulation, including the 58 estimated cancer cases avoided and consistency with OSHA, outweigh the expense.

Finally, Texas A & M does not believe that custodians should be considered "asbestos workers." EPA is unsure as to what Texas A & M intended by this comment, because the only place that EPA uses a similar term ("asbestos abatement workers") is in Unit I.B.1. of the Asbestos Model Accreditation Plan (MAP), 40 CFR part 763, subpart E, appendix C. The proposed amendments to the WPR did not suggest that custodians be required to complete the 4-day training course for workers under Unit I.B.1. of the MAP (Ref. 1, pp. 248137–24814). As discussed in this unit, this rule requires, at a minimum, 2 hours of awareness training for custodians.

The comments from the American Industrial Hygiene Association (AIHA) expressed strong support for consistency between EPA and OSHA rules and standards, and reminded EPA that OSHA permits Certified Industrial Hygienists to perform certain functions required by the regulations (Docket #62125A, C-002). AIHA indicated that OSHA permits CIHs to collect samples to rebut the presumption that surfacing materials and thermal system insulation contain asbestos. AIHA also indicated that OSHA permits CIHs to serve as competent persons under certain circumstances. EPA intends to be as consistent with the OSHA asbestos regulations as possible. However, for projects in schools or in public or commercial buildings, EPA's MAP requires persons who collect samples to be accredited as inspectors and persons who supervise asbestos response actions to be accredited as supervisors. (TSCA section 206(a), Units I.A. and I.B. of the MAP). Thus, CIHs collecting samples in schools or in public or commercial buildings would also have to be MAP accredited inspectors, and CIHs supervising asbestos response actions in such buildings would have to be MAP accredited supervisors. Changes to the MAP are outside the scope of this rulemaking, but EPA will consider the issues raised by AIHA in any future actions to amend the MAP.

AIHA also noted in its comments that OSHA is more inclusive than EPA with respect to laboratory accreditation programs. OSHA requires laboratories that analyze bulk samples of presumed asbestos-containing material (surfacing materials and thermal system insulation) to participate in a nationally recognized testing program (Ref. 4, pp. 41062, 41141). The AIHA industrial hygiene laboratory accreditation program is one of the programs specifically mentioned by OSHA. EPA will also recognize AIHA laboratory accreditation for laboratories that analyze bulk samples under the WPR, unless those samples are collected in a school building that is regulated under the Asbestos Hazard Emergency Response Act (AHERA), Title II of TSCA, 15 U.S.C. 2641 *et seq.* (Ref. 1, p. 24810). TSCA section 206(d), within AHERA, requires laboratories that analyze samples collected from school buildings under the authority of a local education agency to be accredited by the National Institute of Standards and Technology (NIST). Therefore, EPA may not accept AIHA accreditation for laboratories that analyze samples collected from school buildings.

The American Society of Safety Engineers (ASSE) strongly endorsed EPA's proposal to protect State and local government employees from the health risks of exposure to asbestos to the same extent as private sector employees. ASSE and the Board of Certified Safety Professionals (BCSP), however, both commented that Certified Safety Professionals (CSPs), by virtue of their extensive training, should be permitted to perform the same tasks as CIHs (Docket #62125A, C-010 and C-007, respectively). Specifically, these commenters stated that the preamble to the proposal should have recognized CSPs as qualified to collect bulk samples of surfacing materials and thermal system insulation (Ref. 1, p. 24809) and to determine, in certain circumstances, when alternate control methods for Class I projects are adequate (Ref. 1, p. 24811). As indicated by ASSE, CSPs are recognized in OSHA Directive CPL 2-2.63 (Ref. 2), which

contains guidance for OSHA compliance inspectors on the asbestos standards. Appendix C, "Questions and Answers on the Occupational Exposure to Asbestos Standard," to CPL 2-2.63 says that an employer should not be cited for a violation of the asbestos standards if a CSP was used to evaluate alternate control methods for Class I work, so long as a review of the particular CSP's past work history and training indicates that the CSP possessed the skills, professional judgment, and background to perform the evaluation.

EPA intends to follow OSHA's lead in the interpretation and application of the WPR, so EPA will likewise allow properly qualified CSPs to evaluate alternate control methods for Class I projects. However, OSHA does not permit CSPs to collect bulk samples of thermal system insulation or surfacing material for the purpose of rebutting the presumption that these materials contain asbestos (Ref. 6). EPA will defer to OSHA's expertise in this matter, and maintain consistency by requiring samples to be taken by either a MAP-accredited inspector or a CIH.

The comments from the Resilient Floor Covering Institute (RFCI) expressed concern that, because EPA had not expressly adopted OSHA's interpretations of the Asbestos Standards as set out in OSHA Instruction CPL 2-2.63, EPA would not apply the WPR consistent with the OSHA asbestos standards, particularly with regard to removal and/or replacement of resilient floor covering materials (Docket #62125A, C-008). Specifically, RFCI pointed out that Appendix D to OSHA's CPL 2-2.63 includes the terms of a Settlement Agreement between the flooring industry and OSHA on the application of the OSHA asbestos standards to resilient floor covering. Although RFCI recommended that EPA specifically cite OSHA Instruction CPL 2-2.63 in the text of the WPR, EPA does not believe that this is appropriate, particularly since CPL 2-2.63 is not cited in the text of the OSHA asbestos standards. However, EPA will follow CPL 2-2.63, including all of the appendices and any possible future changes, in implementing the WPR, so long as the Directive is not contrary to other EPA statutes and regulations, such as TSCA, AHERA, the Asbestos-in-Schools Rule, and the MAP.

Finally, comments from the Asbestos Information Association (AIA) supported consistency between the OSHA and EPA asbestos regulations, but objected to the characterization of the risk to State and local government employees as "unreasonable" (Docket #62125A, C-006). In support of this comment, AIA implied that workers would be exposed only to chrysotile asbestos and stated that EPA's (and OSHA's) asbestos risk assessments were outdated, and that the latest scientific findings indicate that the risk from products made with chrysotile asbestos is actually much lower than predicted by current EPA and OSHA risk assessments. However, AIA did not submit any additional information to support this claim. The issue of the risk from chrysotile asbestos has been raised and considered in previous EPA and OSHA rulemakings, and both Agencies have declined to distinguish between asbestos fiber types in performing risk assessments for regulatory purposes. See, for example, the discussion in the preamble to EPA's 1989 final Asbestos Ban and Phaseout Rule (Ref. 3, pp. 29470–29471) and the discussion in the preamble to the 1994 final OSHA Asbestos Standards (Ref. 4, pp. 40978, 40979). Furthermore, EPA reviewed the literature available in 1999 on asbestos hazards in order to assist in the preparation of the United States third-party submissions to a dispute resolution panel of the World Trade Organization regarding the French asbestos ban (Refs. 7-8). EPA found nothing during this literature review that persuasively contradicted the risk assessment approach followed by EPA and OSHA.

The balance of the comments expressed only support for the proposal and contained no substantive comments. These comments were received from the Laborers' International Union of North America, the International Brotherhood of Teamsters, the Safe Buildings Alliance, the Service Employees International Union, and the American Federation of State, County, and Municipal Employees.

No commenter requested an informal public hearing on the proposed rule.

2. *What does this final rule require?* This final rule makes the WPR consistent with the OSHA Asbestos Construction Standard, 29 CFR 1926.1101, including all revisions to that standard from 1994 through the present, and all future amendments. If you are a State or local government employer whose employees perform asbestos abatement activities, you must now comply with the OSHA Asbestos Construction Standard. This rule will effectively lower the permissible exposure limit (PEL) for these employees to 0.1 fibers per cubic centimeter (f/cc) and incorporate additional hazard communication and respiratory protection program requirements.

