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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.

Rules and Regulations

Federal Register
Vol. 63, No. 54
Friday, March 20, 1998

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Office of the Secretary, USDA.

ACTION: Determination on historical license reductions.

SUMMARY: The Department of Agriculture has determined that provisions of the Dairy Tariff-Rate Import Quota Licensing Regulation with respect to the issuance of reduced historical import licenses based on license surrenders of more than 50 percent will be suspended, in light of market conditions, and shall not apply for a period of five years.

DATES: Effective March 20, 1998, 7 CFR 6.25(b)(1)(i) and (b)(1)(ii) are suspended.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, Group Leader, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., Stop 1029, Washington, DC 20250–1029 or telephone (202) 720–2916.

SUPPLEMENTARY INFORMATION:

Determination: The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, 7 CFR 2.43, has determined pursuant to 7 CFR 6.25(b)(2), to suspend the historical license reduction provisions of 7 CFR 6.25(b)(1)(i) and 6.25(b)(1)(ii) for a five-year period, in light of U.S. import market conditions for cheese. At the end of the five-year suspension, beginning in quota year 2004, if more than 50 percent of a historical license is surrendered in each of the three prior quota years (i.e., 2001–2003), that license will be issued in an amount equal to the average amount entered in those years. Beginning in quota year 2006, if more than 50 percent of a historical license is surrendered in at least three of the five prior quota years (i.e., 2001–2005), that license will be issued in an amount equal to the average amount entered in those years. FAS has determined that a principal underlying cause of changing U.S. import market conditions is the European Union's (the EU's) progressive implementation of its Uruguay Round export subsidy reduction commitment which, in quota year 1997, began to have a direct impact on trade flows of EU cheese to the U.S. market resulting in reduced U.S. imports and increased historical license surrenders. FAS has further determined that a five-year suspension of the historical license reduction requirement, until the Uruguay Round export subsidy reductions are completed in the year 2000, is warranted under § 6.25(b)(2) to allow time for historical licensees to adjust to changing U.S. import market conditions.

Backgound

The Dairy Tariff-Rate Import Quota Licensing Regulation at 7 CFR 6.25(b)(2) provides that prior to 1999, the Secretary of Agriculture may determine that the requirements in §§ 6.25(b)(1)(i) and 6.25(b)(1)(ii) to reduce permanently the quantity of historical license based on license surrenders of more than 50 percent in three consecutive quota years or three out of five quota years, "shall not apply in light of market conditions." The Department requested public comments in a notice of proposed rulemaking published on October 15, 1997 (62 FR 53580–81 and 62 FR 55184), on possible options for the implementation of the historical license reduction requirement, including possible recision, suspension, or delay of this requirement, and requested comments on current dairy import market conditions that should be considered with respect to implementation of § 6.25(b)(2). Public comments were submitted by 37 entities during the comment period from October 15, 1997, to November 28, 1997.

Historical License Surrenders and Market Conditions: In 1997, surrenders of historical licenses for cheese, in which the quantity surrendered exceeded 50 percent of a license amount, reached 12,302 metric tons; compared to 1,980 metric tons in 1996, and 5,163 metric tons in 1995. Surrenders of historical licenses for EU cheese accounted for over 60 percent of 1997 historical license surrenders of 12,302 metric tons. In previous years, historical license surrenders were based, in part, on supply shortages and currency situations. However, the 1997 increase in historical license surrenders can be attributed principally to the EU's implementation of its Uruguay Round commitment to reduce the quantity of cheese exported under subsidy.

Under Uruguay Round export subsidy disciplines, the EU's export subsidy ceiling for cheese is scheduled to decrease each fiscal year (FY) from 426,500 tons in FY 1995 (July-June) to 321,300 tons in FY 2000. The EU administers its export subsidy reduction program by setting monthly export subsidy allocations equal to prorated amounts of the annual export subsidy ceiling, and issuing export licenses for subsidized cheese shipments by destination. In October 1997, to avoid exceeding its export subsidy limit, the EU adjusted subsidies for various cheeses and lowered subsidies by 20 percent for cheese exports destined for the United States. EU subsidy cuts during the 1997 quota year were sufficient to raise EU prices of various cheeses to levels that impeded EU cheese sales to U.S. historical licenses. In particular, prices of EU industrial-grade cheeses rose above U.S. prices for comparable cheese (i.e., domestic barrel Cheddar cheese), thereby removing the economic incentive to import. In addition to EU export subsidy reductions, the 1998 merger of the license allocations for Austria, Finland, and Sweden into an EU–15 allocation added approximately 21,000 metric tons of EU historical licenses for cheese.

In view of rapid and significant changes in U.S. import market conditions for EU cheeses beginning in 1997, FAS has determined that temporary suspension of the historical license reduction requirement is justified through the year 2000. The overriding purpose of the five-year suspension is to provide adequate time for historical licensees of EU cheeses to adjust to changing market conditions, to find alternative suppliers of cheese in the EU, and to develop new markets to enable importers to fully utilize their historical licenses for EU cheese. The suspension is consistent with the intent of the U.S.-EU Uruguay Round bilateral

agreement on maximizing utilization of U.S. licenses for EU cheese.

Summary of Public Comments: Comments, views, and recommendations were submitted by 32 importers holding historical licenses; three members of Congress; and two trade associations. Submissions by most historical licensees stressed that substantial business investments rely on historical import licenses, and permanent reductions can cause significant harm to employees, distributors, customers, and the survival of many businesses. Most historical licensees supported immediate elimination of the historical license reduction requirement. Certain other historical licensees supported either: (1) the permanent reduction and reallocation of historical licenses in order to provide new entrants and growing businesses a greater opportunity to import cheese; or (2) postponement of the historical license reduction requirement to provide time for adjustment to and analysis of changing market conditions. Comments submitted by the members of Congress and trade associations favored elimination of the historical license reduction requirement based on market conditions.

With respect to market conditions, the members of Congress stated that, under current circumstances, surrenders of historical licenses result from market conditions beyond an importer's control. Historical licensees and the trade associations identified the following market conditions as causes of historical license surrenders: (1) lack of exportable supply; (2) non-competitive foreign prices (resulting in some cases from foreign export administration decisions, and currency fluctuations); (3) low-quality or high-priced foreign products; and (4) foreign export monopolies which can affect license utilization through supply and price controls.

Signed at Washington, D.C. on March 13, 1998.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 98–7171 Filed 3–19–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 96–082–2]

Bamboo

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are consolidating the regulations pertaining to the importation of bamboo, contained in "Subpart—Bamboo Capable of Propagation," and the regulations pertaining to propagative material in general, contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products." This change will simplify and clarify our regulations. We are also amending the regulations in "Subpart—Fruits and Vegetables" to add provisions allowing fresh bamboo shoots without leaves or roots to be imported into the United States from various countries for consumption. This action is based on assessments that indicate that bamboo shoots without leaves or roots may be imported into the United States from certain countries without a significant risk of introducing plant pests.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange, Staff Officer, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231, telephone (301) 734–6799; or e-mail jpdmange@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 7 CFR part 319 prohibit or restrict the importation of plants, plant parts, and related materials to prevent the introduction of foreign plant pests into the United States.

The importation into the United States of any variety of bamboo seed, bamboo plants, and bamboo cuttings capable of propagation, including all genera and species of the tribe *Bambuseae*, has been regulated under "Subpart— Bamboo Capable of Propagation," contained in 7 CFR 319.34. Section 319.34(a) provides that all varieties of bamboo seeds, bamboo plants, and bamboo cuttings capable of propagation are prohibited importation into the United States unless they are imported: (1) For experimental or scientific purposes by the United States Department of Agriculture; (2) for export, or for transportation and exportation in bond, in accordance with 7 CFR part 352; or (3) into Guam, in accordance with § 319.37–4(b).

"Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (referred to below as "Subpart—Nursery Stock"), contained in 7 CFR 319.37 through 319.37–14, regulates the importation into the United States of most other propagative plant material. Regulated articles are designated as either prohibited or restricted.

On September 11, 1997, we published in the **Federal Register** (62 FR 47770–47772, Docket No. 96–082–1) a proposal to consolidate "Subpart—Bamboo Capable of Propagation" and "Subpart—Nursery Stock" by adding bamboo seed, bamboo plants, and bamboo cuttings capable of propagation, except those imported into Guam, to the list of prohibited articles in § 319.37(a). In conjunction with this action, we proposed to remove "Subpart—Bamboo Capable of Propagation" and all references to § 319.34 contained in part 319.

Under this proposal, bamboo seeds, bamboo plants, and bamboo cuttings capable of propagation would have continued to be eligible for importation into Guam as restricted articles. (The term *restricted article* is defined in § 319.37–1 of "Subpart—Nursery Stock" as any class of nursery stock or other class of plant, root, bulb, seed, or other plant product for, or capable of, propagation, excluding any prohibited articles listed in § 319.37–2 (a) or (b) of "Subpart—Nursery Stock," and excluding any articles regulated under other subparts of part 319.)

The importation of bamboo seeds, bamboo plants, and bamboo cuttings for experimental or scientific purposes by the United States Department of Agriculture also would not have been affected by this change. In "Subpart—Nursery Stock," § 319.37–2(c) provides that any article listed as a prohibited article in § 319.37(a) may be imported for experimental or scientific purposes by the Department of Agriculture.

In addition, bamboo seeds, bamboo plants, and bamboo cuttings capable of propagation would have continued to be eligible for movement through the United States for export, or for transportation and exportation in bond, in accordance with 7 CFR part 352. The regulations at 7 CFR part 352, "Plant Quarantine Safeguard Regulations," allow plants and plant parts that are not eligible for entry into the United States to move through the United States for export to other countries under safeguards intended to prevent the introduction of plant pests.

We also proposed to amend "Subpart—Fruits and Vegetables," contained in §§ 319.56 through 319.56–8, by adding provisions allowing fresh bamboo shoots without leaves or roots to be imported into the United States for consumption from China, the Dominican Republic, Japan, and Taiwan. We proposed to add bamboo shoots without leaves or roots to the list of fruits and vegetables in § 319.56–2t that may be imported from specified countries or places in accordance with § 319.56–6 and all other applicable provisions of the regulations. (Section 319.56–6, among other things, provides for inspection and, if necessary, disinfection of imported fruits and vegetables at the port of first arrival.) This proposed action was based on assessments that show that fresh bamboo shoots without leaves or roots may be imported from the countries listed into the United States for consumption without presenting a significant pest or plant disease risk.

We solicited comments concerning our proposal for 60 days ending November 10, 1997. We received six comments by that date. Two were from State government officials, and four were from representatives of the domestic bamboo industry. Five commenters asked that we consider amending one or more aspects of our proposal. One commenter expressed disapproval with our proposal. Their concerns are addressed below by topic.

Removal of the Prohibition on Importing Bamboo Nursery Stock

Comment: The prohibition on the importation of bamboo propagative material should be removed since our domestic bamboo industry needs more and better species if it is to become a viable industry. The present quarantine system is not suited for the growing bamboo industry, as it performs both the functions of keeping plant pests out, and keeping industry growth down. The prohibition on the importation of bamboo seeds and tissue-cultured embryos should be removed as well, because the pathogens that were the original basis for the regulations are not carried on the seeds, and therefore, the Animal and Plant Health Inspection Service should allow their importation along with shoots.

Response: Any change in the nursery stock regulations that would eliminate the prohibition on the importation of bamboo would need to be based on a pest risk assessment for each genus of bamboo to be imported. At present, we do not have the resources to complete such pest risk assessments in a timely fashion, as the tribe *Bambuseae* is made up of approximately 50–120 different genera. However, anyone wishing to import a specific genus may submit such a request to the Phytosanitary Issues Management Team at the address listed above in the **FOR FURTHER INFORMATION CONTACT** section of this rule, and we will conduct a pest risk assessment for that genus. We invite the submission of any pest risk information, preferably published data, with such a request to import bamboo.

Propagative Bamboo into Guam

Comment: The importation of bamboo nursery stock into Guam should be prohibited, since it is prohibited everywhere else in the United States. At present, there are no bamboo pests on Guam, and by continuing to allow the importation of bamboo by standard permit, such bamboo pests or diseases or other plant pests may be brought to Guam.

Response: We have decided to make the change requested in regard to the prohibition of the importation of bamboo nursery stock into Guam. Though the regulations currently allow bamboo nursery stock to be imported into Guam under permit, we have concluded for the reasons stated in the comment that bamboo nursery stock should not be imported into Guam unless a pest risk assessment is conducted that documents that the importation of bamboo nursery stock will not present a significant risk of introducing plant pests into Guam.

Bamboo Shoots

Comment: Mexico should be added to the list of countries eligible to export bamboo shoots to the United States.

Response: In order to add Mexico to the list, a pest risk assessment must be conducted and must indicate that the importation of bamboo shoots from Mexico will not present a significant risk of introducing plant pests into the United States. Anyone who is interested in importing bamboo shoots from Mexico or any other country for consumption should submit a request to the Phytosanitary Issues Management Team at the address listed above in the **FOR FURTHER INFORMATION CONTACT** section of this rule, and we will conduct a pest risk assessment on bamboo shoots from that particular country.

Comment: Bamboo shoots can and might be used for propagation, and thus may introduce new plant pests to the United States.

Response: We are adding edible bamboo shoots without leaves or roots to the list of acceptable imports in § 319.56–2t, which deals with nonpropagative material. We acknowledge that it is possible to propagate a plant from bamboo shoots, but bamboo shoots are allowed importation under § 319.56–2t for consumption only. We currently require prospective importers to state the purpose of their importation(s) on their application for an import permit. In this case, a permit is issued only for bamboo shoots that are without leaves or roots and that are intended for human consumption. If we have reason to believe that bamboo shoots are being imported for the purpose of planting, we have the authority to investigate and take enforcement action, which could include the revocation of an importer's permit, denial of future permits, and seizure of the propagated bamboo, as well as civil or criminal penalties. We do not believe, however, that propagation of shoots imported for consumption is likely, due to the fragile nature and decreased viability of imported bamboo shoots. It is our understanding that propagative bamboo plants that are imported under special scientific permits have limited survival rates even though such plants are packed and shipped individually with great care. When contrasted with packing and shipping procedures for bulk quantities of fresh bamboo shoots imported for consumption, it is clear that such shoots have a very limited potential to propagate themselves, even if planted. Under these circumstances, we continue to believe that the proposed importation of bamboo shoots for consumption would present a negligible pest risk and are, therefore, making no change in the rule in response to this comment.

Comment: The importation of bamboo shoots will hurt U.S. growers' business.

Response: We anticipate that less than 200 metric tons of fresh bamboo shoots will be imported into the United States under this rule. Data on imported bamboo shoots in general suggests that fresh bamboo shoots occupy a minimal part of the overall market for bamboo shoots in general (less than one percent of the overall market). In 1995, 8,632 metric tons of frozen bamboo shoots and 29,824 metric tons of canned bamboo shoots were imported into the United States. Though we could not determine the amount of domestic production of fresh bamboo shoots, we anticipate that, given the quantity of expected imports (200 metric tons) relative to the overall size of the market for imported bamboo shoots in general (over 38,000 metric tons), a large economic impact on the domestic industry is unlikely.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the

provisions of the proposal as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the impact of this final rule on small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This rule consolidates the regulations pertaining to the importation of bamboo, contained in "Subpart—Bamboo Capable of Propagation," and the regulations pertaining to propagative material in general, contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products." This change is nonsubstantive, and will simplify and clarify our regulations.

This rule also amends the regulations in "Subpart—Fruits and Vegetables" by adding provisions that allow fresh bamboo shoots without leaves or roots to be imported into the United States from certain countries.

One commenter on the proposed rule expressed concern that the importation of fresh bamboo shoots would have a negative impact on domestic producers of bamboo shoots.

It is estimated that less than 200 metric tons of fresh bamboo shoots will be imported into the United States as a result of this rule. This is compared to imports of 8,632 metric tons of frozen bamboo shoots and imports of 29,824 metric tons of canned bamboo shoots in 1995. While we could not determine the amount of domestic production of fresh bamboo shoots, we anticipate that the imports would supply part of an expanding demand for fresh, rather than frozen or canned, bamboo shoots.

The additional information necessary to determine the impacts on U.S. growers, including estimates of domestic production, is not available. It is possible that this rule could lead to price effects that could affect producers. Although bamboo shoot growers do not constitute a separate category for classification of small entities by the Small Business Administration, it is likely that the majority of these growers would be considered small. Therefore, any economic impacts of this rule would affect small entities. However, given the quantity of expected imports of fresh bamboo shoots relative to the overall size of the market for imported bamboo shoots in general (over 38,000 metric tons), a large economic impact is unlikely.

Several alternatives to this rule were suggested in public comments on our proposed rule. Two commenters suggested that we remove the prohibition on the importation of bamboo nursery stock so as to facilitate the growing industry in its search for a better crop base. We did not adopt this alternative, based on a lack of scientific pest risk data on bamboo nursery stock. We also did not adopt another proposal to include Mexico on the list of regions we will import fresh bamboo shoots from, based on a similar lack of available data at this time. We did adopt a change suggested by two commenters from Guam who felt that Guam also should be subject to the same prohibition on the importation of bamboo nursery stock as the rest of the United States.

A final alternative to this rule was to make no changes in the regulations. However, we have done pest risk assessments which indicate that bamboo shoots without leaves or roots may be imported into the United States from certain countries without a significant risk of introducing plant pests. Further, we lack the pest risk assessment data needed to demonstrate that there is no significant pest risk associated with the importation of bamboo nursery stock into Guam. Therefore, we have adopted the provisions concerning bamboo shoots, as proposed, and the new provisions concerning bamboo nursery stock into Guam, as suggested by public comment.

Executive Order 12988

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

Paperwork Reduction Act

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

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and record keeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

Subpart—Bamboo Capable of Propagation [Removed]

2. Subpart—Bamboo Capable of Propagation, consisting of § 319.34, is removed.

§ 319.37–1 [Amended]

3. In § 319.37–1, the definition for *Restricted article* is amended by removing the reference to "319.34" and adding "319.24" in its place.

§ 319.37–2 [Amended]

4. In § 319.37–2(a), the table is amended as follows:

a. By adding, in alphabetical order, an entry for "Bambuseae," to read as set forth below.

b. By amending the entry for "Poaceae" by revising the text in the first column, to read as set forth below.

§ 319.37–2 Prohibited Articles

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
*	*	*
Bambuseae (seeds, plants, and cuttings).	All	Various plant diseases, including bamboo smut (*Ustilago shiraiana*)
*	*	*
Poaceae (vegetative parts of all grains and grasses, except species of Bambuseae).	* * *	* * *
*	*	*

* * * * *

§ 319.40–2 [Amended]

5. In § 319.40–2, paragraph (c) is amended by removing the words "; § 319.34, "Subpart—Bamboo Capable of Propagation";" and by adding in their place a comma immediately after the word "Diseases".

6. In § 319.56–2t, the table is amended by adding entries, in alphabetical order, to read as follows:

§ 319.56–2t Administrative instructions; conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	*
China	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.
*	*	*	*
Dominican Republic	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.
*	*	*	*
Japan	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.
*	*	*	*
Taiwan	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.
*	*	*	*

* * * * *

Done in Washington, DC, this 16th day of March 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–7330 Filed 3–19–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Chapter 15

RIN 1990 AA25

Office of the Federal Inspector for the Alaska Natural Gas Transportation System

AGENCY: Office of Fossil Energy, DOE.

ACTION: Final rule.

SUMMARY: The Office of Fossil Energy, Department of Energy, is eliminating the regulations codified at 10 CFR chapter 15, entitled "Office of the Federal Inspector for the Alaska Natural Gas Transportation System."

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Ellett, Office of Fossil Energy, (202) 586–4669, or Diane Stubbs, Office of the General Counsel, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The regulations codified at 10 CFR chapter 15, entitled "Office of the Federal Inspector for the Alaska Natural Gas Transportation System," are being eliminated as contemplated by section 3012 of the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, 106 Stat. 2776, 3128 (1992).

The Office of the Federal Inspector (OFI) was established pursuant to the Alaska Natural Gas Transportation Act of 1976 (ANGTA), 15 U.S.C. 719; Reorganization Plan No. 1 of 1979, 44 FR 33663 (June 12, 1979); and Executive Order No. 12142, 44 FR 36927 (June 25, 1979), to oversee construction of the Alaska Natural Gas Transportation System (ANGTS). The ANGTS encompasses a 4,800-mile joint U.S.-Canadian overland pipeline project selected and approved for the delivery of Alaska natural gas from Prudhoe Bay to the lower 48 states. The first phase of the project, completed in the early 1980s, involved construction of facilities in the United States and southern Canada. Changing economic conditions and natural gas markets have not supported the second phase of construction, which would complete the Alaskan and northern Canadian portions of ANGTS.

In recognition of ANGTS construction inactivity, section 3012 of EPACT repealed section 7(a)(5) of ANGTA, which authorized the appointment of a Federal Inspector; abolished OFI and transferred all functions and authority vested in the Federal Inspector to the Secretary of Energy; and revoked the OFI regulations in 10 CFR chapter 15. This rule merely eliminates from the CFR regulations which have already

been revoked by law. In the event of remobilization, the Department would promulgate those regulations determined to be necessary for its oversight of ANGTS construction activity.

A. Administrative Procedure Act

In accordance with 5 U.S.C. 553(b), the Administrative Procedure Act, DOE generally publishes a rule in a proposed form and solicits public comment on it before issuing the rule in final. However, 5 U.S.C. 553(b)(3)(B) provides an exception to the public comment requirement if the agency finds good cause to omit advance notice and public participation. Good cause is shown when public comment is "impracticable, unnecessary, or contrary to the public interest."

Because the statutory authority for OFI has been repealed and its regulations have been revoked by EPACT, the Department finds that providing an opportunity for public comment prior to publication of this rule is not necessary and would be contrary to the public interest.

B. Review Under Executive Order 12866

Today's action does not constitute a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735), and has not been reviewed by the Office of Management and Budget.

C. Review Under the Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 501 *et seq.*, are imposed by today's regulatory action.

D. Federalism

The Department has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that there are no implications for federalism that would warrant the preparation of a Federalism Assessment.

E. National Environmental Policy Act

The regulations being amended have no current environmental effect and this rulemaking will not change that status quo. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to subpart D, 10 CFR part 1021, which applies to a rulemaking amending an existing regulation that does not change the environmental effect of the regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. Section 201 excepts agencies from assessing effects on State, local or tribal governments or the private sector of rules that incorporate requirements specifically set forth in law. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, directs agencies to prepare a regulatory flexibility analysis whenever an agency is required to publish a general notice of proposed rulemaking. As discussed above, the Department has determined that prior notice and opportunity for public comment is unnecessary and contrary to the public interest. In accordance with 5 U.S.C. 604(a), no regulatory flexibility analysis has been prepared for today's rule.

H. Small Business Regulatory Enforcement Fairness Act

In accordance with section 801 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 801, DOE will report to Congress the promulgation of this rule prior to its effective date. The report will state that it has been determined that this rule is not a "major rule" as defined by 5 U.S.C. 804(a).

I. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3 of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to eliminate drafting errors and ambiguity; write regulations to minimize litigation; provide a clear legal standard for affected conduct rather than a general standard; and promote simplification and burden reduction. 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. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

List of Subjects in 10 CFR Chapter 15

10 CFR 1500

Alaska Natural Gas Transportation System, Office of Federal Inspector Organization and functions (Government agencies), Seals and insignia.

10 CFR 1502

Alaska Natural Gas Transportation System, Office of Federal Inspector, Organization and functions (Government agencies).

10 CFR 1504

Alaska Natural Gas Transportation System, Office of Federal Inspector, Confidential business information, Freedom of information.

10 CFR 1506

Alaska Natural Gas Transportation System, Office of Federal Inspector, Conflict of interests, Penalties.

10 CFR 1530

Administrative practice and procedure, Alaska, Alaska Natural Gas Transportation System, Office of Federal Inspector, Natural gas, Pipelines, Public lands-rights-of-way.

10 CFR 1534

Administrative practice and procedure, Alaska, Alaska Natural Gas Transportation System, Office of Federal Inspector, Civil rights, Equal employment opportunity, Natural gas, Pipelines.

10 CFR 1535

Administrative practice and procedure, Alaska Natural Gas Transportation System, Office of Federal Inspector, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

Issued in Washington, D.C. on March 16, 1998.

Robert S. Kripowicz,

Principal Deputy Assistant Secretary for Fossil Energy.

As set forth in the preamble, under the authority of section 3012 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776, 3128 (1992), title 10 of the Code of Federal Regulations is amended by removing chapter 15, consisting of parts 1500–1535.

[FR Doc. 98–7296 Filed 3–19–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–324–AD; Amendment 39–10402; AD 98–06–24]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This action requires modification to reinforce the joints of certain fuselage frames. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent fatigue cracking of the fuselage frames, which could result in reduced structural integrity of the airplane.

DATES: Effective April 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–324–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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 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.

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: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that, during a full-scale fatigue test, a 4.5-millimeter crack developed in the fuselage after 31,717 simulated flight cycles. The crack was found at the lowest inboard bolt hole at the frame splice area and shear clip attachment on left fuselage frame (L FR) 48 at stringer 26. Similar damage was found at L FR 53 and right fuselage frame 52. Such fatigue cracking of fuselage frames, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330–53–3015, dated November 24, 1995 (for Model A330 series airplanes), and A340–53–4023, Revision 2, dated May 15, 1996 (for Model A340 series airplanes). These service bulletins describe procedures for modifying the joints of fuselage frames 48 to 53. The modification involves adding two joint straps, replacing existing fasteners with new fasteners, and replacing the existing clips with machined clips. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 96–006–024(B) and 96–005–039(B), both dated January 3, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent fatigue cracking in the fuselage frames, which could result in reduced structural integrity of the airplane. This AD requires accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 208 work hours to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $30,765 per airplane. Based on these figures, the cost impact of this AD would be $43,245 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–324–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–24 Airbus: Amendment 39–10402. Docket 97–NM–324–AD.

Applicability: Model A330 and A340 series airplanes, on which Airbus Modification 42409 has not been accomplished, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the fuselage frames, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Reinforce the joints for fuselage frames 53, 53.1, and 53.2, in accordance with Airbus Service Bulletin A330–53–3015, dated November 24, 1995 (for Model A330 series airplanes); or Airbus Service Bulletin A340–53–4023, Revision 2, dated May 15, 1996 (for Model A340 series airplanes), as applicable; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Airbus Model A330 series airplanes on which Airbus Modification 43475 has been accomplished, and for Airbus Model A340 series airplanes: Prior to the accumulation of 4,100 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For Airbus Model A330 series airplanes on which Airbus Modification 43475 has not been accomplished: Prior to the accumulation of 4,600 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(b) Reinforce the joints for fuselage frames 48 through 52 inclusive, in accordance with Airbus Service Bulletin A330–53–3015, dated November 24, 1995 (for Model A330 series airplanes); or Airbus Service Bulletin A340–53–4023, Revision 2, dated May 15, 1996 (for Model A340 series airplanes), as applicable; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For Airbus Model A330 series airplanes on which Airbus Modification 43475 has been accomplished, and for Airbus Model A340 series airplanes: Prior to the accumulation of 13,500 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For Airbus Model A330 series airplanes on which Airbus Modification 43475 has not been accomplished: Prior to the accumulation of 15,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(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.

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

(e) The actions shall be done in accordance with Airbus Service Bulletin A330–53–3015, dated November 24, 1995, or Airbus Service Bulletin A340–53–4023, Revision 2, dated May 15, 1996; as applicable. Airbus Service Bulletin A340–53–4023, Revision 2, dated May 15, 1996, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2, 3, 3a, 4, 4a, 5–7, 31–32, 83–87	2	May 15, 1996.
8–10, 12, 14–18, 20–29, 33–82	Original	November 24, 1995.
11, 13, 19, 30	1	February 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 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 directives 96–006–024(B) and 96–005–039(B), both dated January 3, 1996.

(f) This amendment becomes effective on April 6, 1998.

Issued in Renton, Washington, on March 10, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6757 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–216–AD; Amendment 39–10398; AD 98–06–20]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that currently requires inspections to detect cracking of certain floor beams and side box-beams, and repair of cracks; and modification of the pressure floor. That AD was prompted by results of a full-scale fatigue test. This amendment adds a one-time inspection to verify proper clearance between the fasteners of the reinforcement bracket and the bellcrank of the free-fall extension system of the main landing gear (MLG) and its associated tie rod attachment nut. This amendment also adds a requirement for a new improved modification of the pressure floor. The actions specified by this AD are intended to prevent reduced structural integrity of the fuselage, restricted operation of the MLG free-fall system and, consequently, reduced ability to use the MLG during an emergency.

DATES: Effective April 24, 1998.

The incorporation of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of April 24, 1998.

The incorporation by reference of Airbus Industrie Service Bulletin A320–53–1024, dated September 23, 1992, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 23, 1993 (58 FR 39440, July 23, 1993).

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 93–14–04, amendment 39–8628 (58 FR 39440, July 23, 1993), which is applicable to certain Airbus Model A320 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 12, 1997 (62 FR 11388). The action proposed to continue to require inspections to detect cracking of the floor beams and the side box-beams, and repair of cracks. The action also proposed to add a one-time inspection to verify proper clearance between the fasteners of the reinforcement bracket and the bellcrank of the free-fall extension system of the main landing gear (MLG) and its associated tie rod attachment nut. In addition, the action proposed to add a requirement for a new improved modification of the pressure floor.

Comments

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.

The commenter requests that paragraph (c)(1)(ii) of the supplemental NPRM be revised to include an option to rework the bellcrank just like paragraph (c)(1)(iii)(B) of the supplemental NPRM. The commenter points out that the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has included this rework option in its revised French airworthiness directive (CN) 96–053–77(B)R1, dated June 5, 1996.

The FAA concurs. The FAA has reviewed the subject French airworthiness directive, and has revised paragraph (c)(1)(ii) of this final rule to include an option to rework the bellcrank lever and fasteners, and reinstall the reinforcement bracket fasteners, which is identical to the requirements of paragraph (c)(1)(iii)(B) of the AD.

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 with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 24 Airbus Model A320 series airplanes of U.S. registry that will be affected by this AD.

The inspections that are currently required by AD 93–14–04 take approximately 37 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $53,280, or $2,220 per airplane.

The new inspection that is required by this AD action will take approximately 11 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspection required by this AD on U.S. operators is estimated to be $15,840, or $660 per airplane.

The new modification that is required by this AD action will take approximately 142 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $204,480, or $8,520 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.

Regulatory Impact

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

accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8628 (58 FR 39440, July 23, 1993), and by adding a new airworthiness directive (AD), amendment 39–10398, to read as follows:

98–06–20 Airbus Industrie: Amendment 39–10398. Docket 95–NM–216–AD. Supersedes AD 93–14–04, Amendment 39–8628.

Applicability: Model A320 series airplanes, manufacturer's serial numbers 002 through 008 inclusive, 010 through 078 inclusive, and 080 through 107 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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage, restricted operation of the main landing gear (MLG) free-fall system, and, consequently, reduced ability to use the MLG during an emergency, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings, or within 6 months after August 23, 1993 (the effective date of AD 93–14–04, amendment 39–8628), whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with Airbus Service Bulletin A320–53–1024, dated September 23, 1992, or Revision 1, dated March 31, 1994. As of the effective date of this new AD, only Revision 1 of this service bulletin shall be used.

(1) Conduct an eddy current inspection to detect cracking around the fastener/bolt holes at the top horizontal flange of the floor beams and side box-beams, at the two sides of the pressure floor, and at the vertical integral stiffener of the side box-beams; and

(2) Conduct a detailed visual inspection to detect cracking around the fastener/bolt holes at the fillet radius and riveted area of the top outboard flange of the side box-beam, and at the flange-corner radius of the slanted inboard flange of the side box-beam and fittings.

(b) If any crack is detected during the inspections required by paragraph (a) of this AD, prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) For airplanes on which the modification specified in Airbus Service Bulletin A320–53–1023, dated September 23, 1992, as amended by Service Bulletin Change Notice 0A, dated January 20, 1993; Revision 1, dated March 23, 1993; Revision 2, dated October 22, 1993; Revision 3, dated March 18, 1994; Revision 4, dated September 30, 1994; Revision 5, dated February 28, 1995; or Revision 6, dated September 4, 1995; has been accomplished: Accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Prior to the accumulation of 1,000 landings after the effective date of this AD, perform a one-time inspection to verify proper clearance between the fasteners of the reinforcement bracket and the bellcrank of the free-fall extension system of the MLG and its associated tie rod attachment nut, in accordance with Airbus All Operators Telex (AOT) 53–08, Revision 01, dated January 15, 1996.

(i) If the minimum clearance is greater than 3 mm (0.118 inch) and no evidence of interference is detected, within 60 months following accomplishment of the inspection required by paragraph (c)(1) of this AD, reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995.

(ii) If the minimum clearance is 3 mm (0.118 inch) or less, and no evidence of interference is detected, within 18 months following accomplishment of the inspection required by paragraph (c)(1) of this AD, accomplish either paragraph (c)(1)(ii)(A) or (c)(1)(ii)(B) of this AD.

(A) Reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995; or

(B) Rework the bellcrank lever and fasteners in accordance with Airbus AOT 53–08, Revision 01, dated January 15, 1996. Within 60 months following accomplishment of the rework, reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995.

(iii) If any interference is detected, prior to further flight, accomplish either paragraph (c)(1)(iii)(A) or (c)(1)(iii)(B) of this AD.

(A) Reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995; or

(B) Rework the bellcrank lever and fasteners in accordance with Airbus AOT 53–08, Revision 01, dated January 15, 1996. Within 60 months following accomplishment of the rework, reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995.

(2) Prior to the accumulation of 24,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the pressure floor at section 15 of the fuselage in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995. Accomplishment of the modification terminates the requirements of this AD.

(d) For airplanes on which the modification specified in Airbus Service Bulletin A320–53–1023, dated September 23, 1992, as amended by Service Bulletin Change Notice 0A, dated January 20, 1993; Revision 1, dated March 23, 1993; Revision 2, dated October 22, 1993; Revision 3, dated March 18, 1994; Revision 4, dated September 30, 1994; Revision 5, dated February 28, 1995; or Revision 6, dated September 4, 1995; has not been accomplished: Prior to the accumulation of 18,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the pressure floor at section 15 of the fuselage in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995. Accomplishment of the modification terminates the requirements of this AD.

(e) Accomplishment of the modification of the pressure floor at section 15 of the fuselage in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995, constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

(h) The actions shall be done in accordance with Airbus Service Bulletin A320–53–1024, dated September 23, 1992; Airbus Service Bulletin A320–53–1024, Revision 1, dated March 31, 1994; Airbus All Operators Telex (AOT) 53–08, Revision 01, dated January 15, 1996; and Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995; as applicable. Revision 7 of Airbus Service Bulletin A320–53–1023 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 15–55 ..	7	November 3, 1995.
2–14	6	September 4, 1995.

The incorporation by reference of Airbus Industrie Service Bulletin A320–53–1024, dated September 23, 1992, as listed in the regulations, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 as of August 23, 1993 (58 FR 39440, July 23, 1993). The incorporation by reference of the remainder of the service documents listed above is 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 directives (CN's) 92–205–033(B)R1, dated June 22, 1994, and 96–053–077(B)R1, dated June 5, 1996.

(i) This amendment becomes effective on April 24, 1998.

Issued in Renton, Washington, on March 10, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6758 Filed 3–19–98;8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–68–AD; Amendment 39–10403; AD 98–06–25]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft Inc. Models SA226–AT, SA226–TC, SA227–AC, and SA227–AT Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Fairchild Aircraft Inc. (Fairchild) Models SA226–AT, SA226–TC, SA227–AC, and SA227–AT airplanes. This action would require inspecting the cargo door lower belt frames at the cargo latch receptacles for cracks in the belt frames, repairing any cracks, and reinforcing the cargo door lower belt frames by installing doublers. The AD is the result of a decompression incident during flight caused by fatigue at the bottom of the cargo door on a Fairchild Model SA226–TC. The actions specified by this AD are intended to prevent the failure of the cargo door in flight, which could cause decompression injuries to passengers and substantial structural damage to the airplane.

DATES: Effective April 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Fairchild Aircraft Inc., P. O. Box 790490, San Antonio, Texas 78279–0490, telephone (210) 824–9421. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 96–CE–68–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Fairchild Models SA226–AT, SA226–TC, SA227–AC, and SA227–AT airplanes was published in the **Federal Register** on June 4, 1997 (62 FR 30483). The action proposed would require inspecting the lower belt frames at the cargo latch receptacles for cracks. If cracks are found, the proposed AD would require repairing the cracks, prior to further flight, using a repair scheme provided by the manufacturer through the Ft. Worth Airplane Certification Office. If no cracks are found, the proposed action would require reinforcing the cargo door lower belt frames by installing doublers.

Since Issuance of the Proposed AD

The proposed action required that if cracks were found, the owner/operator should contact the FAA for an approved repair scheme from Fairchild Aircraft Inc. Since the Notice of Proposed Rulemaking was published, Fairchild has developed an FAA-approved repair scheme for the cargo door belt frames. This repair scheme eliminates the need to contact the Ft. Worth Airplane Certification Office, which makes it easier for the owner to fix the airplanes with cracks without waiting for an approved repair scheme to be developed for each individual request. In addition to the availability of a repair, the FAA has clarified the instructions for the inspection of the cargo door belt frames by referencing certain fuselage stations to be inspected for cracks. Accomplishment of these actions would be in accordance with the following service information:

- Fairchild Aircraft Corporation SA227 Series Service Bulletin No. 227–53–003, Issued: January 29, 1986, Revised: February 13, 1986,
- Fairchild Aircraft Corporation SA226 Series Service Bulletin No. 226–53–007, Issued: May 7, 1981, Revised: February 17, 1992,
- Fairchild Aircraft SA226/SA227 Structural Repair Manual (SRM), section 53–90–20, pages 2, 101, 102, 103, and 104; Initial Issue: March 1, 1983, Revision 24, dated August 27, 1997, or
- Fairchild Aircraft Approved Repair Procedure (ARP) 53–30–9701, dated July 28, 1997.

Comments

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

Obtaining Repair Approval

Several commenters express concern about access to a repair scheme and the ability of the FAA to provide a repair scheme outside normal business hours (8:00 a.m. to 4:30 p.m.). The commenters went on to say that in many cases, inspections and repairs are made overnight or on the weekends and waiting on the FAA to provide a repair scheme, on a case by case basis, could cause the commercial operators flight delays and cancellations. These commenters request that the FAA approve and make available a repair scheme prior to the effective date of the proposed AD. The FAA agrees and has approved a repair scheme developed by Fairchild Aircraft Inc. The final rule will be changed to reflect the name and number of these approved repair procedures.

Change of Compliance Time

One commenter requested a change to the compliance times referenced in paragraphs (a) and (c) of the NPRM. The compliance time proposed was 500 hours time-in-service (TIS) after the effective date of this AD for the initial inspection for cracks, and if no cracks were found within the next 500 hours TIS, installing a doubler to the cargo door belt frames. The commenter wants the initial inspection compliance time extended to 900 hours TIS after the effective date of this AD, to fit into the operators' scheduled maintenance to the cargo door belt frames. The FAA does not agree. The 500 hours TIS compliance time will assure that the affected airplanes are not flying with cracks in critical structure. Failure of the cargo door during flight would cause airplane decompression and possible injury to the passengers, as well as structural damage to the airplane. The 500 hours TIS initial inspection is imposed to assure that all the affected airplanes are checked for cracks in this area within a reasonable amount of time. The installation of the doubler to strengthen the cargo door belt frames is not required for another 500 hours TIS, in order to give the owners/operator an opportunity to schedule this "down-time" into their flight schedules. If no cracks are found in the affected area, the owners/operators essentially have 1,000 hours total TIS to schedule the installation of the doublers. The final rule will not change as a result of this comment.

Crack Limits

Two comments were received regarding the discussion in the NPRM preamble. The comments addressed the section directed to the differences between the manufacturer's service bulletin and the proposed action. The commenters said that the language in the preamble implied that the manufacturer's service bulletin allowed the operators to fly with cracks. Although it was not the intent of the FAA to suggest that the manufacturer allowed flying with cracks, the FAA agrees that the language in the preamble could be interpreted this way. The FAA was trying to point out that the compliance times in the service bulletin were different from those in the proposed action, and that the service bulletin referred the operator to the manufacturer for repairs, if cracks of one inch or larger were found. The service bulletin did not require the operator to contact the manufacturer for the repair scheme prior to further flight. This language is not repeated in the final rule, and since a repair scheme is now available directly from the manufacturer, the only difference between the manufacturer's service bulletin and the action required by this AD is the difference in compliance times. The compliance times required by this AD will take precedence over the compliance times in the Fairchild service bulletins. The final rule will reflect this change to the service and repair information in the body of the AD.

The FAA's Determination

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

Cost Impact

The FAA estimates that 145 airplanes in the U.S. registry are affected by this AD, that it will take approximately 30 workhours per airplane to accomplish the initial inspection and installation of the reinforcing doubler, and that the average labor rate is approximately $60 an hour. Parts for the installation of the reinforcing doubler cost approximately $710 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $363,950 or $2,510 per airplane. The FAA has no way to determine the number of affected airplanes that may have already had this action accomplished.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–25 Fairchild Aircraft Inc.: Amendment 39–10403; Docket No. 96–CE–68–AD.

Applicability: The following models and serial numbered airplanes, certificated in any category.

Models	Serial numbers
SA226–AT	AT001 through AT074.
SA226–TC	TC201 through TC419.

Models	Serial numbers
SA227–AC	AC406, AC415, AC416, AC420 through AC456, AC458 through AC469, and AC471 through AC478.
SA227–AT	AT423 through AT469.

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 (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 within the body of this AD, unless already accomplished.

To prevent failure of the cargo door in flight, which, if not corrected, could cause decompression injuries to passengers and substantial structural damage to the airplane, accomplish the following:

(a) Within the next 500 hours time-in-service (TIS) after the effective date of this AD, inspect the cargo door lower belt frames at the cargo latch receptacles for cracks in accordance with Part A of the *ACCOMPLISHMENT INSTRUCTIONS* section in Fairchild Aircraft SA226 Series Service Bulletin (SB) No. 226–53–007, Issued: May 7, 1981; Revised: February 17, 1992, or Fairchild Aircraft SA227 Series SB No. 227–53–003, Issued: January 29, 1986; Revised: February 13, 1986, whichever is applicable.

(b) If cracks are found during the inspection required in paragraph (a) of this AD, prior to further flight, accomplish the following:

(1) For belt frames located at Fuselage Station (F.S.) 438.060 and F.S. 491.060, repair the belt frame by installing angle part number (P/N) 27–22206–009 or P/N 27–22206–010, in accordance with the Fairchild Aircraft SA226/227 Structural Repair Manual (SRM), Section 53–90–20, pages 2, 101, 102, 103, and 104; Initial Issue: March 1, 1983, Revision 24, dated August 27, 1997; or, Fairchild Aircraft Approved Repair Procedure (ARP) 53–30–9701, dated July 28, 1997. The reinforcement doublers (P/N 27–22206–007 and –008) are also needed together with this repair.

(2) For belt frames located at F.S. 454.501, F.S. 455.726, F.S. 473.392, and F.S. 474.657, replace all four belt frames with new design frames, P/N 27–22207–008, 27–22208–005, 27–22208–005, and 27–22207–007, respectively, in accordance with the Fairchild Aircraft SA226/227 SRM, Section 53–90–20, pages 2, 101, 102, 103, and 104; Initial Issue: March 1, 1983, Revision 24, dated August 27, 1997; or, Fairchild Aircraft ARP 53–30–9701, dated July 28, 1997. No reinforcement doublers are needed for these four new design belt frames.

(c) If no cracks are found in all six belt frames during the inspection required by paragraph (a) of this AD, install reinforcement doublers in all six belt frames within 500 hours TIS from the initial inspection, in accordance with Part B of the *ACCOMPLISHMENT INSTRUCTIONS* of Fairchild Aircraft SA226 Series Service Bulletin (SB) No. 226–53–007, Issued: May 7, 1981; Revised: February 17, 1992, or Fairchild Aircraft SA227 Series SB No. 227–53–003, Issued: January 29, 1986; Revised: February 13, 1986, whichever is applicable.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

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

(f) The inspections and modifications required by this AD shall be done in accordance with the following service information:

- Fairchild Aircraft Corporation SA227 Series Service Bulletin No. 227–53–003, Issued: January 29, 1986, Revised: February 13, 1986,
- Fairchild Aircraft Corporation SA226 Series Service Bulletin No. 226–53–007, Issued: May 7, 1981, Revised: February 17, 1992,
- Fairchild Aircraft SA226/SA227 Structural Repair Manual (SRM) section 53–90–20, Initial Issue: March 1, 1983, Revision 24, dated August 27, 1997, and pages 2, 101, 102, 103, and 104;
- Fairchild Aircraft Approved Repair Procedure (ARP) 53–30–9701, dated July 28, 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 Fairchild Aircraft, P. O. Box 790490, San Antonio, Texas 78279–0490, telephone (210) 824–9421. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment (39–10403) becomes effective on April 27, 1998.

Issued in Kansas City, Missouri, on March 9, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6767 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–230–AD; Amendment 39–10409; AD 98–06–31]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, 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 A300, A310, and A300–600 series airplanes, that requires inspections to detect cracking of the aft door frame area, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracks in the aft door frame area, which could result in reduced structural integrity and rapid decompression of the airplane.

DATES: Effective April 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 24, 1998.

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) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300, A310, and A300–600 series airplanes was published in the **Federal Register** on November 26, 1997 (62 FR 63039). That action proposed to require inspections to detect cracking of the aft door frame area, and repair, if necessary.

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

One commenter supports the proposed rule.

Request To Cite Latest Service Bulletins

One commenter requests that the proposed AD be revised to cite the latest revision of Airbus Service Bulletins A300–53–303, A310–53–2079, and A300–53–6056. The commenter states that the related French airworthiness directive (CN) 96–135–199(B) would be revised to include the wording, "SB . . . or any later approved revision." The commenter points out that the latest revisions of the service bulletins include a higher value for the acceptable cumulative crack length.

The FAA does not concur with the commenter's request to cite the latest service bulletin. As stated in the proposal, although the service bulletins, in certain circumstances, provide for continued flight without immediate repair of the damage area, this AD does not permit further flight with cracks detected in the aft door frame area. The FAA has determined that, due to safety implications and consequences associated with cracking in the aft door frame area, all locations in the aft door frame area that are found to be cracked must be repaired prior to further flight. In light of this, the FAA finds it unnecessary to revise this final rule to cite the latest revisions of the service bulletins to reference a higher value for crack length.

In addition, where a specific document is referenced in an AD, the use of the phrase, "or later FAA-approved revision," violates Office of the Federal Register regulations regarding approval of material that is incorporated by reference. However, affected operators may request to use a later revision of the referenced service bulletins as an alternative method of compliance, under the provisions of paragraph (d) of the final rule.

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 as proposed.

Cost Impact

The FAA estimates that 49 Airbus Model A300 and A310 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 25 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required inspections on U.S. operators is estimated to be $73,500, or $1,500 per airplane.

The FAA estimates that 51 Airbus Model A300–600 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required inspections on U.S. operators of Model A300–600 series airplanes is estimated to be $55,080, or $1,080 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.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–31 Airbus Industrie: Amendment 39–10409. Docket 97–NM–230–AD.

Applicability: Model A300, A310, and A300–600 airplanes on which Airbus Modification 6924 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) 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 cracks in the aft door frame area, which could result in reduced structural integrity and possible rapid decompression of the aircraft, accomplish the following:

(a) Prior to the accumulation of 10 years since date of manufacture, or within 12 months after the effective date of this AD, whichever occurs later: Except as provided by paragraphs (b) and (c) of this AD, accomplish a high frequency eddy current inspection to detect stress corrosion cracks in the aft door frame area, and perform the applicable corrective actions, in accordance with Airbus Service Bulletin A300–53–303, dated February 23, 1996 (for Model A300 series airplanes); A310–53–2079, dated February 23, 1996 (for Model A310 series airplanes); or A300–53–6056, dated February 23, 1996 (for Model A300–600 series airplanes); subsequently referred to as the applicable service bulletin. Thereafter, repeat the inspection at intervals not to exceed 5 years, in all areas not repaired permanently

in accordance with the applicable service bulletin.

(b) If any crack is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) If any crack is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies a compliance time other than "prior to further flight" for accomplishment of the repair: Accomplish the repair prior to further flight in accordance with the procedures specified in the applicable service bulletin.

(d) 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.

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

(f) The actions shall be done in accordance with Airbus Service Bulletin A300–53–303; Airbus Service Bulletin A310–53–2079; or Airbus Service Bulletin A300–53–6056, all dated February 23, 1996; 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 (CN) 96–135–199(B), dated July 17, 1996.

(g) This amendment becomes effective on April 24, 1998.

Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6953 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–68–AD; Amendment 39–10408; AD 98–06–30]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model 400, 400A, 400T, MU–300, and MU–300–10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Raytheon (Beech) Model 400, 400A, 400T, MU–300, MU–300–10 airplanes, that currently requires replacement of outflow/safety valves with serviceable valves. This amendment revises the applicability of the existing AD to add an airplane model and to remove other airplanes, as well as to identify the serial numbers of affected airplanes. The actions specified by this AD are intended to prevent cracking and consequent failure of the outflow/safety valves, which could result in rapid decompression of the airplane.

DATES: Effective April 24, 1998.

The incorporation by reference of Raytheon Service Bulletin No. 2476, Revision II, dated June 1997, as listed in the regulations, is approved by the Director of the Federal Register as of April 24, 1998.

The incorporation by reference of AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 24, 1996 (61 FR 42996, August 20, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170; or Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. 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, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael D. Imbler, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4147; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–17–10, amendment 39–9719 (61 FR 42996, August 20, 1996), which is applicable to certain Raytheon (Beech) Model 400, 400A, MU–300–10, and 2000 series airplanes, and Model 200, B200, 300, and B300 series airplanes, was published in the **Federal Register** on July 30, 1997 (62 FR 40763). The action proposed to continue to require replacement of outflow/safety valves with serviceable valves. The action also proposed to revise the applicability of the existing AD to add an airplane model and to remove other airplanes, as well as to identify the serial numbers of affected airplanes.

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.

Clarification of Applicability of This AD

The preamble of the proposed AD states that the applicability of AD 96–17–10 must be revised, in part, to reference Raytheon Service Bulletin No. 2476 as the appropriate source of service information for identifying the serial numbers of the affected airplanes. That statement is incorrect.

The applicability of the proposed AD did not specifically reference that service bulletin but, instead, listed the affected airplane models and serial numbers specified in the "Material" section of that service bulletin. Since the effectivity listing of Service Bulletin No. 2476 does not include the serial numbers of the affected airplanes, the FAA finds that referencing it in the applicability of this AD as the appropriate source of service information for identifying such serial numbers could be misleading to operators. No change to this final rule is necessary in this regard.

Explanation of Changes to Proposal

The FAA finds that the compliance time specified in paragraph (a) of the proposed AD (i.e., 18 months after September 24, 1996) needs to be extended for the new airplanes (i.e., Model 400T and MU–300 series airplanes) added to the applicability of this AD. At the time of issuance of the NPRM, the FAA determined that operators of Model 400T and MU–300 series airplanes could accomplish the requirements of paragraph (a) of the proposed AD within a timely manner. However, due to delay in issuance of the final rule, the compliance time of March 24, 1998, will have passed when this final rule becomes effective. The FAA has determined that an 18-month compliance time for the subject airplanes is appropriate. Therefore, the FAA has revised paragraph (a) of the AD accordingly.

In addition, the proposed AD states that the replacement procedures described in Raytheon Service Bulletin No. 2476, Revision II, dated June 1997, are essentially identical to those described in AlliedSignal Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995 (which is referenced in AD 96–17–10 as one of two appropriate sources of service information). However, the FAA inadvertently did not include the Raytheon bulletin as an additional source of service information for the requirements of paragraph (a) of the proposed AD. Therefore, the FAA has revised paragraph (a) of the final rule accordingly.

Conclusion

After careful review of the available data, 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.

Cost Impact

There are approximately 142 Raytheon (Beech) Model 400, 400A, 400T, MU–300, and MU–300–10 airplanes of the affected design in the worldwide fleet. The FAA estimates that 110 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 96–17–10, and retained in this AD, take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $79,200, or $720 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 substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9719 (61 FR 42996, ugust 20, 1996), and by adding a new airworthiness directive (AD), to read as follows:

98–06–30 Raytheon Aircraft Company (Formerly Beech, Raytheon Corporate Jets, British Aerospace, Hawker Siddley, *et al.*): Amendment 39–10408. Docket 97–NM–68–AD. Supersedes AD 96–17–10, Amendment 39–9719.

Applicability: The following models and series of airplanes, certificated in any category, equipped with AlliedSignal outflow/safety valves, as identified in AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995:

Model of airplane	Serial Nos.
400	RJ–1 through RJ–65 inclusive.
400A	RK–1 through RK–42 inclusive.
400T (military)	TT–4 and TT–19.
MU–300	S/N A001SA through A091SA inclusive.
MU–300–10	A1001SA through A1011SA inclusive.

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 cracking and consequent failure of the outflow/safety valves, which could result in rapid decompression of the airplane, accomplish the following:

(a) Replace the outflow/safety valve in accordance with AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995, or Raytheon Service Bulletin No. 2476, Revision II, dated June 1997, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model 400, 400A, MU–300–10 series airplanes: Replace within 18 months after September 24, 1996 (the effective date of AD 96–17–10, amendment 39–9719).

(2) For Model 400T (military) and MU–300 series airplanes: Replace within 18 months after the effective date of AD.

(b) As of the effective date of this AD, no person shall install an outflow/safety valve, having a part number and serial number identified in AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995, on any airplane unless that valve is considered to be serviceable in accordance with the applicable service bulletin.

(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, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

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

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

(e) The replacement shall be done in accordance with AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995; or Raytheon Service Bulletin No. 2476, Revision II, dated June 1997.

(1) The incorporation by reference of Raytheon Service Bulletin No. 2476, Revision II, dated June 1997, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995, was approved previously by the Director of the Federal Register as of September 24, 1996 (61 FR 42996, August 20, 1996).

(3) Copies may be obtained from AlliedSignal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170; or Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 24, 1998.

Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6952 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–65–AD; Amendment 39–10407; AD 98–06–29]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that requires a one-time inspection of the separation between the galley power feeder and static ground wiring, and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley; and rerouting of wiring, and installing clamps and sleeves, if necessary. This amendment is prompted by reports of inadequate clearance between the galley power feeder wiring and passenger oxygen system tubing. The actions specified by this AD are intended to prevent such inadequate clearance, which could result in a fire in the ceiling area above the door 4 galley due to chafing of wiring on oxygen system tubing.

DATES: Effective April 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 24, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), ransport 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: Susan Letcher, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2670; fax (425) 227–1181.

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 Boeing Model 747–400 series airplanes was published in the **Federal Register** on December 9, 1997 (62 FR 64779). That action proposed to require a one-time inspection of the separation between the galley power feeder and static ground wiring, and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley; and rerouting of wiring, and installing clamps and sleeves, 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.

Several commenters support the rule.

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 as proposed.

Cost Impact

There are approximately 452 Boeing Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 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 $4,320, or $120 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 substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–29 Boeing: Amendment 39–10407. Docket 97–NM–65–AD.

Applicability: Model 747–400 series airplanes; as listed in Boeing Alert Service Bulletin 747–25A3137, dated March 13, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 chafing of the galley power feeder and static ground wiring on passenger oxygen system tubing in the forward ceiling area above the Door 4 galley, which could result in a fire, accomplish the following:

(a) Within 18 months after the effective date of this AD: Perform a one-time inspection of the separation between the galley power feeder and static ground wiring, and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley, in accordance with Boeing Alert Service Bulletin 747–25A3137, dated March 13, 1997. If the separation is outside the limits specified in the alert service bulletin, prior to further flight, reroute the wiring, and install clamps and sleeves, in accordance with the alert service bulletin.

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

(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.

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–25A3137, dated March 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

(e) This amendment becomes effective on April 24, 1998.

Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6951 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–202–AD; Amendment 39–10406; AD 98–06–28]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 31 and 35A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Learjet Model 31 and 35A airplanes, that currently requires replacement of two segments of 16 American Wire Gauge (AWG) wire with 8 AWG wire at the connector that is connected to the auxiliary cabin heater relay box. That AD was prompted by a report indicating that two segments of the 16 AWG wire in the auxiliary cabin heater, which were spliced during production, do not provide adequate current-carrying capacity. This amendment requires the installation of a new replacement wire assembly. The actions specified by this AD are intended to prevent electrical arcing and consequent fire hazard that could result from wiring with inadequate current-carrying capacity.

DATES: Effective April 24, 1998.

The incorporation by reference of Learjet Service Bulletin SB 31–21–10, Revision 1, dated May 17, 1996, and Learjet Service Bulletin SB 35–21–24, Revision 1, dated May 17, 1996, as listed in the regulations, is approved by the Director of the Federal Register as of April 24, 1998.

The incorporation by reference of Learjet Service Bulletin SB 31–21–10, dated August 11, 1995, and Learjet Service Bulletin SB 35–21–24, dated August 11, 1995, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 28, 1996 (61 FR 26090, May 24, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. 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, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dale Bleakney, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–11–07, amendment 39–9632 (61 FR 26090, May 24, 1996), which is applicable to certain Learjet Model 31 and 35A airplanes, was published in the **Federal Register** on October 28, 1996 (61 FR 55584). The action proposed to require the

installation of a new replacement wire assembly.

Comments

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

Conclusion

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

Cost Impact

There are approximately 52 Learjet Model 31 and 35A airplanes of the affected design in the worldwide fleet. The FAA estimates that 44 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 96–11–07, and retained in this AD, take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the required actions on U.S. operators is estimated to be $10,560, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The FAA has been advised, however, that some operators already have installed equipment that is the equivalent to that which would be required by this AD. Therefore, the future economic cost impact of this proposed rule on U.S. operators is expected to be less than the cost impact figure indicated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9632 (61 FR 26090, May 24, 1996), and by adding a new airworthiness directive (AD), amendment 39–10406, to read as follows:

98–06–28 Learjet, Inc.: Amendment 39–10406. Docket 96–NM–202–AD. Supersedes AD 96–11–07, Amendment 39–9632.

Applicability: Model 31 airplanes having serial numbers 31–002 through 31–029 inclusive, and Model 35A airplanes having serial numbers 35–647 through 35–670 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 electrical arcing and consequent fire hazard, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace two segments of 16 American Wire Gauge (AWG) wire with 8 AWG wire at the P190 connector that is connected to the E33 auxiliary cabin heater relay box, in accordance with Learjet Service Bulletin SB 31–21–10, Revision 1, dated May 17, 1996 (for Model 31 airplanes), or Learjet Service Bulletin SB 35–21–24, Revision 1, dated May 17, 1996 (for Model 35A airplanes), as applicable.

Note 2: Accomplishment of the replacement in accordance with the procedures specified in Learjet Service Bulletin SB 31–21–10 or SB 35–21–24 (original issue), both dated August 11, 1995, but using equipment that is identical or equivalent to that of the applicable kit specified in Revision 1 of those service bulletins, is considered to be acceptable for compliance with the requirements of paragraph (a) of this AD.

(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, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

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

(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.

(d) The actions shall be done in accordance with Learjet Service Bulletin SB 31–21–10, dated August 11, 1995, or Revision 1, dated May 17, 1996, or Learjet Service Bulletin SB 35–21–24, dated August 11, 1995, or Revision 1, dated May 17, 1996; as applicable.

(1) The incorporation by reference of Learjet Service Bulletin SB 31–21–10, Revision 1, dated May 17, 1996, and Learjet Service Bulletin SB 35–21–24, Revision 1, dated May 17, 1996, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Learjet Service Bulletins SB 31–21–10 dated August 11, 1995 and Learjet SB 35–21–24 dated August 11, 1995, was approved previously by the Director of the Federal Register as of June 28, 1996 (61 FR 26090, May 24, 1996).

(3) Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 24, 1998.

Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6950 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–117–AD; Amendment 39–10405; AD 98–06–27]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires installation of additional "EXIT" signs at the overwing emergency exits. This amendment is prompted by a report indicating that the "EXIT" signs for the overwing emergency exits, as currently installed, would not be visible to passengers during an emergency evacuation when the emergency exit doors are open. The actions specified by this AD are intended to ensure the "EXIT" signs for overwing emergency exits are clearly visible during an evacuation.

DATES: Effective April 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 24, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, 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 certain Fokker Model F28 Mark 0100 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 28, 1997 (62 FR 9113). That action proposed to require installation of additional "EXIT" signs at the overwing emergency exits, and proposed to expand the applicability of the original NPRM to include additional airplanes.

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

Supportive Comments

Two commenters support the proposed rule.

One commenter states that the proposed rule, if adopted, would not affect its fleet of airplanes.

Requests To Extend the Compliance Time

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the proposed compliance time be extended from 8 months to 14 months. The commenter states that, in order to accomplish the modification within the proposed 8-month compliance schedule, approximately 2 of the 40 affected airplanes in its fleet would require special visits in addition to the normal heavy check scheduled. The commenter notes that the additional aircraft downtime and manpower for the special visit would result in a significant additional cost. The commenter points out that an additional 6 months will allow all of its affected aircraft to be modified during heavy maintenance visits.

The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's and foreign airworthiness authority's recommendations as to an appropriate compliance time, the availability of required parts, and the practical aspect of installing the required modification within an interval of time that parallels the normal scheduled maintenance for the majority of affected operators. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required modification without compromising safety. Additionally, the commenter has not provided any data to substantiate why an extension of the compliance time would not compromise safety.