In addition, this rule extends the requirements of the OSHA Asbestos Construction Standard to State and local government employees who perform any construction activities identified in 29 CFR 1926.1101(a), including demolition, alteration, repair, maintenance, renovation, installation of asbestos-containing products, and housekeeping. For general custodial activities not associated with construction projects, this rule requires State and local government employers to comply with the Asbestos General Industry Standard in 29 CFR 1910.1001.

This rule also applies the current requirements of the OSHA General Industry Standard, 29 CFR 1910.1001, to State and local government employers of employees engaged in automotive brake and clutch repair work. If your employees repair, clean, or replace asbestos-containing clutch plates and brake pads, shoes, and linings, or remove asbestos-containing residue from brake drums or clutch housings, you must comply with the OSHA standards in 29 CFR 1910.1001.

This rule amends the Asbestos-in-Schools Rule, 40 CFR part 763, subpart E, to remove the provisions in 40 CFR 763.91(b) that extend WPR protections to employees of public school systems when they are performing operations, maintenance and repair (O&M) activities. This rule also deletes appendix B to subpart E and the reference to appendix B in 40 CFR 763.92(a)(2)(iii). If you are a public local education agency employer in a State without an OSHA-approved State plan, and your employees perform O&M activities, you will need to follow the requirements of the WPR.

III. References

1. U.S. Environmental Protection Agency (USEPA), Office of Pollution Prevention and Toxics (OPPT). Asbestos Worker Protection; Proposed Rule. **Federal Register** (65 FR 24806, April 27, 2000) (FRL–6493–5).

2. U.S. Department of Labor (USDOL), Occupational Safety and Health Administration (OSHA). Instruction CPL 2-2.63 (November 3, 1995), revised and renamed Directive CPL 2-2.63 (January 9, 1996).

3. USEPA, OPPT. Asbestos Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions; Final Rule. **Federal Register** (54 FR 29460, July 12, 1989).

4. USDOL, OSHA. Occupational Exposure to Asbestos; Final Rule. **Federal Register** (59 FR 40964, August 10, 1994).

5. USEPA, OPPT. Final Asbestos Worker Protection Rule Economic Analysis (September 25, 2000).

6. USDOL, OSHA. Letter to Richard L. Barcum re: procedures for demonstrating that presumed asbestos-containing material does not contain more than 1 percent asbestos (July 1, 1998).

7. U.S. Department of Commerce (USDOC), U.S. Trade Representative (USTR). Third Party Written Submission of the United States, European Communities— Measures Affecting Asbestos and Products Containing Asbestos (May 28, 1999).

8. USDOC, USTR. United States Responses to Questions Posed by the European Communities, European Communities—Measures Affecting Asbestos and Products Containing Asbestos (June 21, 1999).

9. USDOL, OSHA. Letter to the Honorable Jay Johnson re: Occupational Safety and Health Act applicability to tribal land workplaces and employers (March 12, 1998).

IV. Regulatory Assessment Requirements

A. Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB), because this action is not likely to result in a rule that meets any of the criteria for a "significant regulatory action" provided in section 3(f) of the Executive Order.

EPA has prepared an analysis of the potential impact of this action, which is estimated to cost $63.34 million in the first year of the rule and then decline annually thereafter. The analysis is contained in a document entitled "Final Asbestos Worker Protection Rule Economic Analysis" (Ref. 5). This document is available as a part of the public version of the official record for this action (instructions for accessing this document are contained in Unit I.B.).

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, EPA hereby certifies that this final action will not have a significant economic impact on a substantial number of small entities. The factual basis for EPA's determination is presented in the small entity impact analysis prepared as part of the Economic Analysis for the rule (Ref. 5), and is briefly summarized here. For purposes of analyzing potential impact on small entities, EPA used the definition for small entities in RFA section 601. Under RFA section 601, "small entity" is defined as:

1. A small business that meets Small Business Administration size standards codified at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Of the three categories of small entities, only small governmental jurisdictions are affected by this final rule. As such, EPA's analysis of potential small entity impacts assesses the potential impacts on small governmental jurisdictions.

Based on the definition of "small governmental jurisdiction," no State-level government covered by the asbestos WPR can be considered small. Therefore, the small government entities potentially impacted by the asbestos WPR are local governments (e.g., county, municipal, or towns) and school districts.

The amendments to the asbestos WPR may impact local governments in the 27 States without approved OSHA State plans by imposing incremental compliance costs for asbestos-related maintenance, renovation, and brake and clutch repair. There are 24,495 small governmental jurisdictions that are potentially impacted by the asbestos WPR. However, the estimated amounts of the impact are all extremely low. In each of the States, the impact for all small local governments is estimated to be less than 0.1% of revenues available for compliance. EPA estimated that the largest impact would occur for small local governments in Arkansas, Delaware, and West Virginia, where the upper bound estimate of compliance costs as a percent of available revenues is estimated to be 0.051%. For small local governments as a whole, compliance costs associated with the asbestos WPR are estimated to represent 0.023% of available revenues. Therefore, the Agency has concluded that the asbestos WPR will not have a significant impact on small government entities.

Small school districts are defined as school districts serving a resident population of less than 50,000. In the 27 covered States, there are 17,846 small school districts that are potentially impacted by the asbestos WPR. The estimated impact of compliance costs on all small school districts is estimated to be less than 0.01% of available revenues. The largest impact is estimated for Mississippi where compliance costs as a percent of available revenues are estimated to equal 0.013%. The Agency has therefore concluded that the asbestos WPR will not have a significant effect on the revenues of small school districts.

Additional details regarding EPA's basis for this certification are presented in the Final Economic Analysis (Ref. 5), which is included in the public version of the official record for this action. This information will also be provided to the Small Business Administration (SBA) Chief Counsel for Advocacy upon request.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to OMB for review and approval pursuant to the PRA and OMB implementing regulations at 5 CFR part 1320. The burden and costs related to the information collection requirements contained in this rule are described in an Information Collection Request (ICR). This ICR proposes to amend the existing ICR for the current WPR which is approved through September 30, 2001, under OMB No. 2070–0072 (EPA ICR No. 1246.06). A copy of this ICR, which is identified as EPA ICR No. 1246.08, is available electronically at http://www.epa.gov/opperid1/icr.htm, or by e-mailing a request to farmer.sandy@epa.gov. You may also request a copy by mail from Sandy Farmer, Collection Strategies Division, Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 260–2740. The information requirements are not enforceable until OMB approves them.

This amendment to the WPR requires employers to collect, disseminate, and maintain information relating to employee asbestos exposures, respiratory protection, medical surveillance, and training. The records maintained as a result of this information collection will provide EPA with the data necessary for effective enforcement of the WPR.

The public reporting burden for this collection of information is estimated to average, on an annual basis, 17.24 hours per respondent, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. EPA estimates that 25,312 respondents would incur these

burdens, for a total annual respondent burden of 436,289 hours.

As defined by the PRA and 5 CFR 1230.3(b), "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.

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 OMB control number(s) for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, (UMRA), Public Law 104–4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. As discussed in the Final Economic Analysis (Ref. 5), the rule will result in estimated expenditures of at most $63.34 million in any 1 year. In addition, EPA has determined that this rule will not significantly or uniquely affect small governments. For small local governments as a whole, compliance costs associated with the WPR represent 0.023% of revenues assumed to be available for compliance. Moreover, the impact of compliance costs on small school districts as a whole would be less than 0.01% of available revenues. Thus, this final rule is not subject to the requirements of UMRA sections 202, 203, 204, and 205.