In consideration of all of these factors, and in consideration of the amount of time that has already elapsed since issuance of the supplemental NPRM, the FAA has determined that further delay of this AD is not appropriate. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Resolve Method of Compliance

The ATA, in response to the original NPRM and on behalf of one of its members, requests that the AD either be reworded to mandate compliance with the applicable certification requirements for the emergency exit signs rather than requiring accomplishment of the service bulletin, or that issuance of the AD be deferred until an understanding between Fokker and the ATA member is reached as to how the certification requirements should be satisfied. The commenter states that, since it appears that none of its 40 affected airplanes are in compliance, there is no advantage to meeting the applicable certification requirements for the emergency exit signs by accomplishing the service bulletin referenced in the NPRM. The commenter notes that it should be allowed to meet the applicable certification requirements by the most labor and cost effective way possible. The commenter also notes that it may want to design and install one exit sign rather than two exit signs, and that its design would meet the applicable certification requirements. The ATA adds that it is not productive to adopt a rule that does not reflect the actual installation that is ultimately approved. The ATA also suggests that the FAA contact Fokker before any rule is adopted to ensure that the referenced service bulletin is not in the process of being revised.

The FAA does not concur. The FAA has determined that accomplishment of the actions specified in the service bulletin referenced in this AD adequately addresses the identified unsafe condition. In response to comments to the original NPRM, the FAA noted that the 20 airplanes that were inadvertently omitted from the applicability were delivered from the

factory with provisions for the service bulletin modification. (The supplemental NPRM revised the applicability of the original NPRM to include the 20 additional airplanes.) In addition, the FAA has contacted Fokker and determined that Fokker has not and does not plan to revise the referenced service bulletin to change the method of compliance. Therefore, the FAA has determined that no change to the final rule is necessary. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for alternate methods of compliance if data are submitted to substantiate that such an alternate method of compliance would provide an acceptable level of safety.

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 as proposed.

Cost Impact

The FAA estimates that 40 Fokker Model F28 Mark 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 71 work hours per airplane to accomplish the installation, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,600 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $234,400, or $5,860 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 substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–27 Fokker: Amendment 39–10405. Docket 94–NM–117–AD.

Applicability: Model F28 Mark 0100 series airplanes, having the following serial numbers, certificated in any category:

Serial Numbers

11244,
11245,
11248 through 11256 inclusive,
11261,
11268 through 11283 inclusive,
11286,
11289,
11290,
11291,
11293,
11295 through 11297 inclusive,
11300,
11303,
11306 through 11308 inclusive,
11310 through 11315 inclusive,
11331,
11333,
11334,
11337,
11338,
11345,
11346,
11349,
11357,
11358,
11365,
11366,
11372,
11373,
11379,
11380,
11391,
11392,
11398, and
11399.

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 ensure that the "EXIT" signs for the overwing emergency exits are clearly visible during an evacuation, accomplish the following:

(a) Within 8 months after the effective date of this AD, install two additional "EXIT" signs, one above and between the left-hand overwing emergency exits, and one above and between the right-hand overwing emergency exits, in accordance with Fokker Service Bulletin SBF100–33–015, Revision 1, dated March 21, 1994.

(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 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.

(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.

(d) The installation shall be done in accordance with Fokker Service Bulletin SBF100–33–015, Revision 1, dated March 21, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–4, 10–12	1	March 21, 1994.
5–9, 13–20	Original	October 7, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, 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 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 93–147/2 (A), dated April 29, 1994.

(e) This amendment becomes effective on April 24, 1998.

Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6940 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–193–AD; Amendment 39–10404; AD 98–06–26]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires repetitive inspections to detect corrosion in the wheel axles of the main landing gear (MLG) sliding members; and rework of any corroded areas, an inspection to detect cracks in the wheel axles, and replacement of any cracked sliding member. This AD provides for interim actions that may be accomplished in lieu of the repetitive inspections. This AD also requires eventual modifications of the main wheel brake units and the MLG sliding members; when accomplished, these modifications terminate the repetitive inspections and interim actions. This amendment is prompted by a report of failure of an MLG wheel axle during push back of an in-service airplane from the terminal. The actions specified by this AD are intended to prevent failure of the MLG wheel axle due to problems associated with corrosion and cracking.

DATES: Effective April 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 24, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, 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 certain Fokker Model F28 Mark 0100 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on September 9, 1996 (61 FR 47462). That supplemental NPRM proposed to require repetitive inspections to detect corrosion in the wheel axles of the main landing gear (MLG) sliding members; and rework of any corroded areas, an inspection to detect cracks in the wheel axles, and replacement of any cracked sliding member. That supplemental NPRM proposed to provide for interim actions that may be accomplished in lieu of the repetitive inspections. That supplemental NPRM also proposed to require eventual modifications of the main wheel brake units and the MLG sliding members; when accomplished, these modifications terminate the repetitive inspections and interim actions.

Consideration of Comments Received

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

Request To Allow Terminating Action To Be Optional Rather Than Mandated

The Air Transport Association (ATA) of America, representing a member airline, requests that the terminating action of this AD be allowed as an option to the repetitive inspections rather than be mandated. This commenter states that the Dutch airworthiness directive does not mandate the modification as terminating action.

The FAA does not concur with this request and, as cited in the supplemental NPRM, the FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. However, under the provisions of paragraph (g) of the final rule, the FAA may consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that such an alternative method would provide an acceptable level of safety.

Request To Use Long-Term Inspections To Ensure Level of Safety

The ATA, on behalf of one member, states that the member does not agree with the FAA's statement (in the preamble of the NPRM) that "Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet." This commenter also states that the concept that inspections do not provide the degree of safety required runs contrary to established industry principles and FAA advisory material. In addition, the commenter states that the Certification Maintenance Requirements (CMR's) are an example whereby repetitive tasks are defined as operating limitations in order to detect latent failures that could lead to hazardous or catastrophic failure conditions. Further, the commenter states that damage tolerance concepts for structural elements similarly rely on a well-defined inspection program to maintain safety by ensuring that fatigue

cracking is detected before the critical crack length is reached.

The FAA does not concur that the statement regarding long-term inspections is inappropriate for inclusion in the final rule, although the FAA agrees that clarification of this statement may be necessary. The FAA requires CMR items and damage tolerance inspections to ensure compliance with the airworthiness standards for type certification. The FAA also maintains that the requirement for such inspections is a result of a design methodology, and these inspections are necessary for maintaining the type design in an airworthy condition. However, the FAA points out that the inspections required by this final rule result from in-service cracking in a known area, which could lead to an unsafe condition. For this reason, the FAA has determined that the statement that "long term inspections may not be providing the degree of safety assurance" is appropriately used in this case because an unsafe condition exists.

Request To Allow Operators To Revise Maintenance Inspection Programs

The ATA, representing two member airlines, requests adding a new provision to the final rule that would allow an alternative to the accomplishment of the inspection procedures required by this AD. This alternative action would specify that if operators revise their maintenance inspection programs to include the actions specified by this AD, then the AD would no longer be applicable and these operators could use an alternative recordkeeping method to that required by the AD. The ATA further recommends that the FAA not be involved in the continued oversight of the proposed inspection since it will likely continue for the life of the airplane. One operator states that the inspection procedure could be controlled more efficiently and allow more adaptability if it were included in each operator's FAA-approved maintenance program, which could be coordinated with each operator's FAA principal maintenance inspector (PMI). This operator also states that if a regulatory mandate is required by the FAA, a better option would be to incorporate the most recent inspection procedures as an Airworthiness Limitation through the F100 Maintenance Review Board (MRB) process rather than issuance of a new AD.

A second commenter maintains that its inspection program has provided the required level of safety and that no failures of MLG axles have occurred since the introduction of the inspection program in 1994. Another commenter states that industry principles and FAA advisory material accept inspection programs as a satisfactory means of monitoring structural integrity and that the adequacy of such programs has been demonstrated by in-service experience.

The FAA does not concur with the commenters' requests to revise their maintenance inspection programs to include the actions specified by this AD. The ATA's suggested alternative to accomplishment of the actions required by this AD would permit each operator to determine whether and how often these actions should be accomplished. In light of the identified unsafe condition, however, the FAA has determined that allowing this degree of operator discretion is not appropriate. Therefore, this AD is necessary to ensure that operators accomplish the required actions in a common manner and at common intervals.

Requests To Extend Compliance Periods for Modification of the MLG

The ATA, representing a member airline, states that the compliance time for accomplishment of the modification required by paragraph (e) of the proposal is too stringent and that a typical period for landing gear overhaul is in the range of 3 to 5 years. One commenter states that the timing of the mandated modification does not fit into any normal aircraft check period and, as such, will force carriers to take airplanes out of service and obtain otherwise unneeded landing gear assemblies. This commenter maintains that the delivery schedule for the number of airplanes that would be required to support the industry would make it impossible to comply with the proposed AD. The commenter states that any mandate to modify the MLG at any time that is not flexible enough to be accomplished during each carrier's established landing gear overhaul period also should be opposed.

These commenters request changing the proposed compliance time specified in paragraph (e) of the proposal from "At the next major gear overhaul, or within 4,400 landings after accomplishment of the initial inspection required by paragraph (a) of this AD, whichever occurs first. * * *" to "At the next major gear overhaul, or within 4 years after the effective date of the proposed rule, whichever occurs later. * * *" The FAA infers from these remarks that the commenters request an extension for accomplishment of the modification.

The FAA concurs partially with these requests. The FAA concurs with the requests to extend the compliance time for completion of the modification and considers that the repetitive inspections required by paragraphs (a) and (b) of this AD will provide an adequate level of safety until such modification is completed. The FAA has determined that extending the compliance time will provide operators additional time to complete the modification and, at the same time, allow sufficient time to adequately address the unsafe condition. However, the FAA does not concur with the request to change "whichever occurs first" to "whichever occurs later" because it has determined that "later" (which refers to the next scheduled maintenance) does not provide a definitive compliance time.

The FAA concurs with the request to change the compliance time specified in paragraph (e) of this final rule from "within 4,400 landings." However, the FAA does not concur with the request to change the number of landings to 4 years and, instead, has determined that 5 years is more appropriate because it corresponds more closely to most operators' "heavy" maintenance schedules. Paragraph (e) of the final rule is changed to read "At the next major gear overhaul, or within 5 years after the effective date of this AD, whichever occurs first. * * *"

Request To Revise the Cost Estimate To Include the Terminating Actions

Two commenters request a revision of the cost impact information, below, to more accurately reflect the cost associated with accomplishment of the terminating modification. These commenters state that accomplishment of the terminating action requires removal of the MLG from the airplane and rework in the shop, and that because this action will be outside the usual maintenance for the MLG, operators may incur additional cost due to the need for a loaner gear to support the shop repair cycle.

The FAA does not concur with these requests to revise the cost estimate. The FAA points out that the compliance time for accomplishment of the terminating action has been extended in this final rule. This extension will likely allow operators to accomplish the terminating action during a major gear overhaul. Therefore, there is no additional cost associated with the removal of the MLG outside regularly scheduled maintenance.

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.

Cost Impact

The FAA estimates that 125 Fokker Model F28 Mark 0100 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 14 work hours per airplane to accomplish the required visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection of this AD on U.S. operators is estimated to be $105,000, or $840 per airplane.

It will take approximately 66 work hours per airplane to accomplish the required terminating modifications, at an average labor rate of $60 per work hour. Required parts will cost approximately $865 per airplane. Based on these figures, the cost impact of the required terminating modification of this AD on U.S. operators is estimated to be $603,125, or $4,825 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.

Should an operator elect to accomplish the repetitive visual inspections that would be provided by this AD action, it would take approximately 14 work hours to accomplish each repetitive inspection, at an average labor rate of $60 per work hour. The FAA estimates that these inspections would be accomplished four times per year. Based on these figures, the cost impact of the repetitive inspections on U.S. operators is estimated to be $3,360 per airplane, per year.

Should an operator elect to accomplish the interim actions that would be provided by this AD action, it would take approximately 26 work hours for the rework, and 26 work hours per airplane for the brake unit replacement. It would take between 28 to 168 work hours per year for the sampling program, depending on the size of an operator's fleet. The average labor rate is $60 per work hour. The cost for required parts would be approximately $865 per airplane. Additionally, once these interim actions are accomplished, the cost impact of the terminating modifications discussed previously would be reduced by $2,400 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–26 Fokker: Amendment 39–10404. Docket 93–NM–193–AD.

Applicability: Model F28 Mark 0100 series airplanes equipped with Dowty Aerospace main landing gear (MLG) part number 201072011, 201072012, 201072013, 201072014, 201072015, or 201072016; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the MLG wheel axle due to problems associated with corrosion and cracking, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove the MLG wheels and brakes and perform a visual inspection to detect corrosion and cracking in the wheel axles of the MLG sliding members in accordance with Fokker Service Bulletin F100–32–079, Revision 1, dated October 4, 1993, and paragraph 2.A. of the Accomplishment Instructions of Dowty Aerospace Service Bulletin F100–32–63, Revision 2, dated September 23, 1993.

(b) Following accomplishment of the inspection required by paragraph (a) of this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3 months in accordance with Fokker Service Bulletin SBF100–32–080, dated October 4, 1993, and Dowty Aerospace Service Bulletin F100–32–64, Revision 1, dated February 18, 1994, until the actions required by paragraph (e) of this AD are accomplished. Or

(2) Accomplish paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this AD at the times specified in those paragraphs in accordance with Fokker Service Bulletin SBF100–32–083, dated March 23, 1994.

(i) Within 3 months after the accomplishment of an inspection required by paragraph (a) or (b)(1) of this AD: Rework the axles in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Repeat this rework thereafter at intervals not to exceed 12 months or 2,200 landings, whichever occurs first. And

(ii) Prior to or concurrent with accomplishing the initial rework specified in paragraph (b)(2)(i) of this AD: Replace the main wheel brake units in accordance with Part 1 of the Accomplishment Instructions of the service bulletin. And

(iii) Within 3 months after the first accomplishment of the rework required by paragraph (b)(2)(i) of this AD: Begin performing interim inspections ("sampling program") to detect corrosion and cracking in the wheel axles of the MLG sliding members, in accordance with Part 3 of the Accomplishment Instructions of the service bulletin. Perform these inspections at the intervals specified in the service bulletin until the actions required by paragraph (e) of this AD are accomplished.

(c) If any corrosion is found during any inspection required by this AD, prior to further flight, rework the affected area and

perform a non-destructive testing (NDT) inspection to detect cracks in the MLG wheel axles, in accordance with Appendix A of Dowty Aerospace Service Bulletin F100–32–63, Revision 2, dated September 23, 1993 (if corrosion is found during the initial inspection required by this AD); or Dowty Aerospace Service Bulletin F100–32–64, Revision 1, dated February 18, 1994 (if corrosion is found during a repetitive inspection required by this AD); as applicable. After rework, perform repetitive inspections of the affected area in accordance with paragraph (b)(1) of this AD until the actions required by paragraph (e) of this AD are accomplished.

(d) If any crack is found during any inspection required by this AD, prior to further flight, replace the affected sliding member with a serviceable sliding member in accordance with Dowty Aerospace Service Bulletin F100–32–63, Revision 2, dated September 23, 1993 (if any crack is found during the initial inspection required by this AD); or Dowty Aerospace Service Bulletin F100–32–64, Revision 1, dated February 18, 1994 (if any crack is found during a repetitive inspection required by this AD); as applicable. After replacement of the affected sliding member, perform the repetitive inspections in accordance with paragraph (b)(1) of this AD until the actions required by paragraph (e) of this AD are accomplished.

(e) At the next major gear overhaul, or within 5 years after the effective date of this AD, whichever occurs first: Rework the sliding member, and replace the main wheel brake units in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–081, dated March 23, 1994. Accomplishment of these actions constitutes terminating action for the repetitive inspections and the interim actions specified in paragraph (b) of this AD.

Note 2: Fokker Service Bulletin SBF100–32–081 refers to Dowty Aerospace Service Bulletin F100–32–64, Revision 1, dated February 18, 1994, as an additional source of service information for accomplishment of the rework and replacement.

(f) As of the effective date of this AD, no person shall install a Dowty Aerospace MLG, part number 201072011, 201072012, 201072013, 201072014, 201072015, or 201072016, on any airplane unless the requirements of this AD have been accomplished on that MLG. Following its installation, the repetitive inspections required by paragraph (b) of this AD shall be accomplished on that MLG.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

(i) The actions shall be done in accordance with the following Fokker service bulletins or Dowty Aerospace service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
Fokker SBF100–32–079, Revision 1, October 4, 1993	1–3	1	October 4, 1993.
	4	Original	August 2, 1993.
Fokker SBF100–32–080, October 4, 1993	1–4	Original	October 4, 1993.
Fokker SBF100–32–081, March 23, 1994	1–6	Original	March 23, 1994.
Fokker SBF100–32–083, March 23, 1994	1–6	Original	March 23, 1994.
Dowty Aerospace F100–32–63, Revision 2, September 23, 1993	1–3	2	September 23, 1993.
	4	Original	July 29, 1993.
Appendix A	1–2	Original	July 29, 1993
Appendix B	1	2	September 23, 1993.
Dowty Aerospace F100–32–64, Revision 1, February 18, 1994	1–6	1	February 18, 1994.
Appendix A	1–2	Original	September 23, 1993.
Appendix B	1	Original	September 23, 1993.
Appendix C	1	1	February 18, 1994.

The incorporation by reference of these documents 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., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, 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 BLA No. 93–108/2 (A), dated November 1, 1993.

(j) This amendment becomes effective on April 24, 1998.

Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6948 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–109–AD; Amendment 39–10417; AD 98–06–38]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASK–21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASK–21 sailplanes that do not have a certain automatic elevator connection installed. This AD requires drilling a drainage hole in the elevator pushrod, inspecting the elevator pushrod for corrosion damage, and replacing any elevator pushrod if a certain amount of corrosion damage is found. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the elevator pushrod caused by corrosion damage, which could result in loss of control of the sailplane.

DATES: Effective April 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920;

facsimile: 49.6658.8923 or 49.6658.8940. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–109–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexander Schleicher Model ASK–21 sailplanes that do not have a certain automatic elevator connection installed was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 19, 1997 (62 FR 66567). The NPRM proposed to require drilling a drainage hole in the elevator pushrod, inspecting the elevator pushrod for corrosion damage, and replacing any elevator pushrod if a certain amount of corrosion damage is found. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Alexander Schleicher Technical Note No. 26, dated July 1, 1993.

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

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

The FAA's Determination

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

Compliance Time of This AD

The unsafe condition specified by this AD is caused by corrosion. Corrosion can occur regardless of whether the sailplane is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this AD does not go undetected for a long period of time, the compliance time is presented in calendar time instead of hours time-in-service (TIS).

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per sailplane to accomplish this elevator pushrod drainage hole drilling and elevator pushrod inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,800, or $60 per sailplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–38 Alexander Schleicher Segelflugzeugbau: Amendment 39–10417; Docket No. 97–CE–109–AD.

Applicability: Model ASK–21 sailplanes, serial numbers 21 001 through 21 205, certificated in any category, that do not have an automatic elevator connection installed in accordance with Alexander Schleicher Technical Note No. 11, dated December 20, 1983.

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

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

To prevent failure of the elevator pushrod caused by corrosion damage, which could result in loss of control of the sailplane, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, drill a drainage hole in the elevator pushrod in accordance with Alexander Schleicher Technical Note No. 26, dated July 1, 1993.

(b) Within the next 3 calendar months after the effective date of this AD, inspect the elevator pushrod for corrosion damage in accordance with Alexander Schleicher Technical Note No. 26, dated July 1, 1993.

(1) If no corrosion damage is found or corrosion damage is found that does not exceed the amount specified in the service bulletin, prior to further flight after the inspection required by paragraph (b) of this AD, apply a corrosion agent as described in the service bulletin.

(2) If corrosion damage is found that exceeds the amount specified in the service bulletin, prior to further flight after the inspection required by paragraph (b) of this AD, replace the elevator pushrod in accordance with the maintenance manual, and apply a corrosion agent as described in the service bulletin.

(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 sailplane

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

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

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

(e) Questions or technical information related to Alexander Schleicher Technical Note No. 26, dated July 1, 1993, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(f) The inspection, drilling, and application required by this AD shall be done in accordance with Alexander Schleicher Technical Note No. 26, dated July 1, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD No. 93–186, dated September 15, 1993.

(g) This amendment (39–10417) becomes effective on April 28, 1998.

Issued in Kansas City, Missouri, on March 11, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7232 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–107–AD; Amendment 39–10416; AD 98–06–37]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASK–21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASK–21 sailplanes. This AD requires replacing any tow release cable assembly that does not have a swivel-type end with a cable assembly that does have a swivel-type end. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the inability to release the tow rope because of the design of the cable assembly, which could result in loss of control of the sailplane during towing operations.

DATES: Effective April 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–107–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Alexander Schleicher Model ASK–21 sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 19, 1997 (62 FR 66560). The NPRM proposed to require replacing any tow release cable assembly that does not have a swivel-type end with a tow release cable assembly that does have a swivel-type end. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Alexander Schleicher Technical Note No. 10, dated October 10, 1983.

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

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

The FAA's Determination

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

Compliance Time of This AD

Although the loops that form in the cable assembly would only occur during flight over time and the bending loads are related to sailplane operation, the FAA has no basis to determine the approximate number of hours time-in-service (TIS) when the unsafe condition is likely to occur. For example, the loops could form in the tow release cable assembly on a sailplane with 10 hours TIS, but not form until 500 hours TIS on another sailplane. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per sailplane to

accomplish this replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $20 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $4,200, or $140 per sailplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–37 Alexander Schleicher Segelflugzeugbau: Amendment 39–10416; Docket No. 97–CE–107–AD.

Applicability: Model ASK–21 sailplanes, serial numbers 21 001 through 21 196, certificated in any category, that are equipped with a tow release cable assembly that does not have a swivel-type end.

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

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

To prevent the inability to release the tow rope because of the design of the cable assembly, which could result in loss of control of the sailplane during towing operations, accomplish the following:

(a) Replace any tow release cable assembly that does not have a swivel-type end with a tow release cable assembly that does have a swivel-type end in accordance with Alexander Schleicher Technical Note No. 10, dated October 10, 1983.

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

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

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

(d) Questions or technical information related to Alexander Schleicher Technical Note No. 10, dated October 10, 1983, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(e) The replacement required by this AD shall be done in accordance with Alexander Schleicher Technical Note No. 10, dated October 10, 1983. 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 Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD No. 84–2, dated January 13, 1984.

(f) This amendment (39–10416) becomes effective on April 28, 1998.

Issued in Kansas City, Missouri, on March 11, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7249 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–22–AD; Amendment 39–10410]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–111 series airplanes. This amendment requires repetitive inspections to detect cracking around the attachment holes for the access panels in the lower skin of the wing; and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct such cracking, which could result in reduced structural integrity of the airplane.

DATES: Effective June 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–

22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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 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.

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: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320–111 series airplanes. The DGAC advises that it has received a report of cracking detected during fatigue testing on a test article; the cracks were found around the attachment holes for the access panels in the lower skin of the wing, between ribs 13 and 22. Such cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–57–1056, Revision 1, dated July 15, 1997, including Appendix 1, which describes procedures for repetitive high frequency eddy current inspections to detect cracking around the attachment holes for the access panels in the lower skin of the wing, between ribs 13 and 22 (skin panel number 2, left and right sides); and repair, if necessary. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 97–083–096(B), dated March 12, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Rule and the Service Information

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

Cost Impact

Currently, there are approximately 118 Airbus Model A320–111 airplanes of U.S. registry. However, the FAA has determined that none of these U.S.-registered airplanes will be affected by this AD. Therefore, there is no future economic cost impact of this rule on U.S. operators.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 8 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $480 per airplane, per inspection cycle.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. The requirements of this direct final rule address and unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with 14 CFR 11.17, unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received; at that time, the AD number will be specified, and the date on which the final rule will become effective will be confirmed. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–22–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 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:

Airbus: Amendment 39–10410. Docket 98–NM–22–AD.

Applicability: Model A320–111 series airplanes, as identified in Airbus Service Bulletin A320–57–1056, Revision 1, dated July 15, 1997, including Appendix 1; 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 detect and correct cracking around the attachment holes for the access panels in the lower skin of the wing, between ribs 13 and 22 (skin panel number 2, left and right sides), which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current inspection to detect cracking around the attachment holes for the access panels in the lower skin of the wing, between ribs 13 and 22; in accordance with Airbus Service Bulletin A320–57–1056, Revision 1, dated July 15, 1997, including Appendix 1. Thereafter, repeat the inspection at intervals not to exceed 15,000 flight cycles.

(b) If any crack is detected during any inspection required by this AD, and the applicable service bulletin specifies to contact the manufacturer for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

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

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

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

(e) The actions shall be done in accordance with Airbus Service Bulletin A320–57–1056, Revision 1, dated July 15, 1997, including Appendix 1. 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 97–083–096(B), dated March 12, 1997.

(f) This amendment becomes effective on June 18, 1998.

Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6947 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–66–AD; Amendment 39–10418; AD 98–06–39]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332C, L, L1, and L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters. This action requires determining the thickness of the shim washers, inspecting certain cockpit door hinge tenons (hinge tenons) for cracks, and if a crack is found, replacing the hinge tenon with an airworthy hinge tenon. This amendment is prompted by several reports of cracked hinge tenons due to improper shimming. The actions specified in this AD are intended to detect cracks in the hinge tenons due to unintended loading of the improperly shimmed tenons caused by closing the door, which may lead to separation of the door from the helicopter, impact with the main rotor or tail rotor system, and subsequent loss of control of the helicopter.

DATES: Effective April 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–66–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L*Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, L, L1, and L2 helicopters. The DGAC advises that an inspection of the hinge tenons for cracks must be performed on helicopters that have washers of a certain thickness installed.

Eurocopter France has issued Eurocopter AS 332 Service Bulletin No. 01.00.50, dated August 5, 1997, which specifies an inspection of the hinge tenons for cracks on helicopters that have washers of a certain thickness installed. The DGAC classified this service bulletin as mandatory and issued AD 97–108–006(AB)R1 and AD 97–109–061(AB)R1, both dated April 23, 1997, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332C, L, L1, and L2 helicopters of the same type design registered in the United States, this AD is being issued to detect cracks in the hinge tenons due to unintended loading caused by improper shimming of the tenons upon closing the door, which may lead to separation of the door from the helicopter, impact with the main rotor or tail rotor system, and subsequent loss of control of the helicopter. The actions are required to be accomplished in accordance with the service bulletin described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, since the hinge tenons must be inspected and replaced prior to further flight if a crack is found, this AD must be issued immediately.

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

The FAA estimates that 4 helicopters of U.S. registry will be affected by this proposed AD, that it will take approximately 4 work hours to accomplish the inspection and installation (if needed), and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,000 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,960.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–66–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 98–06–39 Eurocopter France: Amendment 39–10418. Docket No. 97–SW–66–AD.

Applicability: Model AS 332C, L, L1, and L2 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters that have been modified, altered,

or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks in the cockpit door hinge tenons (hinge tenons) due to unintended loading of the improperly shimmed tenons caused by closing the door, which may lead to separation of the door from the helicopter, impact with the main rotor or tail rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS), inspect the thickness of the shim washers and perform the following in accordance with Eurocopter Service Bulletin No. 01.00.50, dated August 5, 1997:

(1) If the washers are equal to or less than 3 mm thick, perform the requirements of paragraph 2.B.1.1. and 2.B.2.

(2) If the washers are more than 3 mm thick and equal to or less than 3.5 mm thick, perform the requirement of paragraph 2.B.1.2. and 2.B.2.

(3) If the washers are more than 3.5 mm thick, perform a dye penetrant inspection for cracks on the hinge tenon as specified in paragraph 2.B.1.3.

(i) If a crack is found, before further flight, install an airworthy, zero hours TIS hinge tenon in accordance with the requirements of paragraph 2.B.1.3. and 2.B.2.

(ii) If the hinge tenon is determined to be airworthy and is reinstalled, remove and replace the reinstalled hinge tenon with an airworthy, zero hours TIS hinge tenon within 500 hours TIS, in accordance with paragraph 2.B.1.3. and 2.B.2.

(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, Rotorcraft Standards Staff, 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 Standards Staff.

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

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

(d) The inspections and replacement shall be done in accordance with Eurocopter Service Bulletin No. 01.00.50, dated August 5, 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 97–108–006(AB)R1 and AD 97–109–061(AB)R1, both dated August 27, 1997.

Issued in Fort Worth, Texas, on March 12, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–7230 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–51–AD; Amendment 39–10415; AD 98–06–36]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA341G and SA342J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA341G and SA342J helicopters. This action requires inspecting the tail gearbox support tripod (support tripod) for cracks. This amendment is prompted by reports of cracks that were discovered during routine maintenance inspections. The actions specified in this AD are intended to detect cracks at the welds of the tail gearbox support tripod, which could cause failure of one or more of the tripod arms, subsequent separation of the tail gearbox, and loss of control of the helicopter.

DATES: Effective April 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–51–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model SA341G and SA342J helicopters. The DGAC advises that cracks have been found in the welds of the support tripod, part number 341A23–1136–00 –01, or –02, and is mandating a visual inspection, and if the results of the visual inspection are inconclusive, a dye-penetrant inspection for cracks.

Eurocopter France has issued Eurocopter SA 341/342 Service Bulletin No. 05.32, dated July 17, 1997, which specifies visual inspections, and if there is any doubt about the results of the visual inspection, a dye-penetrant inspection, for cracks on the support tripod and replacement with an airworthy support tripod if a crack is found. The DGAC classified this service bulletin as mandatory and issued AD 97–144–038(B), dated July 2, 1997, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this

type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA341G and SA342J helicopters of the same type design registered in the United States, this AD is being issued to detect cracks at the welds of the tail gearbox support tripod, which could cause failure of one or more of the tripod arms, separation of the tail gearbox and subsequent loss of control of the helicopter. This AD requires, before further flight, and thereafter, prior to the first flight of each day, or at intervals not to exceed 10 hours time-in-service, whichever occurs first, visual inspections of the support tripod for cracks. If the visual inspections indicate potential cracks, a dye-penetrant inspection is required. If a crack is found, replacing the support tripod with an airworthy support tripod is required. The actions are required to be accomplished in accordance with the service bulletin described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the inspections for cracks are required prior to further flight, and this AD must be issued immediately.

The FAA estimates that 24 helicopters of U.S. registry would be affected by this AD, that it would take approximately one-half work hour to conduct the visual inspection and 9 work hours to replace the support tripod, and that the average labor rate is $60 per work hour. Required parts would cost approximately $203,304. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $4,892,976, if the support tripod is replaced in all of the U.S. fleet.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–51–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 98–06–36 Eurocopter France: Amendment 39–10415. Docket No. 97–SW–51–AD.

Applicability: Eurocopter France Model SA341G and SA342J helicopters, with tail gearbox support tripods, part number (P/N) 341A23–1136–00, –01 or –02, 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 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 use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks at the welds of the tail gearbox support tripod, which could cause failure of one or more of the tripod arms, separation of the tail gearbox, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, visually inspect the tail gearbox support tripod (support tripod), P/N 341A23–1136–00, –01 or –02, for cracks in accordance with the Accomplishment Instructions, paragraph 2(B)(1), of Eurocopter SA 341/342 Service Bulletin No. 05.32, dated July 17, 1997; thereafter, conduct this visual inspection prior to the first flight of each day, or at intervals not to exceed 10 hours time-in-service (TIS), whichever occurs first.

(1) If there is any doubt as to whether there is a crack present, perform a dye-penetrant inspection in accordance with paragraph (2)(B)(1) of the service bulletin.

(2) If a crack is found, replace the support tripod with an airworthy support tripod.

Note 2: The FAA has requested the DGAC to contact the type certificate holder and solicit terminating action that would eliminate the recurring inspection requirement of this AD.

(b) Remove from service any support tripod, P/N 341A23–1136–00, –01, or –02, which has accumulated 9,000 or more hours TIS, and replace it with an airworthy support tripod.

(c) This AD revises the Limitation section of the maintenance manual by establishing a new retirement life for the support tripod, P/N 341A23–1136–00, –01, and –02, of 9,000 hours TIS.

(d) 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 Standards Staff, 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 Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

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

(f) The inspections and replacement, if necessary, shall be done in accordance with Eurocopter SA 341/342 Service Bulletin No. 05.32, dated July 17, 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 6, 1998.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 97–144–038(B), dated July 2, 1997.

Issued in Fort Worth, Texas, on March 12, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–7247 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–31–AD; Amendment 39–10414; AD 98–06–35]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA–366G1 helicopters. This action requires initial and repetitive inspections of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar) for delaminations. This amendment is prompted by a report of delamination of a Kevlar tie-bar. The actions specified in this AD are intended to detect delaminations of the Kevlar tie-bar, that could result in loss of anti-torque function and subsequent loss of control of the helicopter.

DATES: Effective April 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–31–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Model SA–366G1 helicopters. The DGAC advises that delamination outside certain tolerance limits may occur on Kevlar tie-bars.

Eurocopter France has issued Eurocopter France Telex Service Bulletin No. 05.19, dated August 19, 1992, which specifies visually checking the condition of the Kevlar tie-bar assembly for delamination around the blade-to-hub attachment point within 10 flying hours, and if delamination exists that is outside certain tolerance limits, removing the tail rotor blade and replacing it with an airworthy blade. Eurocopter France also issued Eurocopter France SA 366 Service Bulletin No. 05.20, Revision 3, dated November 14, 1996, which specifies repetitive visual inspections of the Kevlar tie-bar for delamination, and if delamination exists that is outside certain tolerance limits, removing the tail rotor blade and replacing it with an airworthy tail rotor blade at intervals of 250 flying hours. The DGAC classified these service bulletins as mandatory and issued DGAC AD 92–186–014(B)R4, dated December 4, 1996, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

The FAA estimates that 91 helicopters of U.S. registry will be affected by this AD, that it will take 4 work hours per helicopter to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,000 per helicopter. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $294,840.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA–366G1 helicopters of the same type design registered in the United States, this AD is being issued to detect delaminations of the Kevlar tie-bar, that could result in loss of anti-

torque function and subsequent loss of control of the helicopter. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, an initial inspection within 10 hours time-in-service is required and this AD must be issued immediately.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–31–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 98–06–35 Eurocopter France: Amendment 39–10414. Docket No. 97–SW–31–AD.

Applicability: Model SA–366G1 helicopters, with tail rotor blades, part numbers (P/N) 365A12–0010–all dash numbers, 365A12–0020–01, 365A33–2131–all dash numbers, or 365A12–0020–03, 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 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 use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect delaminations of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar), that could result in loss of anti-torque function and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), inspect each Kevlar tie-bar in accordance with paragraph CC of Eurocopter France Telex Service Bulletin 05.19, dated August 19, 1992. This initial inspection is not required for blade P/N 365A12–0020–03.

Note 2: Twisting the Kevlar tie-bar slightly when inspecting will make it easier to identify any faults.

(b) Within 250 hours TIS, and thereafter at intervals not to exceed 250 hours TIS, inspect each Kevlar tie-bar in accordance with paragraph 2.B of Eurocopter France Service Bulletin 05.20, Revision 3, dated November 14, 1996.

(c) If any delamination is found during any of the inspections required by paragraphs (a) or (b) of this AD, remove the blade and replace it with an airworthy blade before further flight.

(d) 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 Standards Staff, 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 Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

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

(f) The inspections shall be done in accordance with Eurocopter France Telex SB 05.19, dated August 19, 1992 and Eurocopter France SB 05.20, Revision 3, dated November 14, 996. 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd.,

Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 6, 1998.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 92–186–014(B)R4, dated December 4, 1996.

Issued in Fort Worth, Texas, on March 12, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–7248 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 980313063–8063–01]

RIN 0625–AA51

Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Interim final rules; request for comments.

SUMMARY: The Department of Commerce ("the Department") hereby amends its regulations on antidumping and countervailing duty proceedings on an interim basis in order to implement certain provisions of the Uruguay Round Agreements Act ("URAA").

The regulations provide, in particular, for procedures for conducting five-year ("sunset") reviews of antidumping and countervailing duty orders and suspended investigations pursuant to the provisions of sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act").

DATES: Interim final regulations effective March 20, 1998. To be assured of consideration, written comments must be received not later than April 20, 1998. Rebuttal comments must be received not later than May 11, 1998.

ADDRESSES: A signed original and six copies of each set of comments, including reasons for any recommendation, along with a cover letter identifying the commenter's name and address, should be submitted to Robert S. LaRussa, Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; Attention: Sunset Procedural Regulations.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, or Stacy J. Ettinger, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482–4618.

SUPPLEMENTARY INFORMATION:

Background

The Uruguay Round Agreements Act ("URAA") fundamentally revised the Act by requiring that antidumping ("AD") and countervailing duty ("CVD") orders be revoked, and suspended investigations be terminated, after five years unless revocation would be likely to lead to a continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry. The URAA assigns to the Department the responsibility of determining whether revocation of an antidumping or countervailing duty order, or termination of a suspended investigation, would be likely to lead to a continuation or recurrence of dumping or a countervailable subsidy, and of providing to the International Trade Commission the magnitude of the margin of dumping or the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated. The URAA requires that the Department begin initiating sunset reviews in July 1998, that all sunset reviews of "transition orders"—those antidumping and countervailing duty orders and suspended investigations in effect on January 1, 1995, the effective date of the URAA—be initiated by December 31, 1999, and that all reviews of transition orders be completed by June 30, 2001. The URAA further requires that the Department initiate a sunset review of each order or suspended investigation that is not a "transition order" not later than 30 days before the fifth anniversary of publication of the order or suspension agreement in the **Federal Register**. Pursuant to section 751(c)(1) of the Act, initiation of sunset reviews is automatic. The Department intends to notify, in advance, all persons on the service list for each proceeding subject to a sunset review, of the approximate date of publication in the **Federal Register** of the automatic initiation of the sunset review.

The interim regulations described below address the procedures for participation in, and conduct of, sunset reviews consistent with the statute and with the legislative history's commitment to provide further guidance on procedures. These regulations are effective on their date of publication in the **Federal Register** and apply to sunset reviews initiated on or after July 1, 1998. These rules will remain in effect until the Department adopts final regulations after considering comments in response to this notice of interim final rules.

Request for Comment

The Department solicits comments pertaining to these interim final regulations concerning conduct of sunset reviews. Initial comments should be received by the Assistant Secretary not later than April 20, 1998. Any rebuttals to the initial comments should be received by the Assistant Secretary not later than May 11, 1998. Commenters should file a signed original and six copies of each set of initial and rebuttal comments. All comments will be available for public inspection and photocopying in the Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 am and 5:00 pm on business days.

Each person submitting a comment should include the commenter's name and address, and give reasons for any recommendations. To facilitate their consideration by the Department, initial and rebuttal comments should be submitted in the following format: (1) Number each comment in accordance with the number of the regulation being addressed; (2) begin each comment on a separate page; (3) provide a brief summary of the comment (a maximum of three sentences) and label this section "Summary of the Comment;" and (4) concisely state the issue identified and discussed in the comment and provide reasons for any recommendation.

To help simplify the processing and distribution of comments, the Department requests the submission of initial and rebuttal comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be on a DOS formatted 3.5" diskette in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. Please make each comment a separate file on the diskette and name each separate file using the number of the regulation being addressed in the comment.

Comments received on diskette will be made available to the public on the Internet at the following address: "http://www.ita.doc.gov/import_admin/

records/". In addition, upon request, the Department will make comments filed in electronic form available to the public on 3.5" diskettes (at cost), with specific instructions for accessing compressed data (if necessary). Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, (202) 482–0866.

Classification

Administrative Procedure Act

Pursuant to authority at 5 U.S.C. 553(b)(A), the Assistant Secretary for Import Administration waives the requirement to provide prior notice and an opportunity for public comment because this action is a rule of agency procedure. Section 751(c) and section 752 of the Tariff Act of 1930, as amended (19 U.S.C. 1675(c) and 1675a), and the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act (H.R. Doc. No. 103–316, vol. 1 (1994)) address the substantive methodological and analytical framework for sunset reviews, as well as procedures for conducting sunset reviews. This action only addresses the procedures for participation in, and conduct of, sunset reviews consistent with the statute and with the SAA's commitment to provide further guidance on procedures. This interim final rule is not subject to a 30-day delay in its effectiveness under 5 U.S.C. 553(d) as it is not a substantive rule. The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 note) are inapplicable to this rulemaking because it is not one for which a Notice of Proposed Rulemaking is required under 5 U.S.C. 553 or any other statute.

Paperwork Reduction Act

This interim final rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Executive Order 12866

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 12612

This interim final rule does not contain federalism implications described in Executive Order 12612 warranting the preparation of a Federalism Assessment.

Explanation of Particular Provisions

Subpart A—Scope and Definitions

Subpart A sets forth the scope of part 351, definitions, and other general matters applicable to AD/CVD proceedings.

Section 351.102

Section 351.102 sets forth definitions of terms that are used throughout part 351. Most of the terms used in the new sunset regulations have been defined previously in the statute or regulations, and parties should refer to the relevant provisions for guidance. However, we added two new definitions.

Expedited sunset review is used in these regulations as a shorthand expression for the 120-day expedited sunset review conducted by the Department under section 751(c)(3)(B) of the Act. The Department will conduct an expedited sunset review when respondent interested parties provide inadequate responses to a Notice of Initiation under new § 351.218(e)(1)(ii).

Full sunset review is used in these regulations as a shorthand expression for the 240-day (or 330-day if fully extended) full sunset review conducted by the Department under section 751(c)(5) of the Act. The Department will conduct a full sunset review when both domestic interested parties and respondent interested parties provide adequate responses to a Notice of Initiation under section 751(c)(3)(B) of the Act and new §§ 351.218(e)(1)(i) and 351.218(e)(1)(ii).

Section 351.104

Section 351.104 defines what constitutes the official and public records of an AD/CVD proceeding.

Administrative record of proceedings. Although no changes have been made to § 351.104 by these regulations, in order to avoid any confusion that might arise from reporting and recordkeeping differences between the International Trade Commission and the Department with respect to grouped transition orders, we are clarifying that a sunset proceeding before the Department is subject merchandise- and country-specific (*i.e.*, order-specific). Therefore, consistent with § 351.104(a)(1), the Department will maintain in the Central Records Unit an official record of each sunset review of an order or suspended investigation, and a party must file separate submissions, consistent with the filing requirements of § 351.303, in each sunset review in which it participates.

Subpart B—Antidumping and Countervailing Duty Procedures

Subpart B deals with AD/CVD procedures.

Section 351.218

Section 351.218 deals with sunset reviews under section 751(c) of the Act. We removed paragraphs (d) and (e) and added new paragraphs (d), (e), and (f). These revisions are intended to streamline sunset reviews by providing guidance on participation in, and conduct of, sunset reviews. In addition, the Department believes that such guidance will allow both the Department and interested parties to begin preparing in advance, in particular, for the approximately 325 sunset reviews of transition orders scheduled to be initiated over an 18-month period beginning in July 1998.

Participation in sunset review. Paragraph (d) is new and sets forth the procedural requirements for participation in, or waiver of participation in, a sunset review.

Domestic interested party notification of intent to participate. Paragraph (d)(1) sets forth the procedure for domestic interested party participation in a sunset review. Paragraph (d)(1)(i) provides that a domestic interested party that intends to participate in a sunset review must file a Notice of Intent to Participate in a Sunset Review within 15 days of initiation of a sunset review. The requirement that domestic interested parties notify the Department of their intention to participate prior to the deadline for submission of substantive responses to both the Department and the International Trade Commission is intended to alleviate the burden on parties of having to prepare substantive responses in cases where there is no domestic party interest. This is because, where there is no domestic party interest in a particular case, the Department, pursuant to section 751(c)(3)(A) of the Act, automatically will revoke the order or terminate the suspended investigation, as applicable. The Notice of Intent procedure is intended to eliminate needless reviews and promote administrative efficiency, consistent with the explanation in the House Report (H.R. Rep. No. 103–826, pt. 1 (1994)) at 56. As set forth in paragraph (d)(1)(iii), therefore, where no domestic interested party files a Notice of Intent to Participate in the sunset review, the Department will issue a final determination revoking the order or terminating the suspended investigation within 90 days of initiation of the sunset review.

Paragraph (d)(1)(ii) sets forth the information required to be provided in a Notice of Intent to Participate in a Sunset Review. It is the Department's intention to make the Notice of Intent procedure as simple as possible and, as

a result, the information required to be provided is minimal.

Waiver of response by a respondent interested party to a Notice of Initiation. Paragraph (d)(2) deals with the procedure for waiving participation in a sunset review before the Department, consistent with section 751(c)(4) of the Act. As the SAA at 881, and the House Report at 57, explain, allowing respondent interested parties, including foreign governments, to waive participation in a sunset review before the Department is intended to reduce the burden on all parties involved in a sunset review.

Paragraph (d)(2)(i) provides that a Statement of Waiver must be filed within 30 days of initiation of the sunset review, and, consistent with section 751(c)(4)(A) of the Act, clarifies that waiving participation in a sunset review before the Department does not affect a party's opportunity to participate in the sunset review conducted by the International Trade Commission.

Paragraph (d)(2)(iii) clarifies that failure to file a complete substantive response to a Notice of Initiation under paragraph (d)(3) also will be treated as a waiver of participation. It is the Department's intention to make the waiver process as simple as possible and, as reflected in paragraph (d)(2)(ii), the information required to be provided in a Statement of Waiver is minimal.

Paragraph (d)(2)(iv) indicates the effect of waiver by the foreign government in a CVD sunset review. Specifically, paragraph (d)(2)(iv) provides that where the foreign government waives participation in a CVD sunset review, either by filing a Statement of Waiver or by failing to file a complete substantive response to a Notice of Initiation, the Department will conduct an expedited sunset review under section 751(c)(3)(B) of the Act and, consistent with the SAA at 881, and the House Report at 57, normally will conclude that revocation of the order or termination of the suspended investigation would be likely to lead to continuation or recurrence of a countervailable subsidy for *all* respondent interested parties.

Substantive response to a Notice of Initiation. Section 751(c)(2) of the Act requires the Department to initiate sunset reviews automatically every five years. As part of the initiation, section 751(c)(2) of the Act authorizes the Department to request that interested parties submit certain information needed to conduct the review. Paragraph (d)(3) indicates the information that interested parties are required to submit in response to the Notice of Initiation of a sunset review, as well as optional information that may be submitted in response to the Notice of Initiation.

Paragraph (d)(3)(i) provides that a complete substantive response to a Notice of Initiation must be submitted to the Department within 30 days of initiation of the sunset review.

Paragraph (d)(3)(ii), consistent with section 751(c)(2) of the Act, indicates the information required to be filed by all interested parties in a sunset review, including a statement expressing the interested party's willingness to participate in the review by providing information requested by the Department, a statement regarding the likely effects of revocation of the order or termination of the suspended investigation, and, if applicable, a summary of the Department's findings regarding duty absorption.

Paragraph (d)(3)(iii) indicates the additional information required to be filed by respondent interested parties in a sunset review, including historical margin or rate information and export volume and value data. In particular, respondent interested parties are required to report their percentage of the total exports of subject merchandise to the United States; this information will be central to the Department's determination as to whether respondent interested parties provided adequate response to a notice of initiation under section 751(c)(3)(B) of the Act.

Paragraph (d)(3)(iv) indicates that parties also may submit information to show good cause for the Department to consider other factors under sections 752(b)(2) (CVD) or 752(c)(2) (AD) of the Act. Paragraph (d)(3)(iv) clarifies, however, that, if an interested party wants the Department to consider these other factors during the course of the sunset review, the party must submit evidence of good cause in its substantive response.

Substantive response from a foreign government in a CVD sunset review. Paragraph (d)(3)(v) indicates the information required to be filed by the foreign government in a CVD sunset review. This information is a subset of the information required to be filed by other respondent interested parties. However, where the sunset review involves a CVD order where the investigation was conducted on an aggregate basis, paragraph (d)(3)(v)(B) provides for additional information required to be filed by the foreign government. This additional information essentially is identical to the additional required information that normally would be filed by respondent companies. This is because, in an aggregate CVD proceeding, the foreign government normally is the only respondent.

Substantive responses from industrial users and consumers. Paragraph (d)(3)(vi) indicates the information required to be filed by industrial users and representative consumer organizations that intend to participate in a sunset review.

Rebuttal to substantive response to a Notice of Initiation. Paragraph (d)(4) allows parties that filed a substantive response to a Notice of Initiation to file rebuttals to other parties' substantive responses within five days. Paragraph (d)(4) also explicitly provides that the Department normally will not accept or consider any additional information from a party after the time for filing rebuttals has expired unless the Secretary requests additional information from parties after determining to proceed to a full sunset review.

Conduct of sunset review. Paragraph (e) is new and deals with the conduct of sunset reviews, including the determination of whether interested party responses are adequate.

Adequacy of response to a Notice of Initiation. The SAA at 880, provides that the determination of adequacy is committed to the Department's (and, separately, the International Trade Commission's) discretion. Paragraph (e)(1), therefore, sets forth the guidelines by which the Department will determine whether interested parties' substantive responses to a Notice of Initiation are adequate. Responses will be evaluated for adequacy on an individual basis, i.e., whether a party has timely submitted a complete substantive response to a Notice of Initiation. A complete substantive response is one which contains all of the information required under paragraph (d)(3). The Department may consider a substantive response that does not contain all of the information required under paragraph (d)(3) to be complete where a party is unable to report certain required information and provides a reasonable explanation as to why it is unable to provide such information. In addition, responses will be evaluated for adequacy on an aggregate basis. In assessing the adequacy of responses in the aggregate, the Department will consider only those responses that individually are considered adequate. The Department will determine separately the adequacy of responses of domestic interested parties and respondent interested parties. Consistent with the Senate Report at 46, the Department will make its determination of adequacy on a case-by-case basis.

Adequacy of response from domestic interested parties. Paragraph (e)(1)(i)(A) provides that the Department normally will conclude that domestic interested parties have provided adequate response where at least one domestic interested party files a complete substantive response. Paragraph (e)(1)(i)(B) provides that the Department may consider whether a domestic interested party is related to a foreign producer or exporter, or is an importer or related to an importer of the subject merchandise, in determining adequacy of response from domestic interested parties.

Paragraph (e)(1)(i)(C) clarifies that, where the Department disregards a response from a domestic interested party, either because the response is not complete or because of the domestic interested party's relationship with a foreign producer, foreign exporter, or importer, and where no other domestic interested party has responded to the Notice of Initiation, the Department will find no domestic interested party response under section 751(c)(3)(A) of the Act and issue final results revoking the order or terminating the suspended investigation within 90 days after initiation of the sunset review.

Adequacy of response from respondent interested parties. Paragraph (e)(1)(ii)(A) provides that the Department normally will conclude that respondent interested parties have provided adequate response where respondent interested party responses account for more than 50 percent, by volume, of the total exports of subject merchandise to the United States. Paragraph (e)(1)(ii)(C) provides that where respondent interested parties provide inadequate response, the Department will conduct an expedited sunset review under section 751(c)(3)(B) of the Act and issue final results of review based on the facts available. In addition, the Department will notify the International Trade Commission of its adequacy determination within 50 days of initiation of the sunset review.

Adequacy of response from a foreign government in a CVD sunset review. Consistent with the SAA at 880, and the Senate Report at 46, paragraph (e)(1)(ii)(B) provides that if the foreign government does not file a complete substantive response to a Notice of Initiation in a CVD sunset review, the Department will find inadequate response from *all* respondent interested parties under section 751(c)(3)(B) of the Act and will conduct an expedited sunset review.

Full sunset review upon adequate response from domestic and respondent interested parties. Paragraph (e)(2)(i) provides that where the Department receives adequate responses from both domestic and respondent interested parties, it normally will conduct a full sunset review. Consistent with the SAA at 891, and the House Report at 64, paragraph (e)(2)(i) also provides that only under the most extraordinary circumstances will the Department rely on a countervailing duty rate or dumping margin other than those it calculated and published in its prior determinations. As a result, paragraph (e)(2)(i) provides that the Department will not calculate a net countervailable subsidy or dumping margin for a new shipper in the context of a sunset review. Paragraph (e)(2)(ii) clarifies that the Department will consider other factors, if at all, normally only in the context of a full sunset review.

Time limits. Paragraph (f) is new and deals with time limits for verification, issuance of preliminary and final results of full sunset review, and issuance of the Department's determination to continue, revoke, or terminate an order or suspended investigation, as applicable, after the publication of the International Trade Commission's final determination concluding a sunset review.

Paragraph (f)(1) provides that the Department normally will issue its preliminary results of full sunset review not later than 110 days after initiation of the sunset review.

Paragraph (f)(2)(i) clarifies that the Department normally will conduct verification, if at all, only in a full sunset review. In addition, paragraph (f)(2)(i) provides that the Department will conduct verification normally only if, in its preliminary results, the Department determines that revocation of the order or termination of the suspended investigation is *not* likely to lead to continuation or recurrence of a countervailable subsidy or dumping (*see* section 752(b) and section 752(c) of the Act), *and* the Department's determination is *not* based on countervailing duty rates or dumping margins from the original investigation or subsequent reviews. There may be other situations in which the Department would not need to conduct verification. Paragraph (f)(2)(ii) indicates that the Department normally will conduct verification, if at all, approximately 120 days after initiation of the sunset review, i.e., normally after the Department issues its preliminary results of review. Because the Department cannot anticipate the extent of its workload during the conduct of sunset reviews, particularly during the 18-month period in which the Department must begin conducting sunset reviews of approximately 325 transition orders, the Department may need to schedule verification either before or after the 120-day time frame. Paragraph (f)(2)(ii) allows for this type of flexibility in scheduling.

Paragraph (f)(3) provides that the Department normally will issue its final results of full sunset review not later than 240 days after initiation of the sunset review and may extend the period for issuing final results in an extraordinarily complicated sunset review by up to 90 days.

Paragraph (f)(4) provides that the Department normally will issue its determination to continue, revoke, or terminate an order or suspended investigation, as applicable, within seven days after the date of publication of the International Trade Commission's final determination concluding the sunset review, and subsequently publish notice of the Department's determination in the **Federal Register**.

Section 351.221

Section 351.221 deals with review procedures. We amended paragraph (c)(5)(i) to take into account changes in these regulations. Paragraph (c)(5)(i) provides, therefore, that the notice of initiation of a sunset review will contain a request for the information described in § 351.218(d).

Section 351.222

Section 351.222 deals with the revocation of orders and the termination of suspended investigations. We removed paragraph (i) and added new paragraph (i). These revisions are intended to clarify the circumstances under which the Department will revoke an order or terminate a suspended investigation and the effective date of revocation.

Circumstances under which the Secretary will revoke an order or terminate a suspended investigation. Paragraph (i)(1) is new and clarifies the circumstances under which the Department will revoke an order or terminate a suspended investigation. Paragraph (i)(1)(i) provides for revocation or termination within 90 days after initiation of the sunset review where no domestic interested party files a Notice of Intent to Participate in the sunset review or where the Department determines that domestic interested parties provided inadequate response to the Notice of Initiation. Paragraph (i)(1)(ii) provides for revocation or termination within 240 days (or 330 days where a full sunset review is fully extended) after initiation of the sunset review where the Department determines that revocation or

termination is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping, as applicable. Finally, paragraph (i)(1)(iii) provides for revocation or termination within seven days after the date of publication of a final determination by the International Trade Commission that revocation or termination is not likely to lead to continuation or recurrence of material injury.

Effective date of revocation. Paragraph (i)(2) is new and clarifies the effective date of revocation. With respect to non-transition orders, paragraph (i)(2)(i) provides that revocation or termination will be effective on the fifth anniversary of the date of publication of the order or suspended investigation, as applicable. With respect to transition orders, paragraph (i)(2)(ii) provides that revocation or termination will be effective on January 1, 2000.

Subpart C—Information and Argument

Subpart C deals with collection of information and presentation of arguments to the Department.

Section 351.308

Section 351.308 deals with determinations on the basis of the facts available. We added new paragraph (f) to take into account changes in these regulations.

Use of facts available in a sunset review. Paragraph (f) is new and, consistent with the SAA at 879, provides that, where the Department determines to issue final results of review on the basis of the facts available, it normally will rely on calculated rates or margins, as applicable, from prior Department determinations and information contained in parties' substantive responses to the Notice of Initiation.

Section 351.309

Section 351.309 deals with written argument. We made minor changes to paragraphs (c)(1)(i) and (c)(1)(iii), and added new paragraph (e) to take into account changes in these regulations.

Case and rebuttal briefs. Paragraph (c)(1)(i) provides that case briefs for the final results of full sunset reviews may be filed 50 days after the date of publication of the preliminary results. Only an interested party (or industrial user or consumer organization) that filed a complete substantive response to the Notice of Initiation may submit a case brief. Paragraph (d)(1) (which is unchanged) provides that rebuttal briefs may be filed five days after the time limit for filing the case brief.

Comments on adequacy of response and appropriateness of expedited sunset review. Paragraph (e) is new and provides for filing of comments on adequacy of response and the appropriateness of conducting an expedited sunset review. Paragraph (e)(i) provides that, where the Secretary determines that respondent interested parties provided inadequate response to a Notice of Initiation and has notified the International Trade Commission as such, interested parties (and industrial users and consumer organizations) that submitted complete substantive responses to the Notice of Initiation may file comments on whether an expedited sunset review is appropriate based on the adequacy of response. Paragraph (e)(i) clarifies that the comments may not include any new factual information or evidence and are limited to five pages. Paragraph (e)(ii) provides that comments on adequacy and appropriateness of expedited sunset review may be filed within 70 days after initiation of the sunset review.

Section 351.310

Section 351.310 deals with matters related to hearings.

Hearings. Although no changes have been made to § 351.310 by these regulations, we are clarifying that the provisions of § 351.310 are applicable in a full sunset review.

Section 351.312

Section 351.312 clarifies the regulatory provisions under which industrial users and consumers are entitled to provide information and comments.

Opportunity for industrial users and consumer organizations to submit relevant information and argument. We have made minor changes to paragraph (b) to take into account changes in these regulations. Specifically, paragraph (b) has been amended to allow industrial users and consumers to file substantive responses to a Notice of Initiation and comments concerning adequacy of response and appropriateness of expedited review. All such submissions must be filed in accordance with § 351.303.

Annex VIII–A, –B, and –C

Schedule for sunset review. We have added new Annex VIII–A, –B, and –C, which provides the schedules for 90-day, expedited, and full sunset reviews, respectively.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping duties, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations, Reporting and recordkeeping requirements.

Dated: March 13, 1998

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR part 351 is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

2. Section 351.102 is amended by adding new definitions to read as follows:

§ 351.102 Definitions.

* * * * *

(b) * * *

Expedited sunset review. "Expedited sunset review" means an expedited sunset review conducted by the Department where respondent interested parties provide inadequate responses to a notice of initiation under section 751(c)(3)(B) of the Act and § 351.218(e)(1)(ii).

* * * * *

Full sunset review. "Full sunset review" means a full sunset review conducted by the Department under section 751(c)(5) of the Act where both domestic interested parties and respondent interested parties provide adequate response to a notice of initiation under section 751(c)(3)(B) of the Act and §§ 351.218(e)(1)(i) and 351.218(e)(1)(ii).

* * * * *

Subpart B—Antidumping and Countervailing Duty Procedures

3. Section 351.218 is amended by revising paragraph (d) and (e) and adding paragraph (f) to read as follows:

§ 351.218 Sunset reviews under section 751(c) of the Act.

* * * * *

(d) *Participation in sunset review*—(1) *Domestic interested party notification of intent to participate*—(i) *Filing of notice of intent to participate.* Where a domestic interested party intends to participate in a sunset review, the interested party must, not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation, file a notice of intent to participate in a sunset review with the Secretary.

(ii) *Contents of notice of intent to participate.* Every notice of intent to participate in a sunset review must include a statement expressing the domestic interested party's intent to participate in the sunset review and the following information:

(A) The name, address, and phone number of the domestic interested party (and its members, if applicable) that intends to participate in the sunset review and the statutory basis (under section 771(9) of the Act) for interested party status;

(B) A statement indicating whether the domestic producer:

(1) Is related to a foreign producer or to a foreign exporter under section 771(4)(B) of the Act; or

(2) Is an importer of the subject merchandise or is related to such an importer under section 771(4)(B) of the Act;

(C) The name, address, and phone number of legal counsel or other representative, if any;

(D) The subject merchandise and country subject to the sunset review; and

(E) The citation and date of publication in the **Federal Register** of the notice of initiation.

(iii) *Failure of domestic interested party to file notice of intent to participate in the sunset review.* (A) A domestic interested party that does not file a notice of Intent to participate in the sunset review will be considered not willing to participate in the review and the Secretary will not accept or consider any unsolicited submissions from that party during the course of the review.

(B) If no domestic interested party files a notice of intent to participate in the sunset review, the Secretary will:

(1) Conclude that no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act;

(2) Notify the International Trade Commission in writing as such normally not later than 20 days after the date of publication in the **Federal Register** of the notice of initiation; and

(3) Not later than 90 days after the date of publication in the **Federal Register** of the Notice of Initiation, issue a final determination revoking the order or terminating the suspended investigation (*see* §§ 351.221(c)(5)(ii) and 351.222(i)).

(2) *Waiver of response by a respondent interested party to a notice of initiation*—(i) *Filing of statement of waiver.* A respondent interested party may waive participation in a sunset review before the Department under section 751(c)(4) of the Act by filing a statement of waiver with the Department, not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. If a respondent interested party waives participation in a sunset review before the Department, the Secretary will not accept or consider any unsolicited submissions from that party during the course of the review. Waiving participation in a sunset review before the Department will not affect a party's opportunity to participate in the sunset review conducted by the International Trade Commission.

(ii) *Contents of statement of waiver.* Every statement of waiver must include a statement indicating that the respondent interested party waives participation in the sunset review before the Department and the following information:

(A) The name, address, and phone number of the respondent interested party waiving participation in the sunset review before the Department;

(B) The name, address, and phone number of legal counsel or other representative, if any;

(C) The subject merchandise and country subject to the sunset review; and

(D) The citation and date of publication in the **Federal Register** of the notice of initiation.

(iii) *No response from a respondent interested party.* The Secretary will consider the failure by a respondent interested party to file a complete substantive response to a notice of initiation under paragraph (d)(3) of this section as a waiver of participation in a sunset review before the Department.