E. Federalism

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local government officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local government officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local government officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules 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). Those requirements include providing State and local government officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local government officials regarding the conflict between State law and federally protected interests within the agency's area of regulatory responsibility.

This final rule does not have federalism implications. This rule amends the existing WPR to cover additional asbestos-related activities and to conform the WPR to the OSHA Asbestos Standards. The changes do not result in a significant intergovernmental mandate under the UMRA, and thus, EPA concludes that the rule does not impose substantial direct compliance costs. Nor does the rule substantially affect the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Those relationships have already been established under the existing WPR, and these amendments do not alter them. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

This rule preempts State and local law in accordance with TSCA section 18(a)(2)(B). By publishing and inviting comment on the proposed rule, EPA provided State and local government officials notice and an opportunity for appropriate participation. Thus, EPA complied with the requirements of section 4 of the Executive Order.

F. Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on such communities. Since the OSHA Asbestos Standards cover tribal governments and tribal employees, the WPR does not apply to these groups (Ref. 9). Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Environmental Justice

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in minority and low-income populations. Many of the employees who will benefit from the protections of this rule are members of minority and low-income populations. By providing protection for currently unprotected State and local government building maintenance and custodial employees and their families, this rule addresses the lesser levels of protection in the workplace provided under federal regulations to minority and low-income

populations among State and local government employees. In other words, the rule does not impose disproportionately high- and adverse-human health or environmental effects on minority or low-income populations, but actually decreases such effects.

As described in the proposal (Ref. 1, p. 24829), public participation is an important environmental justice concern. EPA received comments on the proposed rule from organizations representing State and local government employees, but no requests for an informal public hearing on the proposed rule. (See Unit II.A.1).

H. Children's Health

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this final rule because it is not "economically significant" as defined under Executive Order 12866. However, it is EPA's policy to consistently and explicitly consider risks to infants and children in all risk assessments generated during its decision making process, including the setting of standards to protect public health and the environment.

EPA has determined that children are physiologically more vulnerable to asbestos exposures than adults, and that this rule will prevent approximately 65.65 cancer cases among persons with childhood exposures to asbestos from school buildings. EPA also expects this rule to result in other benefits associated with lower asbestos exposures, such as a reduced incidence of non-cancerous health effects such as asbestosis, pleural plaques, and pleural effusion. EPA expects the rule to substantially benefit children by reducing the incidental exposures children face while attending affected schools and when at home from workers' clothing. By reducing ambient asbestos concentrations in school buildings, this rule will help protect children from the disproportionate asbestos exposure risk they face.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA described the applicability of the NTTAA to this rule in the proposal (Ref. 1, pp. 24829–24830). The Agency received no comments or suggestions regarding alternative approaches to technical standards. One of EPA's primary goals in finalizing these amendments to the WPR is to achieve consistency with the OSHA Asbestos Standards. EPA has determined that having different standards for public and private sector workers is inefficient and unfair, and that EPA should generally defer to OSHA's expertise in the matter of worker protection. Therefore, EPA finds that any voluntary consensus standard which is inconsistent with the applicable OSHA Standards is impractical under NTTAA section 12(d)(3).

J. Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

K. Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Schools, Hazardous substances, Reporting and recordkeeping requirements, Worker protection.

Dated: November 3, 2000.

Carol M. Browner,

Administrator.

Therefore, 40 CFR chapter I, subchapter R, is amended as follows:

PART 763—[AMENDED]

1. The authority citation for part 763 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607(c), 2643, and 2646.

2. By revising § 763.91(b) to read as follows:

§ 763.91 Operations and maintenance.

* * * * *

(b) *Worker protection.* Local education agencies must comply with either the OSHA Asbestos Construction Standard at 29 CFR 1926.1101, or the Asbestos Worker Protection Rule at 40 CFR 763.120, whichever is applicable.

* * * * *

§ 763.92 [Amended]

3. By revising § 763.92(a)(2)(iii) to remove the phrase "Appendices A, B, C, D of this subpart E of this part" and add in its place the phrase "Appendices A, C, and D of this subpart E of this part."

Appendix B to Subpart E [Removed and reserved]

4. By removing and reserving Appendix B to subpart E.

5. By revising subpart G to read as follows:

Subpart G—Asbestos Worker Protection

Sec.

Subpart G—Asbestos Worker Protection

§ 763.120 What is the purpose of this subpart?

This subpart protects certain State and local government employees who are not protected by the Asbestos Standards of the Occupational Safety and Health Administration (OSHA). This subpart applies the OSHA Asbestos

Standards in 29 CFR 1910.1001 and 29 CFR 1926.1101 to these employees.

§ 763.121 Does this subpart apply to me?

If you are a State or local government employer and you are not subject to a State asbestos standard that OSHA has approved under section 18 of the Occupational Safety and Health Act or a State asbestos plan that EPA has exempted from the requirements of this subpart under § 763.123, you must follow the requirements of this subpart to protect your employees from occupational exposure to asbestos.

§ 763.122 What does this subpart require me to do?

If you are a State or local government employer whose employees perform:

(a) Construction activities identified in 29 CFR 1926.1101(a), you must:

(1) Comply with the OSHA standards in 29 CFR 1926.1101.

(2) Submit notifications required for alternative control methods to the Director, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(b) Custodial activities not associated with the construction activities identified in 29 CFR 1926.1101(a), you must comply with the OSHA standards in 29 CFR 1910.1001.

(c) Repair, cleaning, or replacement of asbestos-containing clutch plates and brake pads, shoes, and linings, or removal of asbestos-containing residue from brake drums or clutch housings, you must comply with the OSHA standards in 29 CFR 1910.1001.

§ 763.123 May a State implement its own asbestos worker protection plan?

This section describes the process under which a State may be exempted from the requirements of this subpart.

(a) *States seeking an exemption.* If your State wishes to implement its own asbestos worker protection plan, rather than complying with the requirements of this subpart, your State must apply for and receive an exemption from EPA.

(1) *What must my State do to apply for an exemption?* To apply for an exemption from the requirements of this subpart, your State must send to the Director of EPA's Office of Pollution Prevention and Toxics (OPPT) a copy of its asbestos worker protection regulations and a detailed explanation of how your State's asbestos worker protection plan meets the requirements of TSCA section 18 (15 U.S.C. 2617).

(2) *What action will EPA take on my State's application for an exemption?* EPA will review your State's application and make a preliminary determination whether your State's asbestos worker protection plan meets the requirements of TSCA section 18.

(i) If EPA's preliminary determination is that your State's plan does meet the requirements of TSCA section 18, EPA will initiate a rulemaking, including an opportunity for public comment, to exempt your State from the requirements of this subpart. After considering any comments, EPA will issue a final rule granting or denying the exemption.

(ii) If EPA's preliminary determination is that the State plan does not meet the requirements of TSCA section 18, EPA will notify your State in writing and will give your State a reasonable opportunity to respond to that determination.

(iii) If EPA does not grant your State an exemption, then the State and local government employers in your State are subject to the requirements of this subpart.

(b) *States that have been granted an exemption.* If EPA has exempted your State from the requirements of this subpart, your State must update its asbestos worker protection regulations as necessary to implement changes to meet the requirements of this subpart, and must apply to EPA for an amendment to its exemption.