(iv) *Waiver of participation by a foreign government in a CVD sunset review.* Where a foreign government waives participation in a CVD sunset review under paragraph (d)(2)(i) or (d)(2)(iii) of this section, the Secretary will:

(A) Conclude that respondent interested parties have provided inadequate response to the notice of initiation under section 751(c)(3)(B) of the Act;

(B) Notify the International Trade Commission and conduct an expedited sunset review and issue final results of review in accordance with paragraph (e)(1)(ii)(C) of this section; and

(C) Base the final results of review on the facts available in accordance with § 351.308(f), which normally will include a determination that revocation of the order or termination of the suspended investigation, as applicable, would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.

(3) *Substantive response to a notice of initiation.*—(i) *e limit for substantive response to a notice of initiation.* A complete substantive response to a notice of initiation, filed under this section, must be submitted to the Department not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation.

(ii) *Required information to be filed by all interested parties in substantive response to a notice of initiation.* Except as provided in paragraph (d)(3)(v)(A) of this section, each interested party that intends to participate in a sunset review must file a submission with the Department containing the following:

(A) The name, address, and phone number of the interested party (and its members, if applicable) that intends to participate in the sunset review and the statutory basis (under section 771(9) of the Act) for interested party status;

(B) The name, address, and phone number of legal counsel or other representative, if any;

(C) The subject merchandise and country subject to the sunset review;

(D) The citation and date of publication in the **Federal Register** of the notice of initiation;

(E) A statement expressing the interested party's willingness to participate in the review by providing information requested by the Department, which must include a summary of that party's historical participation in any segment of the proceeding before the Department related to the subject merchandise;

(F) A statement regarding the likely effects of revocation of the order or termination of the suspended investigation under review, which must include any factual information, argument, and reason to support such statement;

(G) Factual information, argument, and reason concerning the dumping margin or countervailing duty rate, as applicable, that is likely to prevail if the Secretary revokes the order or terminates the suspended investigation, that the Department should select for a particular interested party(s);

(H) A summary of the Department's findings regarding duty absorption, if any, including a citation to the **Federal Register** notice in which the Department's findings are set forth; and

(I) A description of any relevant scope clarification or ruling, including a circumvention determination, or changed circumstances determination issued by the Department during the proceeding with respect to the subject merchandise.

(iii) *Additional required information to be filed by respondent interested*

parties in substantive response to a notice of initiation. Except as provided in paragraph (d)(3)(v)(A) of this section, the submission from each respondent interested party that intends to participate in a sunset review must also contain the following:

(A) That party's individual weighted average dumping margin or countervailing duty rate, as applicable, from the investigation and each subsequent completed administrative review, including the final margin or rate, as applicable, where such margin or rate was changed as a result of a final and conclusive court order;

(B) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States;

(C) As applicable, for the calendar year (or fiscal year, if more appropriate) preceding the year of initiation of the dumping investigation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States;

(D) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, on a volume basis (or value basis, if more appropriate), that party's percentage of the total exports of subject merchandise (defined in section 771(25) of the Act) to the United States; and

(E) For each of the three most recent years, including the year of publication of the notice of initiation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States during the two fiscal quarters as of the month preceding the month in which the notice of initiation was published.

(iv) *Optional information to be filed by interested parties in substantive response to a notice of initiation*—(A) *Showing good cause.* An interested party may submit information or evidence to show good cause for the Secretary to consider other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act and paragraph (e)(2)(ii) of this section. Such information or evidence must be submitted in the party's substantive response to the notice of initiation under paragraph (d)(3) of this section.

(B) *Other information.* A substantive response from an interested party under paragraph (d)(3) of this section also may contain any other relevant information or argument that the party would like the Secretary to consider.

(v) *Required information to be filed by a foreign government in substantive response to the notice of initiation in a CVD sunset review*—(A) *In general.* The foreign government of a country subject to a CVD sunset review (*see* section 771(9)(B) of the Act) that intends to participate in a CVD sunset review must file a submission with the Department under paragraph (d)(3)(i) of this section containing the information required under paragraphs (d)(3)(ii) (A) through (E) of this section.

(B) *Additional required information to be filed by a foreign government in a CVD sunset review involving an order where the investigation was conducted on an aggregate basis.* The submission from the foreign government of a country subject to a CVD sunset review, involving an order where the investigation was conducted on an aggregate basis, must also contain:

(1) The information required under paragraphs (d)(3)(ii)(F), (d)(3)(ii)(G), and (d)(3)(ii)(I) of this section;

(2) The countervailing duty rate from the investigation and each subsequent completed administrative review, including the final rate where such rate was changed as a result of a final and conclusive court order; and

(3) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, the volume and value (normally on an FOB basis) of exports of subject merchandise to the United States.

(vi) *Substantive responses from industrial users and consumers.* An industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, that intends to participate in a sunset review must file a submission with the Department under paragraph (d)(3)(i) of this section containing the information required under paragraphs (d)(3)(ii) (A) through (D) of this section and may submit other relevant information under paragraphs (d)(3)(ii) and (d)(3)(iv) of this section.

(4) *Rebuttal to substantive response to a notice of initiation.* Any interested party that files a substantive response to a notice of initiation under paragraph (d)(3) of this section may file a rebuttal to any other party's substantive response to a notice of initiation not later than five days after the date the substantive response is filed with the Department. Except as provided in § 351.309(e), the Secretary normally will not accept or consider any additional information from a party after the time for filing rebuttals has expired, unless the Secretary requests additional information from parties after determining to proceed to a full sunset review under paragraph (e)(2) of this section.

(e) *Conduct of sunset review.*—(1) Adequacy of response to a notice of initiation. (i) *Adequacy of response from domestic interested parties.*—(A) *In general.* The Secretary will make its determination of adequacy of response on a case-by-case basis; however, the Secretary normally will conclude that domestic interested parties have provided adequate response to a notice of initiation where it receives a complete substantive response under paragraph (d)(3) of this section from at least one domestic interested party.

(B) *Disregarding response from a domestic interested party.* In making its determination concerning the adequacy of response from domestic interested parties under paragraph (e)(1)(i)(A) of this section, the Secretary may disregard a response from a domestic producer:

(*1*) Related to a foreign producer or to a foreign exporter under section 771(4)(B) of the Act; or

(*2*) That is an importer of the subject merchandise or is related to such an importer under section 771(4)(B) of the Act (*see* paragraph (d)(1)(ii)(B) of this section).

(C) *Inadequate response from domestic interested parts.* Where the Secretary determines to disregard a response from a domestic interested party(s) under paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section and no other domestic interested party has filed a complete substantive response to the notice of initiation under paragraph (d)(3) of this section, the Secretary will:

(*1*) Conclude that no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act;

(*2*) Notify the International Trade Commission in writing as such normally not later than 40 days after the date of publication in the **Federal Register** of the Notice of Initiation; and

(*3*) Not later than 90 days after the date of publication in the **Federal Register** of the Notice of Initiation, issue a final determination revoking the order or terminating the suspended investigation (see §§ 351.221(c)(5)(ii) and 351.222(i)).

(ii) *Adequacy of response from respondent interested parties.* (A) *In general.* The Secretary will makes its determination of adequacy of response on a case-by-case basis; however, the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where it receives complete substantive responses under paragraph (d)(3) of this section from respondent

interested parties accounting on average for more than 50 percent, on a volume basis (or value basis, if appropriate), of the total exports of subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation.

(B) *Failure of a foreign government to file a substantive response to a notice of initiation in a CVD sunset review.* If a foreign government fails to file a complete substantive response to a notice of initiation in a CVD sunset review under paragraph (d)(3)(v) of this section or waives participation in a CVD sunset review under paragraph (d)(2)(i) or (d)(2)(iii) of this section, the Secretary will:

(*1*) Conclude that respondent interested parties have provided inadequate response to the Notice of Initiation under section 751(c)(3)(B) of the Act;

(*2*) Notify the International Trade Commission and conduct an expedited sunset review and issue final results of review in accordance with paragraph (e)(1)(ii)(C) of this section; and

(*3*) Base the final results of review on the facts available in accordance with § 351.308(f), which normally will include a determination that revocation of the order or termination of the suspended investigation, as applicable, would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.

(C) *Inadequate response from respondent interested parties.* If the Secretary determines that respondent interested parties provided inadequate response to a notice of initiation under paragraph (d)(2)(iv), (e)(1)(ii)(A), or (e)(1)(ii)(B) of this section, the Secretary:

(*1*) Will notify the International Trade Commission in writing as such normally not later than 50 days after the date of publication in the **Federal Register** of the Notice of Initiation; and

(*2*) Normally will conduct an expedited sunset review and, not later than 120 days after the date of publication in the **Federal Register** of the notice of initiation, issue, without further investigation, final results of review based on the facts available in accordance with § 351.308(f) (*see* section 751(c)(3)(B) of the Act and § 351.221(c)(5)(ii)).

(2) *Full sunset review upon adequate response from domestic and respondent interested parties.*—(i) *In general.* Normally, only where the Department receives adequate response to the notice of initiation from domestic interested parties under paragraph (e)(1)(i)(A) of this section and from respondent interested parties under paragraph (e)(1)(ii)(A) of this section, will the Department conduct a full sunset review. Even where the Department conducts a full sunset review, only under the most extraordinary circumstances will the Secretary rely on a countervailing duty rate or a dumping margin other than those it calculated and published in its prior determinations, and in no case will the Secretary calculate a net countervailable subsidy or a dumping margin for a new shipper in the context of a sunset review.

(iii) *Consideration of other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act.* The Secretary will consider other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act if the Secretary determines that good cause to consider such other factors exists. The Secretary normally will consider such other factors only where it conducts a full sunset review under paragraph (e)(2)(i) of this section.

(f) *Time limits.*—(1) *Preliminary results of full sunset review.* The Department normally will issue its preliminary results in a full sunset review not later than 110 days after the date of publication in the **Federal Register** of the notice of initiation.

(2) *Verification.*—(i) *In general.* The Department will verify factual information relied upon in making its final determination normally only in a full sunset review (*see* section 782(i)(2) of the Act and § 351.307(b)(1)(iii)) and only where needed. The Department will conduct verification normally only if, in its preliminary results, the Department determines that revocation of the order or termination of the suspended investigation, as applicable, is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (*see* section 752(b) and section 752(c) of the Act), as applicable, and the Department's preliminary results are not based on countervailing duty rates or dumping margins, as applicable, determined in the investigation or subsequent reviews.

(ii) *Timing of verification.* The Department normally will conduct verification, under paragraph (f)(2)(i) of this section and § 351.307, approximately 120 days after the date of publication in the **Federal Register** of the notice of initiation.

(3) *Final results of full sunset review and notification to the International Trade Commission.*—(i) *Timing of final results of review and notification to the International Trade Commission.* The Department normally will issue its final results in a full sunset review and notify the International Trade Commission of its results of review not later than 240 days after the date of publication in the **Federal Register** of the notice of initiation (*see* section 751(c)(5)(A) of the Act).

(ii) *Extension of time limit.* If the Secretary determines that a full sunset review is extraordinarily complicated under section 751(c)(5)(C) of the Act, the Secretary may extend the period for issuing final results by not more than 90 days (*see* section 751(c)(5)(B) of the Act).

(4) *Notice of continuation of an order or suspended investigation; notice of revocation of an order or termination of a suspended investigation.* Except as provided in paragraph (d)(1)(iii)(B)(*3*) of this section and § 351.222(i)(1)(i), the Department normally will issue its determination to continue an order or suspended investigation, or to revoke an order or terminate a suspended investigation, as applicable, not later than seven days after the date of publication in the **Federal Register** of the International Trade Commission's determination concluding the sunset review. The Department immediately thereafter will publish notice of its determination in the **Federal Register**.

4. Section 351.221(c)(5)(i) is revised to read as follows:

§ 351.221 Review procedures.

* * * * *

(c) * * *

(5) * * *

(i) The notice of initiation of a sunset review will contain a request for the information described in § 351.218(d); and

* * * * *

5. Section 351.222 is amended by revising paragraph (i) to read as follows:

§ 351.222 Revocation of orders; termination of suspended investigations.

* * * * *

(i) *Revocation or termination based on sunset review.*—(1) *Circumstances under which the Secretary will revoke an order or terminate a suspended investigation.* In the case of a sunset review under § 351.218, the Secretary will revoke an order or terminate a suspended investigation:

(i) Under section 751(c)(3)(A) of the Act, where no domestic interested party files a Notice of Intent to Participate in the sunset review under § 351.218(d)(1), or where the Secretary determines under § 351.218(e)(1)(i)(C) that domestic interested parties have provided inadequate response to the Notice of Initiation, not later than 90 days after the date of publication in the **Federal Register** of the notice of initiation;

(ii) Under section 751(d)(2) of the Act, where the Secretary determines that revocation or termination is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (*see* section 752(b) and section 752(c) of the Act), as applicable, not later than 240 days (or 330 days where a full sunset review is fully extended) after the date of publication in the **Federal Register** of the notice of initiation; or

(iii) Under section 751(d)(2) of the Act, where the International Trade Commission makes a determination, under section 752(a) of the Act, that revocation or termination is not likely to lead to continuation or recurrence of material injury, not later than seven days after the date of publication in the **Federal Register** of the International Trade Commission's determination concluding the sunset review.

(2) *Effective date of revocation.*—(i) *In general.* Except as provided in paragraph (i)(2)(ii) of this section, where the Secretary revokes an order or terminates a suspended investigation, pursuant to section 751(c)(3)(A) or section 751(d)(2) of the Act (*see* paragraph (i)(1) of this section), the revocation or termination will be effective on the fifth anniversary of the date of publication in the **Federal Register** of the order or suspended investigation, as applicable. This paragraph also applies to subsequent sunset reviews of transition orders (*see* paragraph (i)(2)(ii) of this section and section 751(c)(6)(A)(iii) of the Act).

(ii) *Transition orders.* Where the Secretary revokes a transition order (defined in section 751(c)(6)(C) of the Act) pursuant to section 751(c)(3)(A) or section 751(d)(2) of the Act (*see* paragraph (i)(1) of this section), the revocation or termination will be effective on January 1, 2000. This paragraph does not apply to subsequent sunset reviews of transition orders (*see* section 751(c)(6)(A)(iii) of the Act).

Subpart C—Information and Argument

6. Section 351.308 is amended by adding new paragraph (f) to read as follows:

§ 351.308 Determinations on the basis of the facts available.

* * * * *

(f) *Use of facts available in a sunset review.* Where the Secretary determines to issue final results of sunset review on the basis of facts available, the Secretary normally will rely on:

(1) Calculated countervailing duty rates or dumping margins, as applicable, from prior Department determinations; and

(2) Information contained in parties' substantive responses to the Notice of Initiation filed under § 351.218(d)(3), consistent with section 752(b) or 752(c) of the Act, as applicable.

7. Section 351.309 is amended by revising paragraph (c)(1)(i), by revising paragraph (c)(1)(iii), and by adding new paragraph (e), to read as follows:

§ 351.309 Written argument.

* * * * *

(c) * * *

(1) * * *

(i) For a final determination in a countervailing duty investigation or antidumping investigation, or for the final results of a full sunset review, 50 days after the date of publication of the preliminary determination or results of review, as applicable, unless the Secretary alters the time limit;

* * * * *

(iii) For the final results of an expedited antidumping review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

* * * * *

(e) *Comments on adequacy of response and appropriateness of expedited sunset review.* (i) *In general.* Where the Secretary determines that respondent interested parties provided inadequate response to a Notice of Initiation (*see* § 351.218(e)(1)(ii)) and has notified the International Trade Commission as such under § 351.218(e)(1)(ii)(C), interested parties (and industrial users and consumer organizations) that submitted a complete substantive response to the Notice of Initiation under § 351.218(d)(3) may file comments on whether an expedited sunset review under section 751(c)(3)(B) of the Act and § 351.218(e)(1)(ii)(B) or 351.218(e)(1)(ii)(C) is appropriate based on the adequacy of response to the notice of initiation. These comments may not include any new factual information or evidence (such as supplementation of a substantive response to the notice of initiation) and are limited to five pages.

(ii) *Time limit for filing comments.* Comments on adequacy of response and appropriateness of expedited sunset review must be filed not later than 70 days after the date of publication in the **Federal Register** of the notice of initiation.

8. Section 351.312 is amended by revising paragraph (b) to read as follows:

§ 351.312 Industrial users and consumer organizations.

* * * * *

(b) *Opportunity to submit relevant information and argument.* In an antidumping or countervailing duty proceeding under title VII of the Act and this part, an industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, may submit relevant factual information and written argument to the Department under paragraphs, (d)(3)(ii), (d)(3)(vi), and (d)(4) of § 351.218, paragraphs (b), (c)(1), and (c)(3) of § 351.301, and paragraphs (c), (d), and (e) of § 351.309 concerning dumping or a countervailable subsidy. All such submissions must be filed in accordance with § 351.303.

* * * * *

9. New Annex VIII–A, –B, and –C is added after Annexes I–VII to read as follows:

ANNEX VIII–A—SCHEDULE FOR 90-DAY SUNSET REVIEWS

Day [1]	Event	Regulation
0	Initiation	§ 351.218(c).
15	Filing of Notice of Intent to Participate by domestic interested parties.	§ 351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation).
20	Notification to the ITC that no domestic interested party has responded to the Notice of Initiation.	§ 351.218(d)(1)(iii)(B)(*2*) (normally not later than 20 days after the date of publication of the Notice of Initiation).
30	Filing of substantive response to the Notice of Initiation by all interested parties and industrial users and consumers.	§§ 351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation).
35	Filing of rebuttal to substantive response to the Notice of Initiation.	§ 351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department).

ANNEX VIII–A—SCHEDULE FOR 90-DAY SUNSET REVIEWS—Continued

Day [1]	Event	Regulation
40	Notification to the ITC that no domestic interested party has responded to the Notice of Initiation (based on inadequate response from domestic interested parties).	§351.218(e)(1)(i)(C)(2) (normally not later than 40 days after the date of publication of the Notice of Initiation).
90	Final determination revoking an order or terminating a suspended investigation where no domestic interested party responds to the Notice of Initiation.	§§351.218(d)(1)(iii)(B)(*3*) and 351.222(i)(1)(i) (not later than 90 days after the date of publication of the Notice of Initiation).

[1] Indicates the number of days from the date of publication in the **Federal Register** of the Notice of Initiation.

ANNEX VIII–B—SCHEDULE FOR EXPEDITED SUNSET REVIEWS

Day [1]	Event	Regulation
0	Initiation	§351.218(c).
15	Filing of Notice of Intent to Participate by domestic interested parties.	§351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation).
30	Filing of Statement of Waiver by respondent interested parties.	§351.218(d)(2)(i) (not later than 30 days after the date of publication of the Notice of Initiation).
30	Filing of substantive response to the Notice of Initiation by all interested parties and industrial users and consumers.	§§351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation).
35	Filing of rebuttal to substantive response to the Notice of Initiation.	§351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department).
50	Notification to the ITC that respondent interested parties provided inadequate response to the Notice of Initiation.	§351.218(e)(1)(ii)(C)*(1)* (normally not later than 50 days after the date of publication of the Notice of Initiation).
70	Comments on adequacy of response and appropriateness of expedited sunset review.	§351.309(e)(ii) (not later than 70 days after the date of publication of the Notice of Initiation).
120	Final results of expedited sunset review where respondent interested parties provide inadequate response to the Notice of Initiation.	§§351.218(e)(1)(ii)(B) and 351.218(e)(1)(ii)(C)*(2)* (not later than 120 days after the date of publication of the Notice of Initiation).

[1] Indicates the number of days from the date of publication in the **Federal Register** of the Notice of Initiation.

ANNEX VIII–C—SCHEDULE FOR FULL SUNSET REVIEWS

Day [1]	Event	Regulation
0	Initiation	§351.218(c).
15	Filing of Notice of Intent to Participate by domestic interested parties.	§351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation).
30	Filing of Statement of Waiver by respondent interested parties.	§351.218(d)(2)(i) (not later than 30 days after the date of publication of the Notice of Initiation).
30	Filing of substantive response to the Notice of Initiation by all interested parties and industrial users and consumers.	§§351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation).
35	Filing of rebuttal to substantive response to the Notice of Initiation.	§351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department).
110	Preliminary results of full sunset review	§351.218(f)(1) (normally not later than 110 days after the date of publication of the Notice of Initiation).
120	Verification in a full sunset review, where needed	§351.218(f)(2)(ii) (approximately 120 days after the date of publication of the Notice of Initiation).
160	Filing of case brief in full sunset review	§351.309(c)(1)(i) (50 days after the date of publication of the preliminary results of full sunset review).
165	Filing of rebuttal brief in full sunset review	§351.309(d)(1) (5 days after the time limit for filing a case brief).
167	Hearing in full sunset review if requested	§351.310(d)(i) (2 days after the time limit for filing a rebuttal brief).
240	Final results of full sunset review	§351.218(f)(3)(i) (not later than 240 days after the date of publication of the Notice of Initiation).
330	Final results of full sunset review if fully extended	§351.218(f)(3)(ii) (if full sunset review is extraordinarily complicated, period for issuing final results may be extended by not more than 90 days).

[1] Indicates the number of days from the date of publication in the **Federal Register** of the Notice of Initiation.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 94N–0355]

Drug Products Containing Quinine for the Treatment and/or Prevention of Malaria for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that over-the-counter (OTC) drug products containing quinine for the treatment and/or prevention of malaria are not generally recognized as safe and are misbranded. FDA is issuing this final rule after considering public comment on the agency's notice of proposed rulemaking and all data and information that have come to the agency's attention on the safety of quinine.

EFFECTIVE DATE: April 20, 1998.

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

SUPPLEMENTARY INFORMATION:

I. Background

The agency's proposed rule for OTC drug products for the treatment and/or prevention of malaria was published in the **Federal Register** of April 19, 1995 (60 FR 19650). In that proposed rule, the agency summarized the history of quinine in the OTC drug review for use as an analgesic, antipyretic, and muscle relaxant (for the treatment and/or prevention of nocturnal leg muscle cramps). The agency also recognized that quinine has been marketed for decades, on both an OTC and a prescription basis, as an anti-infective agent for the treatment and/or prevention of malaria, a serious and potentially life-threatening disease that at one time was endemic in this country. However, data and information reviewed by the agency during the rulemaking for OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps raised serious safety concerns about the continued OTC availability of quinine for the treatment and/or prevention of malaria. The agency also discussed serious safety and efficacy concerns about the continued OTC availability of quinine for the self-treatment of malaria without the care and supervision of a doctor. Interested persons were invited to file comments by July 3, 1995.

For reasons discussed in this document, FDA is classifying OTC drug products containing quinine or any quinine salt (e.g., quinine sulfate) and labeled for the treatment and/or prevention of malaria as not generally recognized as safe, as misbranded, and as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, these products are considered misbranded under section 502 of the act (21 U.S.C. 352). The final rule is being incorporated into 21 CFR part 310, Subpart E—Requirements for Specific New Drugs or Devices, by adding new § 310.547.

As discussed in the preamble to the proposed rule for OTC drug products containing quinine for the treatment and/or prevention of malaria, the conditions under which the drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded would be effective 30 days after the date of publication of the final rule in the **Federal Register**. On or after April 20, 1998, no OTC drug product that is subject to the final rule may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the final rule that is repackaged or relabeled after the effective date of the final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce.

In response to the proposed rule, one comment from a drug distributor was submitted. The comment (Ref. 1) is on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

Reference

(1) Comment No. C1, Docket No. 94N–0355, Dockets Management Branch.

II. The Agency's Conclusion on the Comment

The comment contended that the agency had failed to distinguish between the safety of quinine used for malaria and quinine used for leg cramps. The comment contended that the agency appeared to commingle its safety concerns about quinine for these two uses. The comment noted the agency's discussion of adverse reaction reports on file for quinine: 110 reports over 22 years from 1969 through 1990. The comment noted that this was an average of only five cases per year. The comment added that only 26 of the 110 reports were identified as cases where it can be reasonably concluded that quinine was the causative agent and that only 5 of the 26 reports involved quinine products used for the treatment of malaria. The comment concluded that this is an extremely low incidence of adverse reaction reports for quinine used for malaria: On average, 0.25 reports per year from 1969 through 1990. The comment further noted an agency statement in the **Federal Register** of August 22, 1994 (59 FR 43234 at 43252), that approximately "two-thirds of these quinine-containing products are marketed for antimalarial use (with approximately one-third for the treatment and/or prevention of nocturnal leg muscle cramps)." The comment concluded that OTC quinine products are safe and effective for the treatment of malaria due to the very low incidence of reports of adverse reactions for quinine products used for the treatment of malaria and the two-thirds marketing of quinine products for malaria. The comment argued that these facts demonstrate a lack of scientific support for this proposed rule.

The agency does not agree with the comment. The Center for Disease Control and Prevention stated that approximately 1,000 cases of malaria are reported each year in the United States (60 FR 19650 at 19651). It is not known how many of these people might have used quinine as part of their treatment. As discussed in section III of this document, quinine is not the drug of choice for malaria. Although many quinine products are marketed for the treatment of malaria, many of these products may have been used to treat leg muscle cramps. In 1987, a U.S. manufacturer of quinine estimated (based on sales figures) that there are well over 1 million users of quinine for leg muscle cramps in the United States (Ref. 1). Based on the large number of people using quinine for leg muscle cramps, a larger number of adverse drug experiences would be expected to occur

in this population when compared with the much smaller number of people using the drug for malaria. However, the daily dosage of quinine for treating malaria (see below) is greater than the dosage used for leg muscle cramps. Therefore, one would expect a higher rate of adverse reactions in the population using the drug for malaria.

In addition, the agency believes that underreporting of adverse reactions for OTC drug products is substantial. In the **Federal Register** of August 22, 1994 (59 FR 43234 at 43241 and 43242), the agency stated:

> Underreporting of such reactions into the agency's spontaneous reporting system is believed to be very substantial for OTC drug products. This may be due to physicians (the principal reporters to the spontaneous reporting system) not becoming aware of reactions to OTC drugs, and because manufacturers and distributors are not generally required to transmit reports of serious adverse reactions involving OTC drugs to FDA.

The agency reviewed labeling from eight randomly selected OTC quinine drug products for malaria and found that the dosage recommendations ranged from 200 milligrams (mg) to 975 mg three times a day (for 6 to 12 days) (60 FR 19650 at 19653). The adverse event characteristics of quinine toxicity have been observed in clinical efficacy studies using typical doses for nocturnal leg cramps of 260 mg and 325 mg daily (59 FR 43234 at 43237). Given the much higher dosage recommended for malaria, it is reasonable to assume that these types of dose-related adverse reactions may increase with the malaria dosage. Finally, the agency is greatly concerned that if quinine remains available on an OTC basis labeled for the treatment and/or prevention of malaria, an extensive amount of such products would be sold OTC and used to treat and/or prevent leg muscle cramps, resulting in continued possible serious adverse reactions to OTC users of these products. Quinine was removed from the market for this use because of the lack of substantial evidence of effectiveness of quinine in this condition, along with evidence of quinine toxicity at the OTC doses employed for leg cramps in a proportion of the target population, and the potential for serious, life threatening, and fatal hypersensitivity reactions to quinine (59 FR 43234 at 43251).

Reference

(1) Levy, N. W., "Overview: Efficacy and Safety of Quinine Sulfate in the Treatment and/or Prevention of Nocturnal Leg Cramps," unpublished report in SUP00033, Docket No. 77N–0094, Dockets Management Branch.

III. The Agency's Final Conclusions on OTC Quinine Drug Products for the Treatment and/or Prevention of Malaria

Malaria is rare in the United States, but is a serious and potentially deadly disease. Diagnosis and treatment of malaria depend on such factors as the specie(s) of parasite involved, the density of parasites in the blood, the potential for possible exposure to drug-resistant parasites that are associated with malaria in humans, e.g., *Plasmodium falciparum* or *P. vivax*, and concomitant medical conditions. Malaria requires a medical diagnosis, both to confirm the disease and to determine the treatment of choice. Prompt and proper diagnosis, treatment, and monitoring of the therapeutic efficacy of the treatment used require laboratory analyses of blood samples and clinical assessments. Continuous physician monitoring is then necessary to determine if the selected drug therapy is effective and if the malarial parasites have been eradicated. Section 503(b)(1)(B) of the act (21 U.S.C. 353(b)(1)(B)) requires that a drug intended for use by man which, "* * * because of its toxicity or other potentiality for harmful effect, * * * or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug * * *," be limited to prescription use only. Quinine used for malaria has considerable potential for toxic or harmful effects, and its use requires substantial collateral measures to ensure safe and effective treatment.

There are serious safety concerns about the continued availability of quinine sulfate for OTC use, even at dosages much lower than those used for the treatment of malaria. Adverse events characteristic of quinine toxicity have been observed in healthy individuals at doses of 260 and 325 mg daily. These events included visual, auditory, and gastrointestinal symptoms, and fever. Studies of auditory, vestibular, and visual function in subjects given quinine confirm sensory disturbances at these and lower doses (59 FR 43234 at 43239). Altered pharmacokinetics with age result in a longer half-life of quinine in older people, which suggests that the frequency and severity of adverse effects could be greater in the elderly.

Adverse events associated with quinine toxicity are possible at the therapeutic doses of quinine used in the treatment of malaria (i.e., 600 to 650 mg three times daily for 3 to 7 days). A fatal dose of quinine for an adult is approximately 2,000 to 8,000 mg. Thus, in the treatment of malaria, a narrow margin of safety exists between a therapeutic dose and a toxic dose of quinine.

In addition to toxic effects, serious and unpredictable hypersensitivity reactions to quinine drug products can occur. Symptoms are often dramatic, leading people to seek medical treatment. Hospitalization may be required, and fatalities have been reported. Quinine is the only drug available OTC that has such a high association with thrombocytopenia, a serious adverse event. Because there are no known factors that predispose people to the development of hypersensitivity to quinine, which may occur after 1 week of exposure or after months or years of use, label warnings cannot be expected to protect consumers from idiosyncratic hypersensitivity reactions to quinine drug products.

In addition, unsupervised quinine therapy (allowing for incomplete or interrupted treatments due to poor compliance with dosing instructions) is a practice believed to promote proliferation of malarial parasites less sensitive to quinine. Furthermore, interrupted quinine therapy in persons with falciparum malaria may also predispose them to the serious complications of blackwater fever, including anemia, red blood cell destruction, and renal failure.

Current public health recommendations do not include the use of oral quinine in the prevention of malaria and limit its use in the treatment of the disease (primarily to uncomplicated, low-density, chloroquine-resistant falciparum malaria). Current treatments for malaria include the use of quinine only in combination therapies with prescription drugs or as part of an intensive therapy involving blood transfusions and parenteral drugs during hospitalization. Thus, any patient properly using quinine for malaria should be under the care and supervision of a doctor.

Based upon quinine's demonstrated toxic effects and potential for harm and the extensive collateral measures necessary to ensure a successful outcome for quinine therapy, the agency has determined that consumers cannot safely and effectively self-treat malaria. Accordingly, the agency concludes that quinine is not safe and effective for OTC use in the treatment of malaria.

This final rule requires that any OTC quinine drug product for the treatment and/or prevention of malaria have an approved application for continued marketing.

IV. Analysis of Impacts

An analysis of the costs and benefits of this regulation, conducted under Executive Order 12866, was discussed in the proposed rule for OTC quinine drug products for the treatment and/or prevention of malaria (60 FR 19650 at 19654). No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking.