(1) *What must my State do to apply for an amendment to its exemption?* To apply for an amendment to its exemption, your State must send to the Director of OPPT a copy of its updated asbestos worker protection regulations and a detailed explanation of how your State's updated asbestos worker protection plan meets the requirements of TSCA section 18. Your State must submit its application for an amendment within 6 months of the effective date of any changes to the requirements of this subpart, or within a reasonable time agreed upon by your State and OPPT.

(2) *What action will EPA take on my State's application for an amendment?* EPA will review your State's application for an amendment and make a preliminary determination whether your State's updated asbestos worker protection plan meets the requirements of TSCA section 18.

(i) If EPA determines that the updated State plan does meet the requirements of TSCA section 18, EPA will issue your State an amended exemption.

(ii) If EPA determines that the updated State plan does not meet the requirements of TSCA section 18, EPA will notify your State in writing and will give your State a reasonable opportunity to respond to that determination.

(iii) If EPA does not grant your State an amended exemption, or if your State does not submit a timely request for amended exemption, then the State and local government employers in your State are subject to the requirements of this subpart.

[FR Doc. 00–29232 Filed 11–14–00; 8:45 am]

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Federal Register

Wednesday,
November 15, 2000

Part VII

The President

Federal Register
Vol. 65, No. 221
Wednesday, November 15, 2000

Presidential Documents

Title 3—

The President

Proclamation 7373 of November 9, 2000

Boundary Enlargement of the Craters of the Moon National Monument

By the President of the United States of America

A Proclamation

The Craters of the Moon National Monument was established on May 2, 1924 (Presidential Proclamation 1694), for the purpose of protecting the unusual landscape of the Craters of the Moon lava field. This "lunar" landscape was thought to resemble that of the Moon and was described in the Proclamation as "weird and scenic landscape peculiar to itself." The unusual scientific value of the expanded monument is the great diversity of exquisitely preserved volcanic features within a relatively small area. The expanded monument includes almost all the features of basaltic volcanism, including the craters, cones, lava flows, caves, and fissures of the 65-mile-long Great Rift, a geological feature that is comparable to the great rift zones of Iceland and Hawaii. It comprises the most diverse and geologically recent part of the lava terrain that covers the southern Snake River Plain, a broad lava plain made up of innumerable basalt lava flows that erupted during the past 5 million years.

Since 1924, the monument has been expanded and boundary adjustments made through four presidential proclamations issued pursuant to the Antiquities Act (34 Stat. 225, 16 U.S.C. 431). Presidential Proclamation 1843 of July 23, 1928, expanded the monument to include certain springs for water supply and additional features of scientific interest. Presidential Proclamation 1916 of July 9, 1930, Presidential Proclamation 2499 of July 18, 1941, and Presidential Proclamation 3506 of November 19, 1962, made further adjustments to the boundaries. In 1996, a minor boundary adjustment was made by section 205 of the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104–333, 110 Stat. 4093, 4106).

This Proclamation enlarges the boundary to assure protection of the entire Great Rift volcanic zone and associated lava features, all objects of scientific interest. The Craters of the Moon, Open Crack, Kings Bowl, and Wapi crack sets and the associated Craters of the Moon, Kings Bowl, and Wapi lava fields constitute this volcanic rift zone system. Craters of the Moon is the largest basaltic volcanic field of dominantly Holocene age (less than 10,000 years old) in the conterminous United States. Each of the past eruptive episodes lasted up to several hundred years in duration and was separated from other eruptive episodes by quiet periods of several hundred years to about 3,000 years. The first eruptive episode began about 15,000 years ago and the latest ended about 2,100 years ago.

Craters of the Moon holds the most diverse and youngest part of the lava terrain that covers the southern Snake River Plain of Idaho, a broad plain made up of innumerable basalt lava flows during the past 5 million years. The most recent eruptions at the Craters of the Moon took place about 2,100 years ago and were likely witnessed by the Shoshone people, whose legend speaks of a serpent on a mountain who, angered by lightening, coiled around and squeezed the mountain until the rocks crumbled and melted, fire shot from cracks, and liquid rock flowed from the fissures as the mountain exploded. The volcanic field now lies dormant, in the latest of a series of quiet periods that separate the eight eruptive episodes

during which the 60 lava flows and 25 cinder cones of this composite volcanic field were formed. Some of the lava flows traveled distances of as much as 43 miles from their vents, and some flows diverged around areas of higher ground and rejoined downstream to form isolated islands of older terrain surrounded by new lava. These areas are called "kipukas."

The kipukas provide a window on vegetative communities of the past that have been erased from most of the Snake River Plain. In many instances, the expanse of rugged lava surrounding the small pocket of soils has protected the kipukas from people, animals, and even exotic plants. As a result, these kipukas represent some of the last nearly pristine and undisturbed vegetation in the Snake River Plain, including 700-year-old juniper trees and relict stands of sagebrush that are essential habitat for sensitive sage grouse populations. These tracts of relict vegetation are remarkable benchmarks that aid in the scientific study of changes to vegetative communities from recent human activity as well as the role of natural fire in the sagebrush steppe ecosystem.

The Kings Bowl lava field and the Wapi lava field are included in the enlarged monument. The Kings Bowl field erupted during a single fissure eruption on the southern part of the Great Rift about 2,250 years ago. This eruption probably lasted only a few hours to a few days. The field preserves explosion pits, lava lakes, squeeze-ups, basalt mounds, and an ash blanket. The Wapi field probably formed from a fissure eruption simultaneously with the eruption of the Kings Bowl field. With more prolonged activity over a period of months to a few years, the Wapi field formed a low shield volcano. The Bear Trap lava tube, located between the Craters of the Moon and the Wapi lava fields, is a cave system more than 15 miles long. The lava tube is remarkable for its length and for the number of well preserved lava-cave features, such as lava stalactites and curbs, the latter marking high stands of the flowing lava forever frozen on the lava tube walls. The lava tubes and pit craters of the monument are known for their unusual preservation of winter ice and snow into the hot summer months, due to shielding from the sun and the insulating properties of the basalt.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as an addition to the Craters of the Moon National Monument:

NOW, THEREFORE, I, William J. Clinton, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as an addition to the Craters of the Moon National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled "Craters of the Moon National Monument Boundary Enlargement" attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 661,287 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating

to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. For the purpose of protecting the objects identified above, the Secretary shall prohibit all motorized and mechanized vehicle use off road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of the Interior shall prepare a transportation plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

The Secretary of the Interior shall manage the area being added to the monument through the Bureau of Land Management and the National Park Service, pursuant to legal authorities, to implement the purposes of this proclamation. The National Park Service and the Bureau of Land Management shall manage the monument cooperatively and shall prepare an agreement to share, consistent with applicable laws, whatever resources are necessary to manage properly the monument; however, the National Park Service shall have primary management authority over the portion of the monument that includes the exposed lava flows, and shall manage the area under the same laws and regulations that apply to the current monument. The Bureau of Land Management shall have primary management authority over the remaining portion of the monument, as indicated on the map entitled, "Craters of the Moon National Monument Boundary Enlargement."

Wilderness Study Areas included in the monument will continue to be managed under section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701–1782).

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Idaho with respect to fish and wildlife management.

This proclamation does not reserve water as a matter of Federal law. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation. The Secretary shall work with appropriate State authorities to ensure that water resources needed for monument purposes are available.

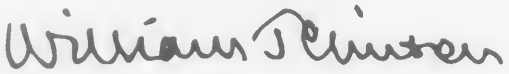
Nothing in this proclamation shall be deemed to enlarge or diminish the rights of any Indian tribe.

Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument administered by the Bureau of Land Management.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

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



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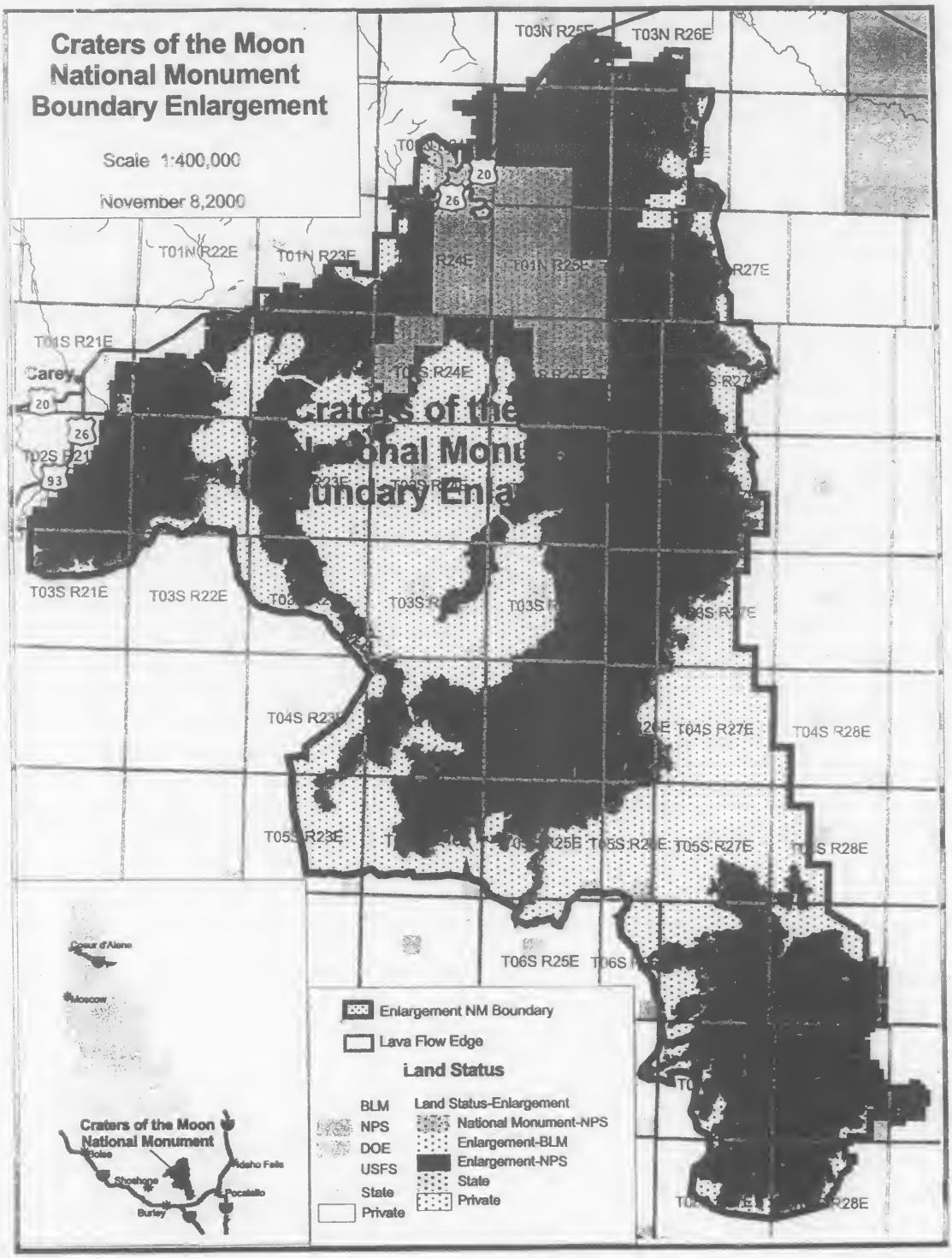


[FR Doc. 00–29452
Filed 11–14–00; 8:46 am]
Billing code 3195–01–C

Presidential Documents

Proclamation 7374 of November 9, 2000

Vermilion Cliffs National Monument

By the President of the United States of America

A Proclamation

Amid the sandstone slickrock, brilliant cliffs, and rolling sandy plateaus of the Vermilion Cliffs National Monument lie outstanding objects of scientific and historic interest. Despite its arid climate and rugged isolation, the monument contains a wide variety of biological objects and has a long and rich human history. Full of natural splendor and a sense of solitude, this area remains remote and unspoiled, qualities that are essential to the protection of the scientific and historic objects it contains.

The monument is a geological treasure. Its centerpiece is the majestic Paria Plateau, a grand terrace lying between two great geologic structures, the East Kaibab and the Echo Cliffs monoclines. The Vermilion Cliffs, which lie along the southern edge of the Paria Plateau, rise 3,000 feet in a spectacular escarpment capped with sandstone underlain by multicolored, actively eroding, dissected layers of shale and sandstone. The stunning Paria River Canyon winds along the east side of the plateau to the Colorado River. Erosion of the sedimentary rocks in this 2,500 foot deep canyon has produced a variety of geologic objects and associated landscape features such as amphitheaters, arches, and massive sandstone walls.

In the northwest portion of the monument lies Coyote Buttes, a geologically spectacular area where crossbeds of the Navajo Sandstone exhibit colorful banding in surreal hues of yellow, orange, pink, and red caused by the precipitation of manganese, iron, and other oxides. Thin veins or fins of calcite cut across the sandstone, adding another dimension to the landscape. Humans have explored and lived on the plateau and surrounding canyons for thousands of years, since the earliest known hunters and gatherers crossed the area 12,000 or more years ago. Some of the earliest rock art in the Southwest can be found in the monument. High densities of Ancestral Puebloan sites can also be found, including remnants of large and small villages, some with intact standing walls, fieldhouses, trails, granaries, burials, and camps.

The monument was a crossroad for many historic expeditions. In 1776, the Dominguez-Escalante expedition of Spanish explorers traversed the monument in search of a safe crossing of the Colorado River. After a first attempt at crossing the Colorado near the mouth of the Paria River failed, the explorers traveled up the Paria Canyon in the monument until finding a steep hillside they could negotiate with horses. This took them out of the Paria Canyon to the east and up into the Ferry Swale area, after which they achieved their goal at the Crossing of the Fathers east of the monument. Antonio Armijo's 1829 Mexican trading expedition followed the Dominguez route on the way from Santa Fe to Los Angeles.

Later, Mormon exploring parties led by Jacob Hamblin crossed south of the Vermilion Cliffs on missionary expeditions to the Hopi villages. Mormon pioneer John D. Lee established Lee's Ferry on the Colorado River just south of the monument in 1871. This paved the way for homesteads in the monument, still visible in remnants of historic ranch structures and associated objects that tell the stories of early settlement. The route taken by the Mormon explorers along the base of the Paria Plateau would later

become known as the Old Arizona Road or Honeymoon Trail. After the temple in St. George, Utah was completed in 1877, the Honeymoon Trail was used by Mormon couples who had already been married by civil authorities in the Arizona settlements, but also made the arduous trip to St. George to have their marriages solemnized in the temple. The settlement of the monument area by Mormon pioneers overlapped with another historic exploration by John Wesley Powell, who passed through the monument during his scientific surveys of 1871.

The monument contains outstanding biological objects that have been preserved by remoteness and limited travel corridors. The monument's vegetation is a unique combination of cold desert flora and warm desert grassland, and includes one threatened species, Welsh's milkweed. This unusual plant, known only in Utah and Arizona, colonizes and stabilizes shifting sand dunes, but is crowded out once other vegetation encroaches.

Despite sporadic rainfall and widely scattered ephemeral water sources, the monument supports a variety of wildlife species. At least twenty species of raptors have been documented in the monument, as well as a variety of reptiles and amphibians. California condors have been reintroduced into the monument in an effort to establish another wild population of this highly endangered species. Desert bighorn sheep, pronghorn antelope, mountain lion, and other mammals roam the canyons and plateaus. The Paria River supports sensitive native fish, including the flannelmouth sucker and the speckled dace.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Vermilion Cliffs National Monument:

NOW, THEREFORE, I, William J. Clinton, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Vermilion Cliffs National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled "Vermilion Cliffs National Monument" attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 293,000 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. For the purpose of protecting the objects identified above, the Secretary shall prohibit all motorized and mechanized vehicle use off road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities, to implement the purposes of this proclamation.

The Secretary of the Interior shall prepare a transportation plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

The establishment of this monument is subject to valid existing rights.

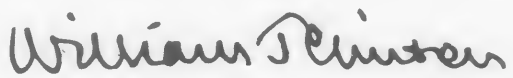
Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Arizona with respect to fish and wildlife management.

This proclamation does not reserve water as a matter of Federal law. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation. The Secretary shall work with appropriate State authorities to ensure that any water resources needed for monument purposes are available.

Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation. Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

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



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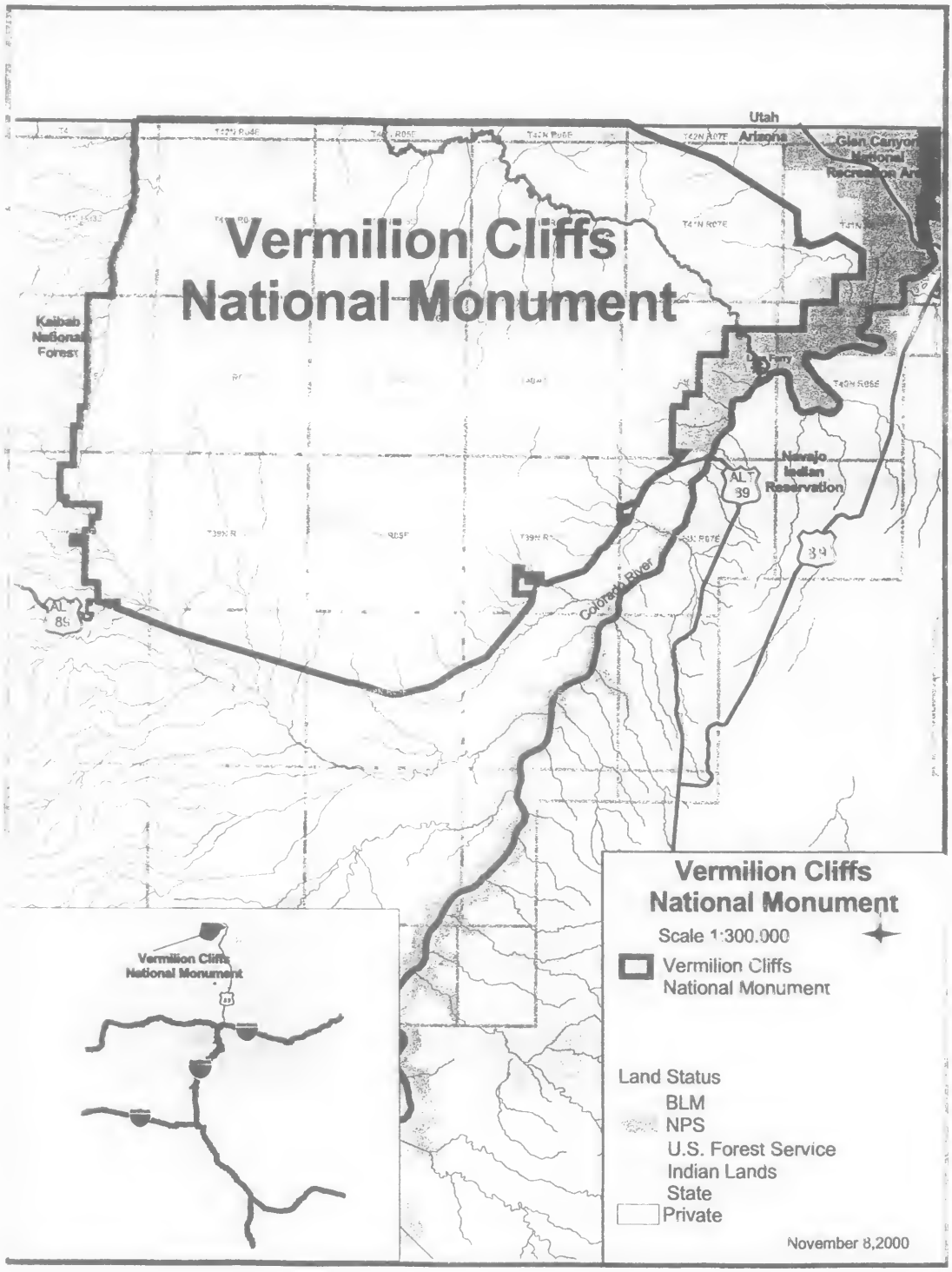

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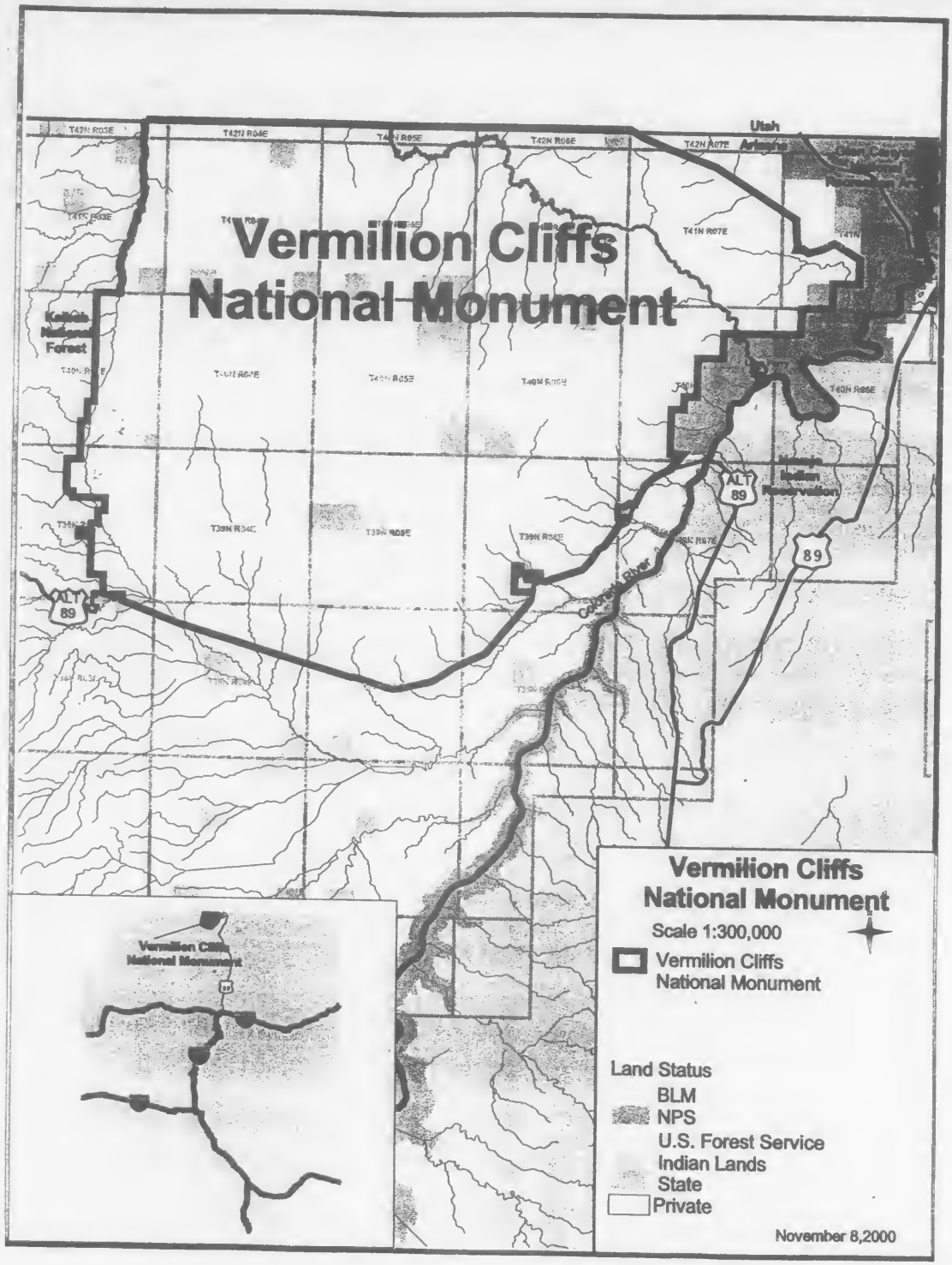