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The proposed rule that has led to the development of this final rule was already well into the publication cycle at the time the Unfunded Mandates Reform Act was enacted, publishing approximately 1 month later on April 19, 1995. The agency explains in this final rule that the final rule will not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

The agency believes that this final rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this final rule is to establish that OTC quinine drug products for the treatment and/or prevention of malaria are not generally recognized as safe and are misbranded. Quinine formulations for the treatment of malaria are currently marketed as both OTC and prescription drug products. There are a limited number of quinine products marketed at this time. The agency's Drug Listing System identifies approximately 22 products containing quinine sulfate in dosage unit strengths of 200 mg to 325 mg. These products are marketed by 14 different manufacturers, most of which are considered to be small entities, using the U.S. Small Business Administration designations for this industry (750 employees). The agency believes that any other unidentified manufacturer of these products is also likely to be a small entity.

Manufacturers will no longer be able to market OTC quinine drug products for the treatment and/or prevention of malaria after the effective date of this final rule. While the manufacturers will incur a loss of revenue from the sale of these products, the agency believes the economic impact will be minimal for several reasons. First, it appears that current use in the United States of oral OTC quinine for the treatment of malaria is minimal. Approximately 1,000 cases of malaria are reported each year in the United States (60 FR 19650 at 19651). However, current public health recommendations do not include the use of oral quinine in the prevention of malaria and limit its use in the treatment of the disease. The agency does not believe that any of the affected manufacturers have any considerable amount of sales of OTC quinine drug products that are used for the treatment of malaria. Second, when quinine is needed for treatment of malaria, this final rule does not affect the availability of quinine products by a doctor's prescription.

Manufacturers have known since April 1995 that if adequate data were not submitted to establish general recognition of the safety of quinine drug products for OTC use in the treatment and/or prevention of malaria, cessation of marketing of the current OTC drug products would be required when the final rule published. No data have been received. Further, the agency is concerned that if quinine remains available on an OTC basis labeled for the treatment and/or prevention of malaria, an extensive amount of such products would be sold and used to treat and/or prevent leg muscle cramps, resulting in continued possible adverse reactions to users of these products. Due to the safety concerns discussed in this document, manufacturers are required to comply with the provisions of this final rule 30 days after its date of publication in the **Federal Register**.

The agency considered but rejected several alternatives: (1) To allow continued marketing of OTC quinine drug products for the treatment of malaria, and (2) to allow a longer implementation period. FDA does not consider either of these approaches acceptable because the agency does not consider quinine to be safe for OTC drug use and because no new data concerning the safety of OTC quinine are forthcoming.

The analysis shows that this final rule is not economically significant under Executive Order 12866 and that the agency has considered the burden to small entities. The agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Finally, this analysis shows that the Unfunded Mandates Act does not apply to the final rule because it would not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

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

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.547 is added to subpart E to read as follows:

§ 310.547 Drug products containing quinine offered over-the-counter (OTC) for the treatment and/or prevention of malaria.

(a) Quinine and quinine salts have been used OTC for the treatment and/or prevention of malaria, a serious and potentially life-threatening disease. Quinine is no longer the drug of choice for the treatment and/or prevention of most types of malaria. In addition, there are serious and complicating aspects of the disease itself and some potentially serious and life-threatening risks associated with the use of quinine at doses employed for the treatment of malaria. There is a lack of adequate data to establish general recognition of the safety of quinine drug products for OTC

use in the treatment and/or prevention of malaria. Therefore, quinine or quinine salts cannot be safely and effectively used for the treatment and/or prevention of malaria except under the care and supervision of a doctor.

(b) Any OTC drug product containing quinine or quinine salts that is labeled, represented, or promoted for the treatment and/or prevention of malaria is regarded as a new drug within the meaning of section 201(p) of the act, for which an approved application or abbreviated application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use for the treatment and/or prevention of malaria is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After April 20, 1998, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Dated: March 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7186 Filed 3–19–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–169–0065; FRL–5974–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. This action is an administrative change which revises the definitions in South Coast Air Quality Management District (SCAQMD or District) Rule 102, Definition of Terms. The intended effect of approving this action is to incorporate changes to the definitions for clarity and consistency with revised Federal and state definitions.

DATES: This action is effective on May 19, 1998 unless adverse or critical comments are received by April 20, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments must be submitted to Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95814

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone (415–744–1189).

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is: SCAQMD Rule 102, Definition of Terms, submitted on March 26, 1996, by the California Air Resources Board.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included South Coast, see 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the South Coast AQMD portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). In response to the SIP call and other requirements, the SCAQMD submitted many rules which EPA approved into the SIP.

This document addresses EPA's direct-final action for the following SCAQMD rule: Rule 102, Definition of Terms. This rule was adopted by SCAQMD on November 17, 1995, and submitted by the State of California for incorporation into its SIP on March 26, 1996. This rule was found to be complete on August 6, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [1] and is being finalized for approval into the SIP. This rule was originally adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement.

The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements appears in various EPA policy guidance documents. [2]

EPA previously reviewed many rules from the SCAQMD and its predecessor agencies and incorporated them into the federally approved SIP pursuant to section 110(k)(3) of the CAA. Those rules that are being superseded by today's action are as follows:

- Los Angeles County Rule 2, Definitions (submitted 6/30/72)
- Orange County Rule 2, Definitions (submitted 6/30/72)
- Riverside County Rule 2, Definitions (submitted 2/21/72 and 6/30/72)
- San Bernardino County Rule 2, Definitions (submitted 2/21/72)
- South Coast Air Quality Management District Rule 102, Definition of Terms (submitted 2/10/77, 10/13/77, and 6/22/78)

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section (110)(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book)(notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 102, Definition of Terms, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future 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.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective May 19, 1998 without further notice unless the Agency receives relevant adverse comments by April 20, 1998.

If the EPA received such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 19, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

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 impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a 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); 42 U.S.C. 7410(a)(2).

C. 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 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. 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 May 19, 1998. 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: February 13, 1998.

Laura Yoshii,

Acting Regional Administrator, EPA, Region IX.

Part 52, chapter I, title of 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 F—California

2. Section 52.220 is amended by adding paragraph (c)(230)(i)(B)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(230) * * *

(i) * * *

(B) * * *

(2) Rule 102 amended on November 17, 1995.

* * * * *

[FR Doc. 98–7004 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[KS 044–1044a; FRL–5979–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Kansas plan for implementing the Municipal Solid Waste (MSW) Landfill Emission Guideline (EG) at 40 CFR part 60, subpart Cc, which was required pursuant to section 111(d) of the Clean Air Act (Act). The state's plan was submitted to the EPA on December 1, 1997, in accordance with the requirements for adoption and submittal of state plans for designated facilities in 40 CFR part 60, subpart B. The plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

DATES: This action is effective May 19, 1998, unless by April 20, 1998, relevant adverse comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

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

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Act, the EPA has established procedures whereby states submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not "criteria pollutants" (i.e., pollutants for which National Ambient Air Quality Standards are set pursuant to sections 108 and 109 of the Act). As required by section 111(d) of the Act, the EPA established a process at 40 CFR part 60, subpart B, similar to the process required by section 110 of the Act (regarding State Implementation Plan (SIP) approval) which states must follow in adopting and submitting a section 111(d) plan. Whenever the EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, the EPA establishes emissions guidelines (EG) in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a state's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, the EPA published an EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW landfills at 40 CFR part 60 subpart WWW (40 CFR 60.750 through 60.759). The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds, other organic compounds, methane, and hazardous air pollutants. To determine whether control is required, nonmethane organic compounds (NMOC) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), states were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG, or by December 12, 1996. If there were no designated facilities in the state, then the state was required to submit a negative declaration by December 12, 1996.

II. Analysis of State Submittal

The official procedures for adoption and submittal of state plans are codified in 40 CFR part 60, subpart B, §§ 60.23 through 60.26. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, compliance assurance and enforcement requirements, and cross references to the MSW landfill EG.

On December 1, 1997, the state of Kansas submitted its section 111(d) plan for MSW landfills for implementing the EPA's MSW landfill EG.

The Kansas plan includes documentation that all applicable subpart B requirements have been met. More detailed information on the requirements for an approvable plan and Kansas' submittal can be found in the Technical Support Document (TSD) accompanying this action, which is available on request.

The Kansas plan cross-referenced both the NSPS subpart WWW and EG subpart Cc to adopt the requirements of the Federal rule. The state has ensured, through this cross-reference process, that all the applicable requirements of the Federal rule have been adopted into the state plan. The emission limits, testing, monitoring, reporting and recordkeeping requirements, and other aspects of the Federal rule have been adopted. Kansas rules K.A.R. 28–19–721 through K.A.R. 28–19–727 contain the applicable requirements.

Kansas demonstrated that it has the legal authority to implement and enforce the applicable requirements. The state provided evidence that it complied with the public notice and comment requirements of 40 CFR part 60, subpart B.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, the EPA is approving Kansas' December 1, 1997, submittal of its section 111(d) plan for the control of landfill gas from existing MSW landfills, except those located in Indian Country.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective May 19, 1998 without further notice unless the Agency receives relevant adverse comments by April 20, 1998.

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a

subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 19, 1998 and no further action will be taken on the proposed rule.

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

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

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

State plan approvals under section 111 of the Act do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal state plan approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning state plans on such grounds. See Union electric Co. v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the 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 private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

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

E. Petitions for Judicial Review

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 May 19, 1998. 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, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: February 24, 1998.

Diane K. Callier,

Acting Regional Administrator, Region VII.

Part 62, 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 *et seq.*

Subpart R—Kansas

2. Subpart R is amended by adding § 62.4178 and an undesignated center heading to read as follows:

Air Emissions From Existing Municipal Solid Waste Landfills

§ 62.4178 Identification of plan.

(a) *Identification of plan.* Kansas plan for control of landfill gas emissions from existing municipal solid waste landfills and associated state regulations submitted on December 1, 1997.

(b) *Identification of sources.* The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, and have design capacities greater than 2.5 million megagrams and nonmethane organic emissions greater than 50 megagrams per year, as described in 40 CFR part 60, subpart Cc.

(c) *Effective date.* The effective date of the plan for municipal solid waste landfills is May 19, 1998.

[FR Doc. 98–7134 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5976–3]

RIN 2060–AI00

National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action revises monitoring, recordkeeping, and reporting requirements of the "National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries" which was issued as a final rule August 18, 1995. This rule is commonly known as the Petroleum Refineries NESHAP.

DATES: The direct final rule will be effective May 19, 1998 unless significant, adverse comments are received by April 20, 1998. If significant, adverse comments are timely received EPA will publish timely notice in the **Federal Register** withdrawing the final rule.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–48 (see docket section below), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Electronic Submittal of Comments

Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–93–48. Electronic comments on the proposed rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Mr. James Durham, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5672.

SUPPLEMENTARY INFORMATION: On August 18, 1995, the EPA promulgated the "National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries" (the "Petroleum Refineries NESHAP"). The NESHAP regulates hazardous air pollutants (HAP) emitted from new and existing refineries that are major sources of HAP emissions. The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry ..	Petroleum Refineries (Standard Industrial Classification Code 2911).

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.640. If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

A companion proposal to this direct final rule is being published in today's **Federal Register** and is identical to this direct final rule. Any comments on the revisions to the Petroleum Refineries NESHAP should address that proposal. If significant adverse comments are timely received by the date specified in the proposed rule, this direct final rule will be withdrawn and the comments will be addressed in a subsequent final rule based on the proposed rule. If no significant adverse comments are timely filed on any provision of this direct final rule then the entire direct final rule will become effective 60 days from today's **Federal Register** action and no further action will be taken on the companion proposal published today.

I. Background

On August 18, 1995 (60 FR 43243), EPA promulgated in the **Federal Register** national emission standards for hazardous air pollutants (NESHAP) for petroleum refineries. These regulations were promulgated as subpart CC of 40 CFR part 63. As stated in the preamble to the promulgated rule, EPA pledged to continue working with industry to reduce the recordkeeping and reporting burden associated with the Petroleum Refineries NESHAP. The petroleum refining industry submitted suggestions for revisions to monitoring, recordkeeping, and reporting requirements. The EPA reviewed these suggestions and determined those to be included in today's action using several criteria. Included in today's action are revisions that will reduce industry's monitoring, recordkeeping and reporting burden or provide clarification in cases where industry could interpret requirements in a way more burdensome than intended. EPA did not include suggested revisions that delete monitoring, reporting and recordkeeping requirements necessary to ensure compliance with control requirements of the rule or revisions that alter the applicability, stringency, or schedule of the Petroleum Refineries NESHAP or other rules.

Today's action also includes corrections to equations in the miscellaneous process vent provisions of the rule and corrections to typographical errors in references to Subpart Y National Emission Standards for Marine Tank Vessel Loading Operations.

II. Revisions

A. Deletion of Requirement to Report That Actions Are Consistent With Startup, Shutdown, Malfunction Plan

The Petroleum Refineries NESHAP requires that petroleum refineries develop and implement a plan that describes procedures for operating and maintaining the source during periods of startup, shutdown and malfunction, provides a program of corrective action for malfunctioning process and air pollution control equipment, and identifies all routine or otherwise predictable malfunctions of continuous monitoring systems (CMS). Currently, if a startup, shutdown or malfunction is experienced during a reporting period and the Startup, Shutdown, and Malfunction Plan (SSMP) is followed, the refinery is required to report that the SSMP was followed in the next periodic report. Similarly, if a CMS experiences a routine or otherwise predictable failure, as defined in the SSMP, it is to be repaired immediately and the action reported in the next periodic report. The EPA has determined that requiring refineries to report that the SSMP has been followed is inconsistent with the general approach of requiring periodic reporting only of information associated with periods of excess emissions. Actions consistent with the SSMP and immediate repair of CMS do not constitute violations of the Petroleum Refineries NESHAP. For this reason, today's action revises the requirement to report that the SSMP has been followed and immediate repairs to CMS have been made. Owners and operators will not be required to report when the SSMP is followed or when a CMS experiences a routine failure and is immediately repaired unless requested

to do so by the permitting authority. To ensure that following the SSMP and immediate repairs to CMS are documented, the requirements are retained to record when periods of startup, shutdown or malfunction occur and the SSMP is followed and when CMS experience routine or otherwise predictable failures and are immediately repaired.

B. EFR Seal Gap Measurement Reporting Requirements

The current Petroleum Refineries NESHAP requires that if, during a seal gap measurement for an external floating roof tank, it is determined that a storage vessel does not meet the requirements of the rule, a refinery must provide, in the next periodic report, the date of the seal gap measurement, raw data from the seal gap measurement, calculations performed to determine that requirements were not met, the specific conditions that were not met, and the nature and date of repair or the date the storage vessel was emptied. By today's action, the requirement to provide raw data and calculations is deleted. This action reduces the reporting burden and provides consistency with the information required to be reported when a failure is detected during a storage vessel inspection. The requirements to report the date of inspection, the vessel, conditions not met, and date the storage vessel was repaired or emptied are retained. The requirement to keep a record of the raw data and calculations is retained.

C. Startup, Shutdown and Malfunction Plans (SSMP) for Wastewater

As requirements for wastewater stream management units, the Petroleum Refineries NESHAP references the Benzene Waste Operation NESHAP, which does not contain a requirement for a startup, shutdown and malfunction plan (SSMP). The Petroleum Refineries NESHAP also references the general provisions requirement for a refinery SSMP. Revisions included in today's action clarify that an SSMP is optional for wastewater operations. The EPA did not intend to add additional requirements for wastewater beyond the Benzene NESHAP. However, owners and operators may wish to prepare an SSMP because it may reduce reporting when malfunctions occur. If there is an SSMP and it is followed in periods of startup, shutdown and malfunction, the incident is not required to be reported.

Today's action includes a revision that will allow owners and operators with wastewater stream management units that are subject to both subpart CC and subpart G to comply with only subpart G. Subpart G requires an SSMP for wastewater stream management units. Today's action does not alter the requirement for an SSMP to be prepared for wastewater stream management units complying with subpart G.

D. Overlap of Subpart FF and Subpart G for Wastewater Stream Management Units

Currently, when a wastewater stream management unit receives streams subject to 40 CFR part 63, subpart CC (Petroleum Refineries NESHAP) and 40 CFR part 63, subpart G (the HON), the equipment is to be in compliance with the provisions of § 63.133 through § 63.137 of the HON, the requirements of § 63.143 and § 63.148 of the HON for monitoring, inspections, recordkeeping and reporting and all of the requirements of 40 CFR part 61, subpart FF National Emission Standards for Benzene Waste Operations except for § 61.355 and § 61.357, which include reporting and recordkeeping requirements.

The EPA recognizes that there is significant overlap between subparts FF and G. This issue was recently reviewed in revising parts of subpart G. It was determined that it is not possible to require only compliance with subpart FF as subpart FF was developed to control benzene emissions and compliance with subpart FF would not guarantee control of other HAPs. The selected alternative is to allow owners and operators the option to comply only with the requirements of subpart G. Requirements of subpart G were developed to control all HAP emissions and are as stringent as, if not more stringent than requirements of subpart FF. By today's action, the same approach is adopted for petroleum refineries. Today's action gives owners and operators of wastewater stream management units subject to the Petroleum Refineries NESHAP and subpart G the option to comply with only the requirements of subpart G.

E. Notification Requirements for Failure to Follow SSMP

Currently, refineries are required to report an action taken that is inconsistent with the startup, shutdown and malfunction plan (SSMP) to the Administrator within 2 days of commencing the action and within 7 days of completing the action. In addition to this requirement, refineries are to revise the SSMP if it is found to not address or inadequately address a startup, shutdown or malfunction. The revised SSMP is to be completed within 45 days of the event. The EPA has determined that it is not necessary for refineries to notify the Administrator of actions that are inconsistent with the SSMP within 2 days of commencing the action and within 7 days of completing the action for the Administrator to be able to evaluate the SSMP and request revisions if needed. Today's action deletes the requirement to notify the Administrator within 2 days of commencing an action that is inconsistent with the SSMP and within 7 days of completing that action and replaces it with a requirement to report actions taken that are inconsistent with the SSMP in the next periodic report.

F. Identification of Group 2 Process Vents and Storage Vessels in the Notification of Compliance Status

Currently, the Petroleum Refineries NESHAP requires owners and operators to identify Group 2 process vents and storage vessels in the Notification of Compliance Status (NCS). Group 2 emission points are subject to the NESHAP but are not subject to any control requirements. The EPA has determined that it is not necessary for refineries to provide an inventory of Group 2 emission points in the NCS. Because there are no control or reporting requirements associated with Group 2 emission points, it is not foreseen that the Administrator will require an inventory of Group 2 emission points for future reference. Additionally, an inventory of Group 2 emission points will be retained on-site. Today's action adds the requirement to submit the inventory to the permitting authority at the permitting authority's request. The requirement to keep a record of process vents and storage vessels and their group determination is not altered by today's action.

G. Clarification of Requirements for Installation and Calibration of Continuous Monitoring Systems (CMS)

According to the current Petroleum Refineries NESHAP, a continuous monitoring system (CMS) is to be installed and calibrated according to the manufacturer's specifications. Industry representatives have provided and EPA agrees that it is not always possible or desirable to install or calibrate equipment in exact accordance with the manufacturer's specifications. Minor adjustments must be made for most applications. Additionally, it may not be necessary to adhere to all the specifications provided by the manufacturer to ensure correct installation or calibration. By today's action, the directions for installing and calibrating CMS will be expanded to

allow for procedures to be followed other than those specified by the manufacturer.

H. Requirement to Record the Signature of Owner or Operator When Equipment Leak Repairs are Delayed

Under the promulgated petroleum refineries NESHAP, when an equipment leak is detected and it is determined that the leak cannot be repaired within 15 days, the facility is to record that the repair was delayed, the reason for the delay and the signature of the owner or operator (or designate) whose decision it was that the repair could not be affected without a process unit shutdown. By today's action, the requirement to record the signature of the owner or operator is revised to require the name of the person making the decision to be recorded. This revision will make the requirement compatible with electronic recordkeeping systems while maintaining the ability of the requirement to establish accountability.

I. Exemption of Secondary Seal From Requirements During Primary Seal Gap Measurements

The petroleum refineries NESHAP references a provision of the HON that allows secondary seals on external floating roof storage vessels to be exempt from seal gap requirements while the seal is temporarily pulled back during primary seal gap measurements. Subpart Kb of 40 CFR part 60 does not include such a provision. Today's action extends the provision exempting secondary seals from seal gap requirements during primary seal gap measurements to storage vessels subject to the Petroleum Refineries NESHAP that are to comply with subpart Kb. The EPA has determined the provision provides a necessary clarification that was not considered in development of subpart Kb. Today's action does not alter the stringency of control requirements of subpart Kb.

J. Documentation of Compliance

The Petroleum Refineries NESHAP requires that documentation of having achieved compliance be submitted in the Notification of Compliance Status (NCS) report, due within 150 days of the compliance date. A potential source of confusion is the lack of specific instructions regarding the NCS and gasoline loading racks. Refineries with co-located gasoline loading racks that are subject to the Petroleum Refineries NESHAP (subpart CC) are generally required by subpart CC to comply with the requirements of the Gasoline Distribution MACT. The Gasoline Distribution MACT references notification requirements of the General Provisions. It is not clear when the notification is required for gasoline loading racks at petroleum refineries. By today's action, it is clarified that any notifications of compliance status required by the Gasoline Distribution MACT for gasoline loading racks co-located at refineries is to be submitted within 150 days of the Petroleum Refinery NESHAP compliance date.

K. Revision of Notification of Compliance Status (NCS) Report Requirement for New Group 1 Emission Point

In the promulgated Petroleum Refineries NESHAP, facilities are required to provide a NCS report for a new Group 1 emission point within 150 days of the change or addition of that point. By today's action, the reporting requirements are amended to allow the NCS report to be provided in the periodic report for the reporting period in which the Group 1 emission point is added. Today's action will reduce the burden of reporting through consolidating reports.

Periodic reports are due semiannually, within 60 days of the end of each 6-month reporting period. Through this amendment, it will be possible for a NCS report to be submitted more than 150 days after the addition of a Group 1 emission point. At most, if a change or addition is made at the beginning of a reporting period, the NCS may not be provided for eight months, approximately three months more than if the requirement to provide the report within 150 days was retained unchanged. Alternately, this revision may require an owner or operator to submit an NCS in less than 150 days. If an addition or change is made at the end of a reporting period, the NCS must be submitted with the next periodic report no more than 60 days after the end of the reporting period. This amendment does not change the amount of time in which a Group 1 emission point must be in compliance with the standards of the Petroleum Refineries NESHAP.

L. Semiannual Reporting of Inspection Results

For storage vessels complying with the reporting requirements of the Petroleum Refineries NESHAP, if a failure is detected during an inspection, it is required to be reported in the next periodic report. For storage vessels complying with subpart Kb or subpart Ka, if a failure is detected during an inspection, a report is to be provided to the Administrator within 30 days or 60 days, respectively. By today's action, when a failure is detected during an inspection of a storage vessel subject to the Petroleum Refineries NESHAP that is to comply with subpart Kb or subpart Ka, the failure is to be reported in the next periodic report. This revision provides consistency for reporting requirements between storage vessels that are to comply with the NESHAP and storage vessels that are to comply with subpart Kb and subpart Ka, without altering the control requirements of subpart Kb or Ka.

M. Extensions for EFR Seal Gap Measurements

As discussed previously, storage vessels subject to the Petroleum Refineries NESHAP and a new source performance standard (40 CFR part 60, subpart K, Ka or Kb) are only required to comply with one of the standards. Procedures are specified for external floating roof storage vessels that must comply with the refinery MACT to allow seal gap measurements to be delayed if it is determined that it is unsafe to perform the measurement. Provisions allow the gap measurements to be delayed for 30 days while the unsafe conditions are corrected. If the unsafe conditions cannot be corrected within that time period, the vessel is to be emptied within 45 days of the determination that the roof is unsafe. The owner or operator may use up to two extensions of 30 days each to empty the tank. There are no such provisions in subpart Ka or Kb.

Today's action extends the provision to allow seal gap measurements to be delayed due to unsafe conditions to storage vessels subject to the Petroleum Refineries NESHAP that are to comply with subparts Ka and Kb. The EPA has determined that the extension provision provides necessary guidance for owners and operators in circumstances that were not considered in the development of subparts Ka and Kb. Today's action does not alter the stringency of control requirements of subpart Ka or Kb.

N. Extensions for Storage Vessel Repairs

In the Petroleum Refineries NESHAP, when an internal floating roof is discovered to not meet the requirements of the standard, it must be repaired or the associated storage vessel taken out of service and emptied within 45 days. If a storage vessel cannot be emptied or repaired within 45 days, the owner or operator may use up to two extensions of 30 days each. If an extension is utilized, the owner or operator must, in the next periodic report, identify the vessel, provide a description of the failure, document that alternate storage capacity is unavailable, and specify a

schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as possible. Subpart Kb does not include provisions to be followed in the event that a failure is detected during an inspection of a storage vessel control device and the storage vessel cannot be repaired or emptied within 45 days.

Today's action extends the provision to allow for delays in repairing or emptying a storage vessel found to be out of compliance to storage vessels subject to the Petroleum Refineries NESHAP that are to comply with subpart Kb. The EPA has determined that the provision provides necessary guidance for owners and operators in circumstances that were not considered in the development of subpart Kb. Today's action does not alter the stringency of control requirements of subpart Kb.

O. Definition of Gasoline

In the current Petroleum Refineries NESHAP, no definition is provided for gasoline although gasoline loading racks at affected facilities are subject to subpart CC. By today's action, a definition for gasoline is added to the definitions in subpart CC. The definition is taken from 40 CFR part 60, Subpart XX Standards of Performance for Bulk Gasoline Terminals.

P. Report of Determination of Applicability for Flexible Operation Units and for Distillation Columns and Storage Vessels for Which Use Varies

The Petroleum Refineries NESHAP requires a report of the determination of the applicability of subpart CC to process units designed and operated as flexible operation units, and storage vessels and distillation units for which use varies from year to year. For existing units, this report is to be submitted no later than 18 months prior to the compliance date. With the exception of reports required for emission points included in emissions averaging, no other reports are required prior to the compliance date. By today's action, the requirement is revised to allow applicability determinations for flexible operation units and distillation columns and storage vessels for which use varies to be reported in the initial Notification of Compliance Status report. This revision provides consistency between reporting requirements and reduces burden by consolidating reports. This revision does not alter the date by which existing units must be in compliance with the Petroleum Refineries NESHAP.

Q. Compliance of Agitators With Equipment Leaks Provisions

Currently, owners and operators of refineries can comply with the equipment leaks provisions of the NESHAP by complying with the equipment leaks provisions of subpart H. Some of the referenced provisions of subpart H refer to agitators in heavy liquid service. As stated on pages 8–3 of the background information document for the final rule (EPA–453/R–95–015b), the provisions of the Petroleum Refineries NESHAP are not intended to apply to agitators. It is possible that, due to the references to agitators in subpart H, subpart CC could be interpreted as applying to agitators. Today's action revises the Petroleum Refineries NESHAP to specifically state that owners and operators of facilities subject to subpart CC are not required to comply with subpart H for agitators in heavy liquid service.

R. Overlap of Subparts XX and R for Gasoline Loading Racks

The current Petroleum Refineries NESHAP requires gasoline loading racks located at refineries to be in compliance with the control requirements of 40 CFR part 63, Subpart R National Emission Standards for Gasoline Distribution Facilities. New gasoline loading racks are also subject to 40 CFR part 60, Subpart XX, the New Source Performance Standard (NSPS) for bulk gasoline terminals. It is currently possible for a gasoline loading rack at a petroleum refinery to be subject to both subparts R and XX. Today's action revises the Petroleum Refineries NESHAP to require petroleum refineries with gasoline loading racks subject to both subparts R and XX to comply with the control requirements of subpart R. This revision does not alter the stringency of the rule as the control requirements of subpart R are more stringent than the control requirements of subpart XX.

S. Corrections to Miscellaneous Process Vent Equations

Following promulgation of the Petroleum Refineries NESHAP, two errors were discovered in two equations to be used to calculate kilograms per day of volatile organic compounds (VOC) in miscellaneous process vent streams. If used as currently presented, the equations will cause facilities to underestimate kilograms per day of VOC by a factor of 24 or 1,000. Today's action corrects these equations. These corrections do not alter the monitoring, recordkeeping, or reporting requirements or control requirements of the rule as originally intended.

T. Revision of Notification of Compliance Status Report Requirement for Existing Group 1 Storage Vessels Brought Into Compliance After August 18, 1998

The Petroleum Refineries NESHAP allows floating roof storage vessels to be brought into compliance up to 10 years after August 18, 1998, the compliance date for other emission points. A Notification of Compliance Status (NCS) report is required to be submitted when these vessels are brought into compliance. Currently, it is not clear when the NCS report is to be submitted.

Today's revision will require a NCS report to be submitted for storage vessels brought into compliance after August 18, 1998 with the periodic report for the reporting period in which the vessel was brought into compliance. The report will include a list of Group 1 storage vessels and either the actual or anticipated date of compliance for each vessel.

This revision provides needed clarification and allows for the consolidation of reports.

III. Reduction in Burden

The revisions included in today's action are expected to reduce the annual recordkeeping and reporting burden associated with this NESHAP by 80 technical hours per refinery and 13,200 technical hours nationwide.

IV. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

V. Administrative

A. Paperwork Reduction Act

The information collection requirements in the promulgated Petroleum Refineries NESHAP rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned a control number 2060–0340. However, this approval has expired and the information collection request is currently in the reinstatement process. The information collection request has

been revised to reflect the revisions to monitoring, recordkeeping and reporting requirements made by today's action. The collection of information has an estimated annual reporting and recordkeeping burden averaging 3,000 hours per respondent. This estimate includes time for reviewing instructions; developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting existing ways to comply with any previously applicable instructions and requirements; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

The burden estimate reflects an annual reduction of 13,200 technical hours, as compared to the estimate at promulgation, resulting from the revisions made by today's action.

B. Executive Order 12866 Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or land programs or the rights and obligations of recipients thereof; of

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because today's action decreases the burden of the Petroleum Refineries NESHAP without altering the stringency, applicability, or schedule of the NESHAP or other rules, this rule was classified "non-significant" under Executive Order 12866 and, therefore was not reviewed by the Office of Management and Budget.

C. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant negative economic impact on a substantial number of small entities. This direct final rule will not have a significant negative impact on a substantial number of small entities because it revises monitoring, recordkeeping, and reporting requirements and reduces the associated burden for all affected facilities, including small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

At the time of promulgation, EPA determined that the Petroleum Refineries NESHAP 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 determination is not altered by today's action, the purpose of which is to reduce the burden associated with monitoring, recordkeeping, and reporting requirements. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

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

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Petroleum refineries, Reporting and recordkeeping requirements, Storage vessels.

Dated: March 4, 1998.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart CC—National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

2. Amend § 63.640 by revising paragraphs (k)(2)(vii), (n)(1), (n)(3), and (n)(6); by adding paragraphs (n)(8), (n)(9) and (r); and by revising paragraph (o)(2) to read as follows:

§ 63.640 Applicability and designation of affected source.

* * * * *

(k) * * *

(2) * * *

(vii) Reports and notifications required by §§ 63.565 and 63.567 of

subpart Y. These requirements are summarized in table 5 of this subpart.

* * * * *

(n) * * *

(1) After the compliance dates specified in paragraph (h) of this section, a Group 1 or Group 2 storage vessel that is part of an existing source and is also subject to the provisions of 40 CFR part 60, subpart Kb is required to comply only with the requirements of 40 CFR part 60, subpart Kb, except as provided in paragraph (n)(8) of this section.

* * * * *

(3) After the compliance dates specified in paragraph (h) of this section, a Group 2 storage vessel that is part of a new source and is subject to the control requirements in § 60.112b of 40 CFR part 60, subpart Kb is required to comply only with 40 CFR part 60, subpart Kb except as provided in paragraph (n)(8) of this section.

* * * * *

(6) After compliance dates specified in paragraph (h) of this section, a Group 2 storage vessel that is subject to the control requirements of 40 CFR part 60, subparts K or Ka is required to comply only with the provisions of 40 CFR part 60, subparts K or Ka, except as provided for in paragraph (n)(9) of this section.

* * * * *

(8) Storage vessels described by paragraphs (n)(1) and (n)(3) of this section are to comply with subpart Kb of 40 CFR part 60 except as provided for in paragraphs (n)(8)(i) through (n)(8)(vi) of this section.

(i) Storage vessels that are to comply with 40 CFR 60.112b(a)(2) of subpart Kb are exempt from the secondary seal requirements of 40 CFR 60.112b(a)(2)(i)(B), during the gap measurements for the primary seal required by 40 CFR 60.113b(b) of subpart Kb.

(ii) If the owner or operator determines that it is unsafe to perform the seal gap measurements required in 40 CFR 60.113b(b) of subpart Kb or to inspect the vessel to determine compliance with 40 CFR 60.113b(a) of subpart Kb because the roof appears to be structurally unsound and poses an imminent danger to inspecting personnel, the owner or operator shall comply with the requirements in either § 63.120(b)(7)(i) or § 63.120(b)(7)(ii) of subpart G.

(iii) If a failure is detected during the inspections required by 40 CFR § 60.113b(a)(2) or during the seal gap measurements required by 40 CFR 60.113b(b)(1), and the vessel cannot be repaired within 45 days and the vessel cannot be emptied within 45 days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each. The owner or operator is not required to provide a request for the extension to the Administrator.

(iv) If an extension is utilized in accordance with paragraph (n)(8)(iii) of this section, the owner or operator shall, in the next periodic report, identify the vessel, provide the information listed in 40 CFR 60.113b(a)(2) or 60.113b(b)(4)(iii), and describe the nature and date of the repair made or provide the date the storage vessel was emptied.

(v) Owners and operators of storage vessels complying with subpart Kb of 40 CFR Part 60 may submit the inspection reports required by 40 CFR 60.115b(a)(3), (a)(4), and (b)(4) of Subpart Kb as part of the periodic reports required by this subpart, rather than within the 30-day period specified in 40 CFR 60.115b(a)(3), (a)(4), and (b)(4) of Subpart Kb.

(vi) The reports of rim seal inspections specified in 40 CFR 60.115b(b)(2) are not required if none of the measured gaps or calculated gap areas exceed the limitations specified in 40 CFR 60.113b(b)(4). Documentation of the inspections shall be recorded as specified in 40 CFR 60.115b(b)(3).

(9) Storage vessels described by paragraph (n)(6) of this section which are to comply with 40 CFR part 60, subpart Ka, are to comply with only 40 CFR part 60, subpart Ka, except as provided for in paragraphs (n)(9)(i) through (n)(9)(iv) of this section.

(i) If the owner or operator determines that it is unsafe to perform the seal gap measurements required in 40 CFR 60.113a(a)(1) of subpart Ka because the floating roof appears to be structurally unsound and poses an imminent danger to inspecting personnel, the owner or operator shall comply with the requirements in either §§ 63.120(b)(7)(i) or (b)(7)(ii) of subpart G.

(ii) If a failure is detected during the seal gap measurements required by 40 CFR 60.113a(a)(1) of subpart Ka, and the vessel cannot be repaired within 45 days and the vessel cannot be emptied within 45 days, the owner or operator may utilize up to 2 extensions of up to 30 additional calendar days each.

(iii) If an extension is utilized in accordance with paragraph (n)(9)(ii) of this section, the owner or operator shall, in the next periodic report, identify the vessel, describe the nature and date of the repair made or provide the date the storage vessel was emptied. The owner or operator shall also provide documentation of the decision to utilize an extension including a description of the failure, documentation that alternate storage capacity is unavailable, a schedule of actions that will ensure that the control equipment will be repaired or the vessel emptied as soon as possible.

(iv) Owners and operators of storage vessels complying with subpart Ka of part 60 may submit the inspection reports required by 40 CFR 60.113a(a)(1)(i)(E) of subpart Ka as part of the periodic reports required by this subpart, rather than within the 60-day period specified in 40 CFR 60.113a(a)(1)(i)(E) of subpart Ka.

(o) * * *

(2) After the compliance dates specified in paragraph (h) of this section a Group 1 or Group 2 wastewater stream that is conveyed, stored, or treated in a wastewater stream management unit that also receives streams subject to the provisions of §§ 63.133 through 63.147 of subpart G wastewater provisions of this part shall comply as specified in paragraph (o)(2)(i) or (o)(2)(ii) of this section. Compliance with the provisions of paragraph (o)(2) of this section shall constitute compliance with the requirements of this subpart for that wastewater stream.

(i) Comply with paragraphs (o)(2)(i)(A) through (o)(2)(i)(C) of this section.

(A) The provisions in §§ 63.133 through 63.140 of subpart G for all equipment used in the storage and conveyance of the Group 1 or Group 2 wastewater stream.

(B) The provisions in both 40 CFR part 61, subpart FF, and in §§ 63.138 and 63.139 of subpart G for the treatment and control of the Group 1 or Group 2 wastewater stream.

(C) The provisions in §§ 63.143 through 63.148 of subpart G for monitoring and inspections of equipment and for recordkeeping and reporting requirements. The owner or operator is not required to comply with the monitoring, recordkeeping, and reporting requirements associated with the treatment and control requirements in 40 CFR part 61, subpart FF, §§ 61.355 through 61.357.

(ii) Comply with paragraphs (o)(2)(ii)(A) and (o)(2)(ii)(B) of this section.

(A) Comply with the provisions of §§ 63.133 through 63.148 and §§ 63.151 and 63.152 of subpart G

(B) For any Group 2 wastewater stream or organic stream whose benzene emissions are subject to control through the use of one or more treatment processes or waste management units under the provisions of 40 CFR part 61, subpart FF, on or after December 31, 1992, comply with the requirements of

§§ 63.133 through 63.147 of subpart G for Group 1 wastewater streams.

* * * * *

(r) Overlap of this subpart CC with other regulations for gasoline loading racks.

(1) After the compliance dates specified in paragraph (h) of this section, a Group 1 gasoline loading rack that is part of a source subject to subpart CC and also is subject to the provisions of 40 CFR part 60, subpart XX is required to comply only with this subpart.

(2) [Reserved]

3. Amend § 63.641 by adding in alphabetical order a definition for "gasoline" to read as follows:

§ 63.641 Definitions.

* * * * *

Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater which is used as a fuel for internal combustion engines.

* * * * *

4. Amend § 63.644 by revising the last sentence of paragraph (a) introductory text to read as follows:

§ 63.644 Monitoring provisions for miscellaneous process vents.

(a) * * * All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment will monitor accurately.

* * * * *

5. Amend § 63.645 by revising the definition of "K_2" in paragraph (f)(4) and revising paragraph (f)(5) to read as follows:

* * * * *

§ 63.645 Test methods and procedures for miscellaneous process vents.

* * * * *

(f) * * *

(4) * * *

K_2=Constant, 5.986×10^{-5} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram per gram) (minute per day), where the standard temperature (standard cubic meter) is at 20 °C.

(5) If Method 25A is used the emission rate of TOC (ETOC) shall be calculated using the following equation:

$E = K_2 C_{TOC} M Q_s$

where:

E=Emission rate of TOC (minus methane and ethane) in the sample, kilograms per day.

K_2=Constant, 5.986×10^{-5} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram per gram) (minute per day), where the standard temperature (standard cubic meter) is at 20 °C.

C_{TOC}=Concentration of TOC on a dry basis in parts per million volume as measured by Method 25A of 40 CFR part 60, appendix A, as indicated in paragraph (f)(3) of this section.

M=Molecular weight of organic compound used to express units of C_{TOC}, gram per gram-mole.

Q_s=Vent stream flow rate, dry standard cubic meters per minute, at a temperature of 20 °C.

* * * * *

6. Amend § 63.648 by revising paragraph (e) to read as follows:

§ 63.648 Equipment leak standards.

* * * * *

(e) For reciprocating pumps in heavy liquid service, and agitators in heavy liquid service, owners and operators are not required to comply with the requirements in § 63.169 of subpart H.

* * * * *

7. Amend § 63.654 by revising the first sentence of paragraph (a); revising paragraphs (d)(1), (f) introductory text, (f)(1)(i)(A), (f)(1)(ii); adding paragraph (f)(6); revising the last sentence of paragraph (g)(3)(i) introductory text; removing paragraph (g)(3)(i)(B); redesignating paragraphs (g)(3)(i)(C) and (g)(3)(i)(D) as (g)(3)(i)(B) and (g)(3)(i)(C); revising paragraph (h)(1); revising the first two sentences of paragraph (h)(6) introductory text; and adding paragraph (i)(5).

* * * * *

§ 63.654 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to the wastewater provisions in § 63.647 shall comply with the recordkeeping and reporting provisions in 40 CFR 61.356 and 61.357 of subpart FF unless they are complying with the wastewater provisions specified in § 63.640(o)(2)(ii).

* * *

* * * * *

(d) * * *

(1) Sections 60.486 and 60.487 of subpart VV of 40 CFR part 60, except as specified in paragraph (d)(1)(i); or §§ 63.181 and 63.182 of subpart H of this part except for §§ 63.182 (b), (c)(2), and (c)(4).

(i) The signature of the owner or operator (or designate) whose decision it was that a repair could not be effected without a process shutdown is not required to be recorded. Instead, the name of the person whose decision it was that a repair could not be effected without a process shutdown shall be recorded and retained for 2 years.

(ii) [Reserved]

* * * * *

(f) Each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status report within 150 days after the compliance dates specified in § 63.640(h), with the exception of Notification of Compliance Status reports submitted to comply with § 63.640(l)(3) and for storage vessels subject to the compliance schedule specified in § 63.640(h)(4). Notification of Compliance Status reports required by § 63.640(l)(3) and for storage vessels subject to the compliance dates specified in § 63.640(h)(4) shall be submitted according to paragraph (f)(6) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination of the three. If the required information has been submitted before the date 150 days after the compliance date specified in § 63.640(h), a separate Notification of Compliance Status report is not required within 150 days after the compliance dates specified in § 63.640(h). If an owner or operator submits the information specified in paragraphs (f)(1) through (f)(5) of this section at different times, and/or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the previously submitted information. Each owner or operator of a gasoline loading rack classified under Standard Industrial Classification Code 2911 located within a contiguous area and under common control with a petroleum refinery subject to the standards of this subpart shall submit the Notification of Compliance Status report required by subpart R of this part within 150 days after the compliance dates specified in § 63.640(h) of this subpart.

(1) * * *

(i) * * *

(A) For each Group 1 storage vessel subject to this subpart, the information specified in paragraphs (f)(1)(i)(A)(*1*) through (f)(1)(i)(A)(*4*). This information is to be revised each time a Notification of Compliance Status report is submitted for a storage vessel subject to the compliance schedule specified in § 63.640(h)(4) or to comply with § 63.640(l)(3).

(*1*) Identification of each Group 1 storage vessel subject to this subpart. Group 2 storage vessels do not need to be identified unless included in an emissions average.

(*2*) For each Group 1 storage vessel complying with § 63.646 that is not

included in an emissions average, the method of compliance (i.e., internal floating roof, external floating roof, or closed vent system and control device).

(3) For storage vessels subject to the compliance schedule specified in § 63.640(h)(4) that are not complying with § 63.646, the anticipated compliance date.

(4) For storage vessels subject to the compliance schedule specified in § 63.640(h)(4) that are complying with § 63.646 and the Group 1 storage vessels described in § 63.640(l), the actual compliance date.

* * * * *

(ii) For miscellaneous process vents, identification of each Group 1 miscellaneous process vent subject to this subpart and the method of compliance for each Group 1 miscellaneous process vent that is not included in an emissions average (e.g., use of a flare or other control device meeting the requirements of § 63.643(a)). Group 2 miscellaneous process vents do not need to be identified in the Notification of Compliance Status report unless included in an emissions average.

* * * * *

(6) Notification of Compliance Status reports required by § 63.640(l)(3) and for storage vessels subject to the compliance dates specified in § 63.640(h)(4) shall be submitted no later than 60 days after the end of the 6-month period during which the change or addition was made that resulted in the Group 1 emission point or the existing Group 1 storage vessel was brought into compliance, and may be combined with the periodic report. Six-month periods shall be the same 6-month periods specified in paragraph (g) of this section. The Notification of Compliance Status report shall include the information specified in paragraphs (f)(1) through (f)(5) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, as part of the periodic report or in any combination of these four. If the required information has been submitted before the date 60 days after the end of the 6-month period in which the addition of the Group 1 emission point took place, a separate Notification of Compliance Status report is not required within 60 days after the end of the 6-month period. If an owner or operator submits the information specified in paragraphs (f)(1) through (f)(5) of this section at different times, and/or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the previously submitted information.

(g) * * *

(3) * * *

(i) * * * This documentation shall include the information specified in paragraphs (g)(3)(i)(A) through (g)(3)(i)(C) of this section.

* * * * *

(h) * * *

(1) Reports of startup, shutdown, and malfunction required by § 63.10(d)(5) as specified in table 6 of this subpart. Records and reports of startup, shutdown, and malfunction are not required if they pertain solely to Group 2 emission points, as defined in § 63.641, that are not included in an emissions average. The periodic reports of startup, shutdown, and malfunction specified in § 63.10(d)(5)(i) are not required if the actions taken by an owner or operator during a startup, shutdown, or malfunction are consistent with the source's startup, shutdown, and malfunction plan required by § 63.6(e)(3) unless requested by the permitting authority. The operator shall comply with the reporting requirements of § 63.10(d)(5)(ii) if the startup, shutdown, and malfunction plan is not followed, except as specified in table 6 of this subpart. For purposes of this paragraph, startup and shutdown shall have the meaning defined in § 63.641, and malfunction shall have the meaning defined in § 63.2;

* * * * *

(6) The owner or operator shall submit the information specified in paragraphs (h)(6)(i) through (h)(6)(iii) of this section, as applicable. For existing sources, this information shall be submitted in the initial Notification of Compliance Status report. * * *

* * * * *

(i) * * *

(5) In addition to the information reported under paragraphs (a) through (h) of this section, the information listed in paragraphs (i)(5)(i) and (i)(5)(ii) shall be retained on-site. The information listed in (i)(5)(i) shall be submitted upon the request of the permitting authority.

(i) A record identifying all Group 2 miscellaneous process vents.

(ii) A record identifying all Group 2 storage vessels, their dimensions and capacity.

8. In table 5 in the appendix of subpart CC, remove the entries for "63.566(a)" and "63.566(b)" and add two entries, in numerical order, to read as follows:

TABLE 5.—MARINE VESSEL LOADING AND UNLOADING OPERATIONS RECORDKEEPING AND REPORTING REQUIREMENTS [a]

Reference (section of subpart Y of this part)	Description	Comment
63.565(a)	Performance test/site test plan	The information required under this paragraph is to be submitted with the notification of compliance status report required under 40 CFR part 63 subpart CC.
63.565(b)	Performance test data requirements.	
*	* * * * * *	*

[a] This table does not include all the requirements delineated under the sections. See referenced sections for specific requirements

9. In table 6 in the appendix of subpart CC, remove the entries for "63.6(e)", "63.8(c)(1)(i)", "63.8(c)(3)", "63.10(d)(5)(i)", and "63.10(d)(5)(ii)" and add five entries in numerical order, to read as follows:

TABLE 6.—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC [a]

Reference	Applies to subpart CC	Comment
* * * *	* * *	* * *
§63.6(e)	Yes	Does not apply to Group 2 emission points.[b] The startup, shutdown, and malfunction plan specified in §63.6(e)(3) is not required for wastewater operations that are not subject to subpart G of this part. Except that actions taken during a startup, shutdown, or malfunction that are not consistent with the startup, shutdown, and malfunction plan do not need to be reported within 2 and 7 days of commencing and completing the action, respectively, but must be included in the next periodic report.
* * * *	* * *	* * *
§63.8(c)(1)(i)	Yes	Except that if "routine" or otherwise predictable malfunctions, as defined in the source's startup, shutdown and malfunction plan, are immediately corrected, the source is not required to report the action in the semiannual startup, shutdown, and malfunction report required under §63.10(d)(i) unless requested to do so by the permitting authority.
* * * *	* * *	* * *
§63.8(c)(3)	Yes	Except that verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment would monitor accurately.
* * * *	* * *	* * *
§63.10(d)(5)(i)	Yes[b]	Except that reports are not required to be submitted unless they are requested by the permitting authority.
§63.10(d)(5)(ii)	Yes	Except that actions taken during a startup, shutdown, or malfunction that are not consistent with the startup, shutdown, and malfunction plan do not need to be reported within 2 and 7 days of commencing and completing the action, respectively, but must be included in the next periodic report.
* * * *	* * *	* * *

[a] Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.
[b] The plan, and any records or reports of startup, shutdown, and malfunction do not apply to Group 2 emission points.

[FR Doc. 98–6876 Filed 3–19–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300613; FRL–5769–8]

RIN 2070–AB78

Acephate; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is issuing a technical amendment to the acephate tolerances to add food additive regulations for use of acephate in food handling establishments.

DATES: This rule becomes effective March 20, 1998. Written objects and hearing requests must be received by May 19, 1998.

FOR FURTHER INFORMATION CONTACT: By mail, Jeffrey Morris, Special Review Branch (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: 3rd floor, Crystal Station, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8029; e-mail: morris.jeffrey@epamail.epa.gov.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300613], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300613], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: oppdocket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding 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 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300613]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 1998, (63 FR 2163) the Office of Pesticide Programs transferred certain of the pesticide food and feed additive regulations (FRL–5755–9) in parts 185 and 186 to part 180. The consolidation was necessary because, whereas in the past, tolerances for processed food and animal feeds regulated under section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA, 21 U.S.C. 301 et seq.) were placed under parts 185 and 186, as a matter of law all tolerances are now considered to be regulated under FFDCA section 408 as amended by the Food Quality Protection Act (Pub. L. 104–17), and therefore, are being placed under part 180. In the consolidation of § 185.100 with § 180.108, some of the text from § 185.100 was inadvertently removed instead of being transferred to § 180.108. This rule correctly revises § 180.108.

I. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300613] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

II. Regulatory Assessment Requirements

This final rule does not impose any requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.).

III. 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 180

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

Dated: February 19, 1998.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is amended as follows:

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

Authority: 21 U.S.C. 346a and 371.

2. Section 180.108 is revised to read as follows:

§ 180.108 Acephate; tolerances for residues.

(a) *General.* (1) Tolerances are established for combined residues of acephate (*O,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite *O,S*-dimethylphosphura-midothioate in or on raw agricultural commodities as follows:

Commodity	Parts per million
Beans (succulent and dry form, of which no more than 1 ppm is *O,S*-dimethyl phosphoramidothioate)	3
Brussels sprouts (of which no more than 0.5 is *O, S*-dimethyl phosphoramido-thioate)	3.0
Cattle, fat	0.1
Cattle, mbyp	0.1
Cattle, meat	0.1
Cauliflower (of which no more than 0.5 is *O, S*-dimethyl phosphoramido-thioate)	2.0
Celery (of which no more than 1 ppm is *O,S*-dimethyl phosphoramidothioate)	10
Cottonseed	2
Cottonseed, hulls	4
Cottonseed, meal	8
Cranberries (of which no more than 0.1 ppm is *0,S*-dimethyl phosphoramidothioate)	0.5
Eggs	0.1
Goats, fat	0.1
Goats, mbyp	0.1
Goats, meat	0.1
Grass (pasture & range)	15
Grass hay	15
Hogs, fat	0.1
Hogs, mbyp	0.1
Hogs, meat	0.1
Horses, fat	0.1
Horses, mbyp	0.1
Horses, meat	0.1
Lettuce (head, of which no more than 1 ppm is *O,S*-dimethyl phosphoramidothioate)	10
Milk	0.1

Commodity	Parts per million
Mint hay (of which no more than 1 ppm is *O,S*-dimethyl phosphoramidothioate)	15.0
Peanuts	0.2
Peppers (of which no more than 1 ppm is *O, S*-dimethyl phosphoroamidothioate)	4.0
Poultry, fat	0.1
Poultry, mbyp	0.1
Poultry, meat	0.1
Sheep, fat	0.1
Sheep, mbyp	0.1
Sheep, meat	0.1
Soybean, meal	4
Soybeans	1
Macadamia nuts	0.05

(2) A food additive tolerance of 0.02 ppm is established for the combined residues of acephate (*O,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite, methamidophos as follows:

(i) In or on all food items (other than those already covered by a higher tolerance as a result of use on growing crops) in food handling establishments.

(ii) The acephate may be present as a residue from applications of acephate in food handling establishments, including food service, manufacturing and processing establishments, such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat slaughtering and packing plants, and canneries in accordance with the following prescribed conditions:

(A) Application shall be limited solely to spot and/or crack and crevice treatment in food handling establishments where food and food products are held, processed, prepared and served. Spray concentration shall be limited to a maximum of 1.0 percent active ingredient. For crack and crevice treatments, equipment capable of delivering a pin-stream of insecticide shall be used. For spot treatments, a coarse, low-pressure spray shall be used to avoid atomization or splashing of the spray. Contamination of food or food-contact surfaces shall be avoided.

(B) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registration.* Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of acephate and its cholinesterase-inhibiting metabolite in or on the following raw agricultural commodities:

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98–7311 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7685]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final 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.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 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.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Illinois: Maunie, village of, White County	170684	February 11, 1998	January 9, 1974.
Missouri: Willard, city of, Greene County	290653	.....do	November 5, 1976.
Minnesota: St. Anthony, city of, Hennepin and Ramsey Counties.	270716	February 26, 1998.	
New Eligibles—Regular Program			
California: [1] Los Banos, city of, Merced County	060747	February 3, 1998	August 2, 1995.
Iowa: Van Buren County, unincorporated areas	190265	February 11, 1998	October 2, 1997.
Missouri: St. Paul, city of, St. Charles County	290900	February 13, 1998	August 2, 1996.
Reinstatements			
Alabama: Vestavia Hills, city of, Jefferson County	010132	February 21, 1975 Emerg.; January 2, 1981, Reg.; January 2, 1981, Susp.; February 9, 1998, Rein.	Janaury 2, 1981.
Regular Program Conversions			
Region II			
New Jersey: Monroe, township of, Middlesex County	340269	February 4, 1998, Suspension Withdrawn	February 4, 1998.
Region IV			
South Carolina: Mullins, city of, Marion County	450143	.....do	Do.
Region V			
Wisconsin:			
Chetek, city of, Barron County	550012	.....do	Do.
Chippewa County, unincorporated areas	555549	.....do	Do.
Chippewa Falls, city of, Chippewa County	550044	.....do	Do.
Eau Claire, city of, Chippewa & Eau Claire Counties.	550128	.....do	Do.
Region VI			
Arkansas:			
Faulkner County, unincorporated areas	050431	.....do	Do.
Springdale, city of, Washington County	050219	.....do	Do.
Washington County, unincorporated areas	050212	.....do	Do.
Region VIII			
South Dakota: Montrose, city of, McCook County	460052	.....do	Do.
Region X			
Oregon: Curry County, unincorporated areas	410052	.....do	Do.
Region I			
Connecticut: Wilton, town of, Fairfield County	090020	February 18, 1998, Suspension Withdrawn	February 18, 1998.
Region III			
Pennsylvania:			
Landingville, borough of, Schuylkill County	420774	.....do	Do.
Port Clinton, borough of, Schuylkill County	420784	.....do	Do.
Virginia: Spotsylvania County, unincorporated areas.	510308	.....do	Do.
Region VI			
Arkansas: Cave City, city of, Sharp and Independence Counties.	050313	.....do	Do.
Texas:			
Hays County, unincorporated County	480321	.....do	Do.
Kyle, city of, Hays County	481108	.....do	Do.
San Marcos, city of, Hays County	485505	.....do	Do.
Woodcreek, city of, Hays County	481641	.....do	Do.
Region VII			
Missouri: Park Hills, city of, St. Francois County	290920	.....do	Do.
Region VIII			
Montana:			
Wibaux, town of, Wibaux County	300084	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Wibaux County, unincorporated areas	300173	.....do	Do.
South Dakota: Rapid City, city of, Pennington County	465420	.....do	Do.
Region IX			
Nevada: Eureka County, unincorporated areas	320028	.....do	Do.
Region X			
Oregon:			
Bandon, city of, Coos County	410043	.....do	Do.
Glendale, city of, Douglas County	410063	.....do	Do.
Riddle, city of, Douglas County	410066	.....do-	Do.

[1] The City of Los Banos has adopted the Merced County (CID # 060188) Flood Insurance Rate Map dated August 2, 1995.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: March 12, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–7292 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–176; RM–9141]

Radio Broadcasting Services; Roscoe, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of West Wind Broadcasting, allots Channel 287A at Roscoe, South Dakota, as the community's first local aural transmission service. *See* 62 FR 44435, August 21, 1997. Channel 287A can be allotted to Roscoe in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 287A at Roscoe are North Latitude 45–27–00 and West Longitude 99–20–12 . With this action, this proceeding is terminated.

EFFECTIVE DATE: April 27, 1998. A filing window for Channel 287A at Roscoe, South Dakota, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–176, adopted March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Roscoe, Channel 287A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7324 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–238; RM–9201]

Radio Broadcasting Services; Guymon, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Clear Channel Radio Licenses, Inc., allots Channel 258C1 to Guymon, OK, as the community's second local FM service. *See* 62 FR 66324, December 18, 1997. Channel 258C1 can be allotted to Guymon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–41–00 North Latitude; 101–29–06 West Longitude. With this action, this proceeding is terminated.

DATES: Effective April 27, 1998. A filing window for Channel 258C1 at Guymon, OK, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, 202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–238, adopted March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 258C1 at Guymon.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7323 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–175; RM–9138]

Radio Broadcasting Services; Presho, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of West Wind Broadcasting, allots Channel 262A at Presho, South Dakota, as the community's first local aural transmission service. *See* 62 FR 44932, August 25, 1997. Channel 262A can be allotted to Presho in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 262A at Presho are North Latitude 43–54–24 and West Longitude 100–03–36. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 27, 1998. A filing window for Channel 262A at Presho, South Dakota, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–175, adopted March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Presho, Channel 262A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7322 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–218; RM–9172]

Radio Broadcasting Services; Colchester, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Gary G. Kidd, allots Channel 244A at Colchester, Illinois, as the community's second local FM transmission service. *See* 62 FR 58936, October 31, 1997. Channel 244A can be allotted to Colchester in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.2 kilometers (8.2 miles) southwest to avoid a short-spacing to the construction permit site of Station KRNQ(FM), Channel 242C2, Keokuk, Iowa. The coordinates for Channel 244A at Colchester are North Latitude 40–21–48 and West Longitude 90–55–41. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 27, 1998. A filing window for Channel 244A at Colchester, Illinois, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–218, adopted March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 244A at Colchester.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7321 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 87–268; FCC 98–24]

Advanced Television Systems and Their Impact on the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an MO&O addressing 231 petitions for reconsideration of the Sixth R&O. This MO&O generally affirms the DTV channel allotments and other technical rules and procedures with certain minor modifications, including changes in its DTV allotment standards, operating rules and specific DTV allotments. This action will facilitate the conversion of over-the-air television broadcasting from the existing analog system to the new digital system.

DATES: Effective April 20, 1998, except for § 73.622(f)(4)(iv) which contains new or modified paperwork requirements and which will become effective May 19, 1998, following approval by the Office of Management and Budget,

unless timely notice of withdrawal is published in the **Federal Register.**

ADDRESSES: Comments on the proposed and/or modified information collections described herein are to be filed with the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, DC 20554. A copy of any such comments should also be submitted to Judy Boley, at the above address or via the Internet at jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Bruce Franca (202–418–2470), Alan Stillwell (202–418–2470) or Robert Eckert (202–428–2470), Office of Engineering and Technology. For additional information regarding information collections contained in the *Memorandum Opinion and Order,* contact Judy Boley (202–418–0214).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* (*MO&O*) in MM Docket No. 87–268, FCC 98–24, adopted February 17, 1998, and released February 23, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, D.C. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036 (202–857–3800).

Summary of the Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order

1. In the *MO&O,* the Commission has affirmed, with some minor modifications, its April 3, 1997, *Sixth Report and Order* in the DTV proceeding that assigns each broadcaster a new channel for DTV operations and allows TV broadcasters to "replicate" their existing NTSC service in converting to DTV. This action is in response to 231 petitions for reconsideration of the *Sixth Report and Order.*

2. The Commission made a number of modifications to its allotment policies and rules and to the DTV Table of Allotments in this action. It first adopted a core spectrum of channels 2–51 for DTV. This new core will eliminate industry uncertainty about the status of VHF channels 2–6. The new core will also provide more flexibility to address new technical information on DTV adjacent channel performance. In this regard, the new core will ensure that there is sufficient spectrum to eliminate DTV-to-DTV adjacent channel interference situations. The new core will also provide more broadcasters with an in-core DTV channel and eliminate the need for second moves by many stations. In addition, the new core will help ease the impact of the transition on low power TV stations, which are small businesses that provided diverse programming and services to their communities. Further, it will promote diversity in services and television station ownership by increasing the opportunities for new entrants.

3. The Commission also adopted new measures to permit DTV stations to operate with increased power or take other measures to improve their coverage. DTV stations will be permitted to increase power, or modify their antenna height or transmitter location, where the requested change would not result in more than a *de minimis,* i.e., 2 percent, increase in interference to the population served by another station, unless the station already experienced interference to 10 percent or more of its population, or the change would result in the effected station receiving interference in excess of 10 percent of its population. In addition, UHF stations will be allowed to increase power within their service area up to 1000 kW by using antenna beam-tilting techniques, provided they meet the above standard for permissible interference.

4. The Commission next took steps to eliminate adjacent channel interference resulting from operation on DTV allotments. In particular, it changed 42 allotments to eliminate DTV-to-DTV adjacent channel situations where interference would occur, tightened the "emissions mask" that limits out-of-band emissions from DTV operation and provided flexibility in its administrative processes to encourage adjacent channel co-locations.