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Presidential Documents

Proclamation 7375 of November 10, 2000

Veterans Day, 2000

By the President of the United States of America

A Proclamation

On this day, in ceremonies across our Nation and around the world, Americans gather to pay tribute to our veterans. In community centers and church halls, at VFW posts and U.S. embassies, in quiet cemeteries and on battlefields fallen silent, we pause to honor the brave men and women of our Armed Forces whose devotion to duty and willingness to serve have sustained our country for more than two centuries.

Over the course of our history, some 41 million Americans have served—and more than a million have died—so that we might live in freedom. We are the beneficiaries of their courage, their sacrifice, and their vigilance; and so are countless freedom-loving people around the world.

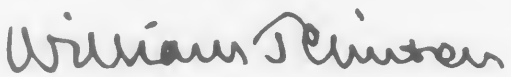
In the past century alone, through two world wars and the long, tense struggle of the Cold War; on the front lines in Korea, Vietnam, Beirut, Grenada, Panama, Somalia, Haiti, the Persian Gulf, and the Balkans, our brave men and women in uniform have risked their lives to protect U.S. interests, assist our allies, promote peace, and advance our ideals. Thanks to their extraordinary record of service, more people now live under democratic rule than at any other time in history. And today, America is a stronger Nation in a more secure world because of our veterans.

President Kennedy once said, "Democracy is never a final achievement. It is a call to untiring effort, to continual sacrifice and to the willingness, if necessary, to die in its defense." Today we give thanks to the veterans of our Armed Forces for showing that willingness. Whether serving on bases and in ports at home or deployed across the globe, they have endured hardship and danger to protect our Nation and assist our allies. The story of America has been written, in large part, by the deeds of our veterans—deeds that bind us to our past, inspire us in the present, and strengthen us to meet the challenges of the future.

In honor 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 pay tribute to 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 Saturday, November 11, 2000, 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 tenth day of November, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



[FR Doc. 00–29454
Filed 11–14–00; 8:46 am]
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Federal Register

Wednesday,
November 15, 2000

Part VIII

The President

Proclamation 7376—International Education Week, 2000

Federal Register
Vol. 65, No. 221
Wednesday, November 15, 2000

Presidential Documents

Title 3—

The President

Proclamation 7376 of November 13, 2000

International Education Week, 2000

By the President of the United States of America

A Proclamation

Today we live in a global community, where all countries must work as partners to promote peace and prosperity and to resolve international problems. One of the surest ways to develop and strengthen such partnerships is through international education programs.

These programs enable students to learn other languages, experience other cultures, develop a broader understanding of global issues, and make lasting friendships with their peers in other countries who will one day guide the political, cultural, and economic development of their nations. Some of America's staunchest friends abroad are those who have experienced our country firsthand as exchange students or who have been exposed to American values through contact with American students and scholars studying overseas.

Since World War II, the Federal Government has worked in partnership with colleges, universities, and other educational organizations to sponsor programs that help our citizens gain the international experience and skills needed to meet the challenges of an increasingly interdependent world. At the same time, American educational institutions have developed study programs that attract students from all over the world to further their education in the United States.

One of the largest and most renowned of these international education initiatives is the Fulbright Program, which was founded by Senator J. William Fulbright more than half a century ago. Since its inception, the program has provided nearly a quarter of a million participants from the United States and 140 other nations—participants chosen for their academic and professional qualifications and leadership potential—with the opportunity to study and teach abroad and to gain knowledge of global political, economic, and cultural institutions. As Senator Fulbright envisioned, this program has proved to be a vital and positive force for peace and understanding around the world.

To build on this tradition of excellence in international education, I signed a memorandum in April of this year directing the heads of Executive departments and agencies to work with educational institutions, State and local governments, private organizations, and the business community to develop a coordinated national policy on international education. We must reaffirm our national commitment to encouraging students from other countries to study in the United States, promote study abroad by U.S. students, and support the exchange of teachers, scholars, and citizens at all levels of society. By doing so, we can expand our citizens' intellectual and cultural horizons, strengthen America's economic competitiveness, increase understanding between nations and peoples, and, as Senator Fulbright so eloquently stated, direct "the enormous power of human knowledge to the enrichment of our own lives and to the shaping of a rational and civilized world order."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution

and laws of the United States, do hereby proclaim November 13 through November 17, 2000, as International Education Week. I urge all Americans to observe this week with events and programs that celebrate the benefits of international education to our citizens, our economy, and the world.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–29462
Filed 11–14–00; 10:59 am]
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South Atlantic snapper-grouper; published 10-16-00

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Arkansas; published 10-16-00
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Copper sulfate pentahydrate; published 11-15-00
Pyriproxyfen; published 11-15-00

FEDERAL COMMUNICATIONS COMMISSION
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Competitive bidding procedures for all auctionable services
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Federal Aviation Administration
Airworthiness directives:
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TREASURY DEPARTMENT
Customs Service
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AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Blueberries, cultivated; promotion, research, and information order; name change from blueberry promotion, research, and information order; comments due by 11-20-00; published 9-21-00
Pork Promotion, Research, and Consumer Information:
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East Anglia; comments due by 11-20-00; published 9-20-00
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Equine viral arteritis regulatory program for horses; comments due by 11-20-00; published 9-20-00
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Federal Crop Insurance Corporation
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Food Safety and Inspection Service
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BE-577; direct transactions of U.S. reporter with foreign affiliate; comments due by 11-20-00; published 9-21-00
BE-82; annual survey of financial services transactions between U.S. financial services providers and unaffiliated foreign persons; comments due by 11-20-00; published 9-21-00
BE-93; annual survey of royalties, license fees, and other receipts and payments for intangible rights between U.S. and unaffiliated foreign persons; comments due by 11-20-00; published 9-21-00

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H.R. 1651/P.L. 106–450

To amend the Fishermen's Protective Act of 1967 to extend the period during which reimbursement may be provided to owners of United States fishing vessels for costs incurred when such a vessel is seized and detained by a foreign country, and for other purposes. (Nov. 7, 2000; 114 Stat. 1941)

H.R. 2442/P.L. 106–451

Wartime Violation of Italian American Civil Liberties Act (Nov. 7, 2000; 114 Stat. 1947)

H.R. 4831/P.L. 106–452

To redesignate the facility of the United States Postal Service located at 2339 North California Avenue in Chicago, Illinois, as the "Roberto Clemente Post Office". (Nov. 7, 2000; 114 Stat. 1950)

H.R. 4853/P.L. 106–453

To redesignate the facility of the United States Postal Service located at 1568 South Green Road in South Euclid, Ohio, as the "Arnold C. D'Amico Station". (Nov. 7, 2000; 114 Stat. 1951)

H.R. 5229/P.L. 106–454

To designate the facility of the United States Postal Service located at 219 South Church Street in Odum, Georgia, as the "Ruth Harris Coleman Post Office Building". (Nov. 7, 2000; 114 Stat. 1952)

S. 501/P.L. 106–455

Glacier Bay National Park Resource Management Act of 2000 (Nov. 7, 2000; 114 Stat. 1953)

S. 503/P.L. 106–456

Spanish Peaks Wilderness Act of 2000 (Nov. 7, 2000; 114 Stat. 1955)

S. 835/P.L. 106–457

Estuaries and Clean Waters Act of 2000 (Nov. 7, 2000; 114 Stat. 1957)

S. 1088/P.L. 106–458

Arizona National Forest Improvement Act of 2000 (Nov. 7, 2000; 114 Stat. 1983)

S. 1211/P.L. 106–459

To amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner. (Nov. 7, 2000; 114 Stat. 1987)

S. 1218/P.L. 106–460

To direct the Secretary of the Interior to issue to the Landusky School District, without consideration, a patent for the surface and mineral estates of certain lots, and for other purposes. (Nov. 7, 2000; 114 Stat. 1988)

S. 1275/P.L. 106–461

Hoover Dam Miscellaneous Sales Act (Nov. 7, 2000; 114 Stat. 1989)

S. 1586/P.L. 106–462

Indian Land Consolidation Act Amendments of 2000 (Nov. 7, 2000; 114 Stat. 1991)

S. 2300/P.L. 106–463

Coal Market Competition Act of 2000 (Nov. 7, 2000; 114 Stat. 2010)

S. 2719/P.L. 106–464

Native American Business Development, Trade Promotion, and Tourism Act of 2000 (Nov. 7, 2000; 114 Stat. 2012)

S. 2950/P.L. 106–465

Sand Creek Massacre National Historic Site Establishment Act of 2000 (Nov. 7, 2000; 114 Stat. 2019)

S. 3022/P.L. 106–466

Nampa and Meridian Conveyance Act (Nov. 7, 2000; 114 Stat. 2024)

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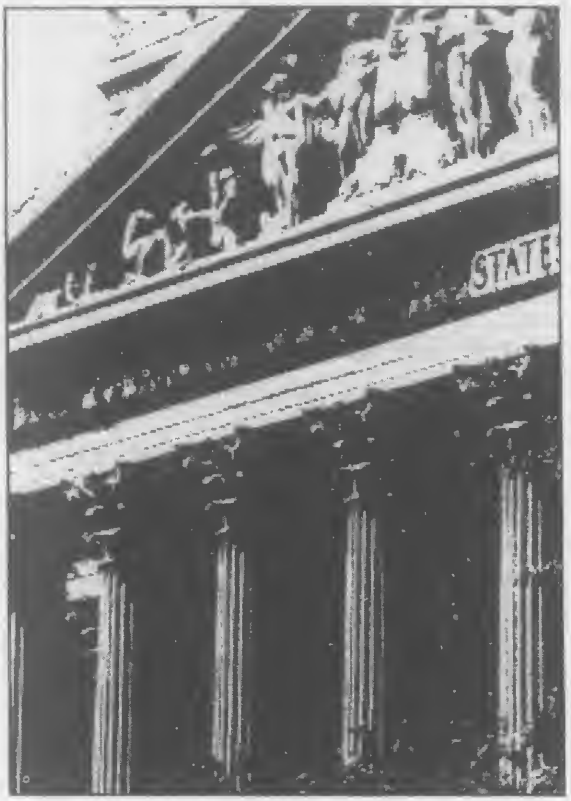

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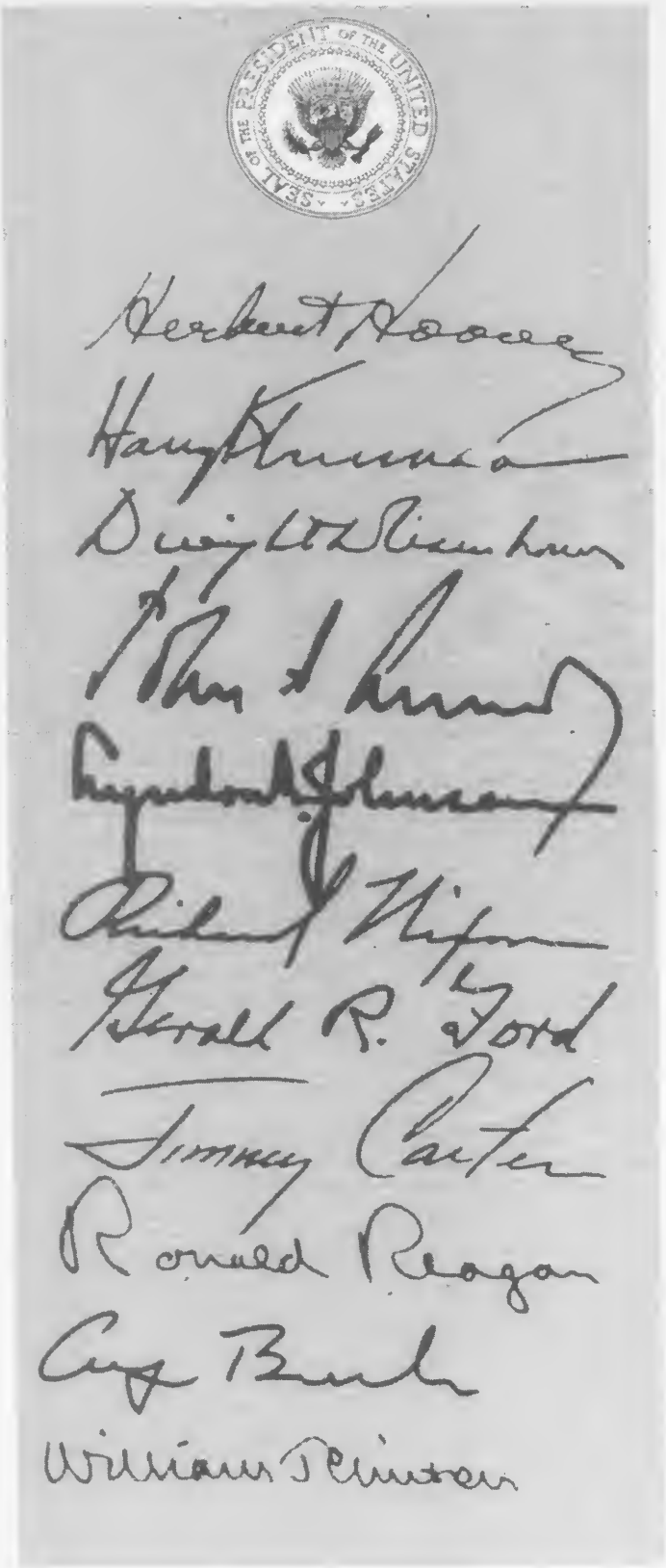

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