5. The Commission affirmed its decision to retain "secondary status" for low power television (LPTV) stations, but took additional steps to assist low power stations that may be displaced or otherwise impacted by DTV operations. In this regard, the Commission said it would consider LPTV or TV Translator stations eligible to seek a new channel without being subject to competing applications where they faced predicted interference either to or from any allotted full service DTV facility, and that such requests will be given priority over other low power applications. The Commission also used software developed by the Community Broadcasters Association to change 66 allotments in the DTV Table in order to avoid using a channel now used by one or more low power stations. These changes provide the affected full power broadcasters with a new DTV channel that is equivalent in service replication and interference. In addition, the Commission modified its technical rules to improve sharing between low power and full power stations.

6. The Commission said that at the end of the DTV transition period, it would, on its own motion, consider establishing additional DTV noncommercial reserved allotments for existing noncommercial reserved NTSC allotments that cannot be replaced at this time.

7. The Commission modified its rules to allow television licensees and permittees to negotiate exchanges of DTV allotments on an intra-community, intra-market or inter-market basis where such changes do not cause interference to other stations or where all affected stations agree to accept any additional interference that may result. The Commission also recognized broadcasters' interest in the establishment of an industry committee system for coordination of DTV allotment changes. It therefore stated that it intends to initiate a rule making proceeding in the near future to seek comment on whether it should adopt such a committee system and, if so, procedures for its operation.

8. It further made a number of minor adjustments to its technical methodologies and standards for DTV allotments and the operation of stations on those allotments.

9. Finally, the Commission modified 29 DTV allotments in response to individual station requests. Overall, with these changes and the changes to avoid adjacent channel interference and conflicts with low power stations indicated above, the Commission modified a total of 143 DTV allotments. The revised DTV Table and associated technical parameters for station operation are available for inspection on the internet at *www.fcc.gov* and at the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554 during regular business hours.

Procedural Matters

10. *Paperwork Reduction Act of 1995 Analysis.* This *Memorandum Opinion and Order* contains either a new or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this order, as required by the Paperwork Reduction Act of 1995, Public Law104–

13. Public and agency comments are due May 19, 1998. Comments should address: (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 estimates; (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. Written comments must be submitted on the proposed and/or modified information collections on or before May 19, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov. For additional information regarding information collections contained in the *Memorandum Opinion and Order* contact Judy Boley at 202–418–0214.

11. *Supplemental Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis was incorporated into the *Sixth Further Notice of Proposed Rule Making* in this proceeding,[2] and a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the subsequent *Sixth Report and Order*.[3] As described below, one Petition for Reconsideration of the *Sixth Report and Order* (62 FR 26684; May 14, 1997) raised an issue concerning the FRFA. The present *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* addresses that reconsideration petition, among others. This associated Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) also addresses that petition, and conforms to the RFA.[4]

A. Need for, and Objectives of, this Memorandum Opinion and Order

12. In the *Sixth Report and Order*, the Commission adopted policies, procedures and technical criteria for use in conjunction with broadcast digital television (DTV), adopted a DTV Table of Allotments, adopted a plan for the recovery of a portion of the spectrum currently allocated to TV broadcasting, and provided procedures for assigning DTV frequencies. In the present *Memorandum Opinion and Order*, the Commission addresses petitions for reconsideration of the *Sixth Report and Order*. Throughout this proceeding, we have sought to allot DTV channels in a manner that is most efficient for broadcasters and the public and least disruptive to broadcast television service during the period of transition from NTSC to DTV service. We wish to ensure that the spectrum is used efficiently and effectively through reliance on market forces, and ensure that the introduction of digital TV fully serves the public interest.

B. Summary of Significant Issues Raised by the Public In Response to the FRFA

13. One petition for reconsideration, that of Skinner Broadcasting, Inc. (Skinner),[5] raises various issues, one of which is in direct response to the FRFA contained in the *Sixth Report and Order*. Skinner states that the Commission conceded in the *Sixth Report and Order* that, as a result of its actions, many low power television (LPTV) and TV translator stations would be displaced. Nonetheless, argues Skinner, the Commission "made no proffer . . . of alternative digital channel allotment configurations" that might have reduced the number of such displacements.[6] Skinner notes that an *ex parte* presentation by Community Broadcasters Association (CBA) offered an alternative allotment table, and that alternative was not discussed in the *Sixth Report and Order* or its FRFA. Skinner states that the Commission was apparently satisfied that the interests of LPTV and TV translator stations deserved no further consideration, given that such operations are "secondary" under current licensing.[7] Skinner argues that "alternatives obviously exist[ed]" that might have avoided subsequent displacements, and requests that the Commission reconsider the allotment table adopted in the *Sixth Report and Order*.[8]

14. We disagree with the contention that the Commission failed to consider alternatives that could have further assisted LPTV stations, TV translator stations, and other possible small entities in the DTV transition process. As quoted by Skinner in a footnote in its reconsideration petition,[9] the previous FRFA specifically described the displacement issue, with reference to the text of the *Sixth Report and Order*, and noted that "[o]ne alternative to this approach would have been to permit existing LPTV and TV translator stations to remain on their incumbent channels; this approach was not chosen because it would have resulted in providing allotments for fewer than all full service licensees." Elsewhere in the FRFA, we stated that, in addition to the "secondary status" reason for the Commission's allotment decision, the decision was consistent with "the primary allotment objective . . . to develop a DTV Table of Allotments that provides a channel for all eligible broadcasters, consistent with the provisions of the 1996 Telecommunications Act regarding initial eligibility for DTV licenses."[10] Discussion at that point cross-referenced the lengthier discussions in the primary text of the *Sixth Report and Order* concerning LPTV and TV translator stations and the "secondary status" issue, including reference to case law.[11] In addition, both the Sixth Report and Order and its FRFA discussed alternative approaches,[12] although not the specific approach of CBA cited by Skinner. Last, as noted by Skinner, the FRFA discussed various policies adopted to mitigate the effects of displacement.

15. We note that the CBA *ex parte* presentation cited by Skinner was dated March 26, 1997, which would have been eight days prior to adoption of the *Sixth Report and Order*. In a proceeding as lengthy as this, that timing was unfortunate, but the Commission did consider other CBA positions submitted earlier. Also, we note that CBA has currently submitted another allocation proposal, which, in the present *Memorandum Opinion and Order*, we have adopted in part. This other proposal is also discussed later in this Supplemental FRFA, in Section E ("Steps Taken to Minimize Significant Economic Burdens on Small Entities, and Significant Alternatives Considered").

[1] *See* 5 U.S.C. §§ 603, 604. The RFA, *see* 5 U.S.C. § 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 1045–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 11 FCC Rcd 10968, 11060 (1996).

[3] 12 FCC Rcd 14588, 14768 (1997).

[4] *See* 5 U.S.C. § 604.

[5] Skinner Broadcasting, Inc., Petition for Reconsideration, filed June 13, 1997. The Skinner petition is also discussed in this context in the present *Memorandum Opinion and Order*, in Section III(F).

[6] *Id.* at 7.

[7] *Id.* at 7–8.

[8] *Id.* at 8.

[9] *Id.* at 8 n.5.

[10] FRFA, 12 FCC Rcd at 14769.

[11] *Id.* at 14769 n.8 (citing paragraphs 11 and 113–147 of the *Sixth Report and Order*).

[12] *Sixth Report and Order*, 12 FCC Rcd at 14593–95; FRFA, 12 FCC Rcd at 14768–69.

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

16. As noted, a Final Regulatory Flexibility Analysis was incorporated into the *Sixth Report and Order*.[13] In that analysis, we described in detail the small entities that might be significantly affected by the rules adopted in the *Sixth Report and Order*.[14] Those entities included full service television stations, TV translator facilities, and LPTV stations. In addition, while we did not believe that television equipment manufacturers, manufacturers of television equipment used by consumers, and computer manufacturers constituted regulated entities for the purpose of that previous FRFA, we included them in the analysis of the FRFA because we thought that some rule changes and textual discussions in the *Sixth Report and Order* might ultimately have some affect on equipment compliance. In the present *Memorandum Opinion and Order* we address reconsideration petitions filed in response to the *Sixth Report and Order*. In this present Supplemental FRFA, we hereby incorporate by reference the description and estimate of the number of small entities from the previous FRFA in this proceeding.[15]

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

17. The rules adopted will result in one change in current reporting, Recordkeeping, or other compliance requirements: an application will be required to be filed for those entities wishing to increase station power within their service area through the use of beam tilting techniques.

E. Steps Taken to Minimize Significant Economic Burdens on Small Entities, and Significant Alternatives Considered

18. As noted in the previous FRFA, the DTV Table of Allotments will affect all of the commercial and noncommercial broadcast television stations eligible for a DTV channel in the transition period and a significant number of the LPTV and TV translator stations.[16] LPTV and TV translator stations, especially, are likely to be small entities. It is expected that the allotments will constitute the population of channels on which broadcasters will operate DTV service in the future. Affected stations will need to modify or obtain new transmission facilities and, to a varying extent, production equipment to operate on the new DTV channels. The actual cost of equipment is expected to vary in accordance with the degree to which the station becomes involved in DTV programming and origination.

19. As described in the present *Memorandum Opinion and Order*,[17] we continue to believe that the general principles and priorities used for the development of the DTV allotments/assignments remain appropriate. We reaffirm our approach to provide all eligible broadcasters with the temporary use of a second channel that, to the extent possible, will allow them to replicate the service areas of their existing NTSC operations. We continue to find that such an approach will promote the orderly transition of DTV by broadcasters and foster the provision of service to the public. Our actions represent a balancing of various factors.

20. In this regard, certain petitioners have suggested that certain "targeted and limited adjustments" to the DTV Table of Allotments are needed. Considering this and other information, we have determined to make a number of limited changes in the Table in order to prevent the loss of DTV service and to minimize the impact of DTV operations on existing NTSC service.[18] In this regard, for example, we have reviewed certain DTV-to-DTV adjacent channel situations and are modifying the DTV allotments to eliminate these situations in a number of instances. Specifically, we are making changes to 42 DTV allotments, to resolve cases where use of adjacent channels is no longer acceptable and would impact our service replication and interference goals. We also are making a number of modifications to our technical rules for DTV operation to further reduce the potential for interference between DTV stations that operate on adjacent channels in the same area. In addition, we are making 29 allotment changes to address requests by individual petitioners, for a total of 71 changes.

21. A number of parties representing low power interests argue that the plan for early recovery of channels 60–69 will adversely impact LPTV and TV translator stations.[19] Again balancing various interests, we have affirmed our basic plan to recover a portion of the existing television spectrum and our earlier decision to permit low power stations to continue to operate on channels 60–69 on a secondary basis through the transition process.[20] As set forth in the *Report and Order* in ET Docket No. 97–157, released January 6, 1998,[21] we have reallocated channels 60–69 for public safety and a broad range of other services, including broadcasting, in accordance with the requirements of the Balanced Budget Act of 1997. However, in that decision, we stated that low power stations will be allowed to operate on these channels, provided no interference is caused to primary users. We also encouraged, wherever possible, private negotiations between low power and new service providers to resolve interference problems in a manner which is acceptable and beneficial to both parties.

22. A number of petitioners have requested that we reconsider our decision to defer the determination of the final core spectrum, pending information on the suitability of channels 2–6 for DTV service. Some also request that we expand or amend the DTV core spectrum to include channels 2–6. In reconsidering this matter, we now believe that the most desirable course of action is to expand the core to include all channels 2–51.[22] While we recognize that this change will reduce the amount of spectrum to be recovered by 30 MHz, we believe that the benefits of expanding the core spectrum outweigh the need for recovery of either channels 2–6 or 47–51. In particular, the change will eliminate certain planning uncertainties, reduce the number of stations required to make second channel moves, increase the availability of channels and thereby promote competition and diversity, and help eliminate DTV-to-DTV adjacent channel interference situations. Importantly for small entities, this expansion of the core will reduce the impact of the transition on low power operations. In this regard, channels 2–6 and 47–51 now support a significant number of LPTV and TV translator stations. The low VHF channels, for example, have some of the highest concentration of low power stations. Expanding the core to include channels 2–6 may eliminate the eventual displacement of most of these stations. In addition, expanding the core will also provide low power stations with more channels and greater

[13] 12 FCC Red 14588, 14768(1997).

[14] *See* Section C of the previous Final Regulatory Flexibility analysis, "Description and Estimate of the Number of Small Entities to Which the Rules Will Apply," at 12 FCC Red at 14770–76.

[15] *Id.*

[16] 12 FCC Red at 14776.

[17] *Memorandum Opinion and Order* at Sections III (A) and (F).

[18] *Id.* at Section III(E)

[19] *Id.* at Section III(A).

[20] *Id.*

[21] Document No. FCC 97–421.

[22] *Memorandum Opinion and Order* at Section III(B).

opportunities to start new stations and relocate existing stations.

23. Some licensees, including noncommercial stations, express concern regarding the additional burden that might be placed on stations that are provided transitional DTV channels outside the core spectrum. These parties generally state that because they will have relocate their DTV operations to channels within the core spectrum they will have to endure additional costs and be placed at a disadvantage with respect to their competitors. They state that the necessity of a "double move" (building facilities twice), if it comes to that, represents disparate treatment of similarly situated broadcasters. Recognizing these concerns, and as explained more fully in the *Memorandum Opinion and Order*,[23] we have attempted to minimize to the extent possible the number of out-of-core DTV allotments in developing the DTV Table. By expanding the core of channels, there will be only 189 stations with out-of-core DTV allotments. All but 12 of these stations have existing NTSC channels within the core spectrum to which they may relocate at the end of the transition period. In addition, to the extent that in-core channels become available during the transition, we will attempt to further reduce the number of out-of-core allotments in any future amendments to the Table of Allotments. We have not, however, determined to modify our "no interference criteria," because most out-of-core allotments occur in the most congested areas of the country where we have already permitted some interference in order to achieve our goal of full accommodation and to maximize the number of in-core allotments. We also do not find it practicable to require stations to choose now the channel they intend to keep following the transition. Regarding the special burdens perhaps placed on certain noncommercial public television licensees because of their reliance on federal, state and private contributions to raise funds, we are initiating a separate proceeding to seek comment on the ability of the licensees to use the DTV channel capacity for commercial purposes. In the interim, we are not adopting special provisions or priorities for PTV stations, but will consider their concerns on a case-by-case basis. Also on a case-by-case basis, we will consider requests by stations with both NTSC and DTV channels outside the core area to defer the construction of their DTV station beyond the current construction deadline, or to convert their operations directly to DTV at the end of the transition, where such stations can show that implementing DTV in accordance with our schedule will cause undue hardship to their operations.

24. In the *Sixth Report and Order*,[24] we allotted DTV channels using a "service replication/maximization" concept that was suggested by a variety of broadcast industry interests and representatives. Under this approach,, we specified for each DTV allotment a maximum permissible effective radiated power (ERP) and antenna height above average terrain (HAAT) that will, to the extent possible, provide for replication of the station's existing Grade B service area. Our actions were intended in part to reduce the disparity between existing UHF and VHF stations. We also provided rules and procedures for stations to "maximize," or increase, their service areas provided they do not cause interference to other stations. In response, some petitioners have raised concerns regarding difficulties that UHF stations may face under the service replication plan in providing DTV service within their core market or Grade A service areas and in competing with the higher-powered DTV service of existing VHF stations. Accordingly, to allow UHF stations to better serve their core market areas and to reduce the disparities that are inherent in the current service replication process, we have modified our rules to provide additional opportunities for stations to maximize their DTV coverage and service through increasing their power and/or making other changes in their facilities.[25] We are replacing the current standard that specifies that changes in DTV operations may not cause any new interference with a new *de minimis* standard along the lines suggested by certain petitioners. Under this new *de minimis* standard, stations will be permitted to increase power or make other changes in their operation, such as modification of their antenna height or transmitter location, where the requested change would not result in more than a 2 percent increase in interference to the population served by another station; provided, however, that no new interference may be caused to any station that already experiences interference to 10 percent or more of its population or that would result in a station receiving interference in excess of 10 percent of its population. In addition, we have adopted an approach that will allow stations to increase their power within their existing DTV service areas using beam tilting techniques.

25. In the *Memorandum Opinion and Order*, we have made a series of decisions concerning LPTV and TV translator stations, which stations, as we noted earlier, are especially likely to be small entities.[26] As we have stated before, we wish to ensure the viability and survivability of LPTV and TV translator stations in a digital world. At this juncture, some petitioners again raise displacement concerns, and one petitioner noted earlier in this present Supplemental FRFA, Community Broadcasters Association (CBA), offers an alternative allotment table. CBA has also proposed that we recognize a presumption favoring potentially displaced LPTV stations that file a request to amend the DTV Table of Allotments. Recognizing these concerns, we have utilized the software algorithm and approach recommended by CBA, and have been able to identify a limited number of cases in certain areas of the country where it is possible to avoid using a channel occupied by low power stations by providing full service stations with an equivalent alternative DTV channel.[27] In particular, we have found 66 instances in which a channel change can be made that would not affect the operations of full service stations, and we are therefore modifying the Table to reflect these 66 DTV channel changes. We are not granting requests by low power licensees to change the channels of individual full service DTV allotments in order to avoid displacement of low power stations, because to do so would adversely affect the ability of full service stations to replicate their existing service and would also lead to increased interference. We will, however, consider changing DTV allotments to protect low power stations where the affected full service station agrees to the change. In this regard, we encourage low power and full service licensees to work together to develop modifications to the DTV Table that will preserve the service of low power stations.

26. In response to petitions requesting clarification of our displacement relief policies, and to assist in making such relief available in an equitable manner to all affected low power stations, we will consider an LPTV or TV translator station eligible for such relief where interference is predicted either to or from any allotted DTV facility.[28] Stations eligible under this criterion may apply for relief as of the effective

[23] *Id.* at Section III(C).

[24] *Sixth Report and Order*, 12 FCC Rcd at 14605–07; FRFA, 12 FCC Rcd at 1478.

[25] *Memorandum Opinion and Order* at Section III(D).

[26] *Id.* at Section III(F).

[27] *Id.* at Section III(F)(1).

[28] *Id.* at Section III(F)(2).

date of this Memorandum Opinion and Order. All LPTV and TV translator licensees on channels 60 to 69 are also eligible to file such displacement relief applications at any time. In addition, and as suggested by CBA, we are affording displacement relief applications priority over new station applications or other requests for modification by low power stations, including any such applications and requests that may be pending at the time the displacement relief application is filed. We will also permit displaced stations to seek modifications other than channel changes, including, where necessary, increases in effective radiated power up to the maximum allowed values. We are not, however, providing any additional priority for urban LPTV stations or PTV low power and TV translator stations in the displacement relief process, as requested by some petitioners. We believe that treating all potentially displaced low power stations in a fair and equitable manner is the most appropriate course of action.

27. In this regard, we wish to note: low power licensees are advised that the channels considered as candidates for assignment to land mobile services in eight major markets under GEN Docket No. 85–172 are available at this time for low power use and may be requested in displacement relief applications.

28. Some petitioners request that we eliminate or modify the new DTV protection requirement in Section 73.623 of our rules, which requires that co-channel NTSC operations provide an additional 19 dB of protection to DTV service at the edge of a DTV station's noise-limited service area. It is argued that the rule is not needed to avoid interference and will greatly complicate the task of finding new channels for displaced LPTV stations. They also request that we require DTV stations that are co-located with a lower adjacent channel LPTV station to match the frequency offset of the LPTV station as a method of reducing interference, and require the DTV station in such cases to cooperate in making the necessary arrangements for maintaining an offset between the two signals, including cost arrangements. We have rejected these requests, because the protection standard is required to ensure protection of DTV service.[29] We are, however, amending the low power television rules to specify the D/U values as a function of S/N values to provide a transition from 21 dB to 2 dB D/U for NTSC-into-DTV, and from 15 dB to 23 dB D/U for DTV-into-DTV. These values are based on measurement data presented to our advisory committee. With regard to adjacent channel operation where a DTV station is immediately above an NTSC station, we agree that DTV stations that are co-located with a lower adjacent channel low power NTSC station should be required to cooperate and maintain the necessary offset to eliminate interference to the low power station. We note that the equipment necessary to lock to a common reference frequency is relatively inexpensive and should not be burdensome for a full power station. We believe that on balance the benefits of maintaining service from low power stations in such cases outweigh the relatively small incremental costs for full service stations. We therefore have amended the rules in this regard, which should benefit small entity stations.

29. Some petitioners have requested that low power stations be permitted to utilize digital operation immediately. While we recognize the desire of some low power operators to begin providing DTV service at the same time as full service stations, there are a number of issues in this context that still need to be addressed through a notice-and-comment rulemaking proceeding. We intend to initiate a separate proceeding on this, in the near future. As noted in the *Sixth Report and Order*,[30] for the time being we will consider requests by low power operators to operate DTV service on replacement channels on a case-by-case basis under our displacement relief policy.

30. Some petitioners request that we take steps to establish a permanent class of LPTV stations with primary allocation status. At this time, we are deferring consideration of this and similar issues. We will address these issues in a future action, when we address a similar petition for rulemaking submitted by CBA.[31]

31. Last, some petitioners request that we reconsider our previously stated intention to consider reimbursement for displaced low power stations in a separate proceeding. They argue that the issue of whether and how LPTV stations should be compensated is an integral part of the DTV allotment process and should not be deferred to a future proceeding. At this juncture, we do not believe that it is appropriate to require broadcasters to implement DTV and at the same time compensate secondary low power stations that are affected by this required implementation.[32] We also continue to believe that compensation with regard to reclaimed spectrum is best addressed in proceedings that specifically consider the reallocation of spectrum and rules for new services. We note that this is consistent with our recent decision in our *Report and Order* in the channel 60–69 reallocation proceeding. In that proceeding we stated, however, that we will consider whether there are other steps that may be of benefit to LPTV and TV translator stations as we develop service rules for the new commercial spectrum.

32. *Report to Congress*: The Commission will send a copy of the *Memorandum Opinion and Order*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Memorandum Opinion and Order*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

33. *Ordering Clauses*. In accordance with the actions described herein, it is ordered that part 73 of the Commission's rules is amended as set forth below. In addition, it is ordered that low power TV and TV translator stations eligible for displacement relief under the additional procedures adopted herein may apply for such relief at any time on or after the effective date of this *Memorandum Opinion and Order*. It is ordered that the rule amendments set forth herein shall be effective April 20, 1998. It is further ordered that the new or modified paperwork requirements contained in the new Section 73.622(f)(4)(iv) of the rules (which are subject to approval by the Office of Management and Budget) will become effective May 19, 1998, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise. This action is taken pursuant to authority contained in sections 4(i), 7, 301, 302, 303, 307 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157, 301, 302, 303, 307 and 336.

List of Subjects in 47 CFR Parts 73 and 74

Television.

[29] *Id.* at Section III(F)(3).

[30] 12 FCC Rcd at 14653 n.263.

[31] CBA Petition for Rule Making, submitted Sept. 30, 1997.

[32] *Memorandum Opinion and Order* at Section III(F)(6).

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

Parts 73 and 74 of title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.622 is amended by revising paragraphs (b), (c), (d), (e), (f), (g) and (h) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(b) *DTV Table of Allotments.*

ALABAMA

Community	Channel No.
Anniston	58
Bessemer	18c
Birmingham	30, 36, 50, 52, *53
Demopolis	*19
Dothan	21, 36
Dozier	*59
Florence	14, 20, *22
Gadsden	26, 45c
Homewood	28
Huntsville	*24, 32c, 41, 49c, 59
Louisville	*44c
Mobile	9, 20, 27, *41, 47
Montgomery	*14, 16, 46c, 51, 57
Mount Cheaha	*56
Opelika	31
Ozark	33
Selma	55
Troy	48
Tuscaloosa	34c
Tuskegee	24

ALASKA

Community	Channel No.
Anchorage	18, 20, 22, *24, *26, 28, 30, 32
Bethel	*3
Dillingham	*9
Fairbanks	18, 22, *24, 26, 28
Juneau	*6, 11
Ketchikan	*8, 13
North Pole	20
Sitka	2

ARIZONA

Community	Channel No.
Flagstaff	18, 22, 27, 32
Green Valley	47c
Kingman	19
Lake Havasu City.	32
Mesa	36
Phoenix	17, 20, 24, 26, *29, 31, 34c, 49, 56
Prescott	25
Sierra Vista	44
Tolleson	52c
Tucson	19c, 23, 25, *28c, *30, 32, 35, 42
Yuma	16, 41

ARKANSAS

Community	Channel No.
Arkadelphia	*46
El Dorado	27
Fayetteville	15, *45
Fort Smith	18, 21, 27
Hot Springs	14
Jonesboro	9c, *20c, 49c
Little Rock	12c, 22, 30, 32, 43c, *47
Mountain View	*35
Newark	*27
Pine Bluff	24, 39c
Rogers	50
Springdale	39

CALIFORNIA

Community	Channel No.
Anaheim	32
Arcata	22
Bakersfield	10, 25, 33, 55
Barstow	44
Calipatria	50
Ceres	*15c
Chico	36, 43
Clovis	44c
Concord	63c
Corona	39c
Cotati	*23c
El Centro	22, 48
Eureka	*11, 16, 17, 28
Fort Bragg	15
Fresno	7, 9, 14, 16, *40
Hanford	20
Huntington Beach.	*48
Los Angeles	31c, 35c, 36, *41c, 42, 43, 53c, *59c, 60, 65c, 66
Merced	38
Modesto	18
Monterey	31, 32
Novato	47
Oakland	56
Ontario	47c
Oxnard	24
Palm Springs	46, 52
Paradise	20
Porterville	48c
Rancho Palos Verdes.	51c
Redding	14, *18
Riverside	68
Sacramento	21c, 35c, 48, *53c, 55c, 61
Salinas	13, 43c
San Bernardino	*26, 38, 61c
San Diego	18, 19, 25, *30, 40c, 55
San Francisco	19, 24, 27c, 29, *30, *33c, 39c, 45c, 51, 57
San Jose	12c, 41c, 49c, *50, 52
San Luis Obispo	15, 34c
San Mateo	*59
Sanger	36
Santa Ana	23c
Santa Barbara	21, 27
Santa Maria	19
Santa Rosa	54
Stockton	25, 46, 62
Twentynine Palms.	23
Vallejo	34
Ventura	49
Visalia	28, *50c
Watsonville	*58

COLORADO

Community	Channel No.
Boulder	15c
Broomfield	*38
Castle Rock	46
Colorado Springs.	10, 22c, 24
Denver	16, 17, *18, 19, 32c, 34, 35, *40, 43, 51c
Durango	15
Fort Collins	21
Glenwood Springs.	23
Grand Junction	2, 7, 12c, 15, *17
Longmont	29
Montrose	13
Pueblo	*26, 42
Steamboat Springs.	10
Sterling	23

CONNECTICUT

Community	Channel No.
Bridgeport	42, *52c
Hartford	5, *32, 33, 46
New Britain	35
New Haven	6, 10, *39
New London	34
Norwich	*45
Waterbury	12

DELAWARE

Community	Channel No.
Seaford	*44
Wilmington	31, *55

DISTRICT OF COLUMBIA

Community	Channel No.
Washington	*27c, *33c, 34, 35, 36, 39, 48, 51c

FLORIDA

Community	Channel No.
Boca Raton	*44c
Bradenton	42
Cape Coral	35
Clearwater	21
Clermont	17
Cocoa	*30, 51
Daytona Beach	11, 49
Fort Lauderdale	52c
Fort Myers	15, *31c, 53
Fort Pierce	*38, 50
Fort Walton Beach.	25, 40, 49
Gainesville	16, *36
High Springs	28
Hollywood	47
Jacksonville	13c, 19, 32, 34, *38, 42, *44
Key West	3, 12
Lake Worth	36
Lakeland	19
Leesburg	40, *46c
Live Oak	48
Melbourne	20, 48
Miami	8c, 9, *18c, 19, *20, 22c, 24c, 26, 30, 32, 46c
Naples	41, 45
New Smyrna Beach.	*33
Ocala	*31
Orange Park	10
Orlando	14, 22, *23, 39, 41, 58
Palm Beach	49
Panama City	19, 29c, *38, 42
Panama City Beach.	47c
Pensacola	17, *31, 34c, 45c
Sarasota	52
St. Petersburg	24, 57, 59
Tallahassee	2, 22, *32
Tampa	7, 12, 29c, *34, 47, *54
Tequesta	16
Tice	33
Venice	25
West Palm Beach.	13c, *27, 28, 55

GEORGIA

Community	Channel No.
Albany	17, 30
Athens	*22, 48
Atlanta	10, 19, 20, *21, 25, 27, 39, *41, 43
Augusta	30, 31, 42, 51
Bainbridge	50c
Baxley	35c
Brunswick	24
Chatsworth	*33
Cochran	*7
Columbus	15, *23, 35, 47, 9
Cordele	51
Dalton	16
Dawson	*26c
Macon	16, 40, 45, 50
Monroe	44
Pelham	*20
Perry	32
Rome	51
Savannah	15, 23c, 39, *46
Thomasville	52

GEORGIA—Continued

Community	Channel No.
Toccoa	24
Valdosta	43
Waycross	*18
Wrens	*36

HAWAII

Community	Channel No.
Hilo	8, 18, *19, 21, 22, 23, *31, *39c
Honolulu	8, *18, 19, 22, 23, 27c, 31c, 33c, 35, *39c, 40, *43
Kailua Kona	25
Kaneohe	41
Lihue	*7c, *12, *28c, *45
Wailuku	16c, 20, 24, *28c, 29, *30, *34c, 36

IDAHO

Community	Channel No.
Boise	*21, 26, 28
Caldwell	10c
Coeur D'alene	*45
Filer	*18
Idaho Falls	9c, 36
Lewiston	32
Moscow	*35
Nampa	24, 44
Pocaello	*17, 23
Twin Falls	16, *22, 34

ILLINOIS

Community	Channel No.
Aurora	59
Bloomington	28
Carbondale	*40
Champaign	41, 48
Charleston	*50
Chicago	3c, 19c, *21c, 27c, 29, 31, 43c, 45c, *47, 52
Decatur	18c, 22
East St. Louis	47c
Freeport	41
Harrisburg	34
Jacksonville	*15c
Joliet	53
Lasalle	10
Macomb	*21
Marion	17
Moline	*23, 38
Mount Vernon	21
Olney	*19
Peoria	30, 39, 40, *46, 57
Quincy	32, *34, 54
Rock Island	58
Rockford	16c, 42, 54
Springfield	42, 44, 53
Urbana	26, *33

INDIANA

Community	Channel No.
Angola	12
Bloomington	*14, 27, 53, 56
Elkhart	58
Evansville	28, 45c, *54, 58, 59
Fort Wayne	4, 19, 24, 36, *40c
Gary	*17, 51c
Hammond	36
Indianapolis	9c, 16, *21c, 25, *44, 45, 46
Kokomo	54
Lafayette	11
Marion	32
Muncie	52
Richmond	39
Salem	51c
South Bend	30, *35c, 42, 48
Terre Haute	24, 36, 39c
Vincennes	*52

IOWA

Community	Channel No.
Ames	59
Burlington	41
Cedar Rapids	27, 47, 51, 52
Council Bluffs	*33c
Davenport	*34, 49, 56
Des Moines	16, 19, 26, 31, *50
Dubuque	43
Fort Dodge	*25
Iowa City	25, *45
Mason City	*18, 42
Ottumwa	14
Red Oak	*35
Sioux City	*28c, 30, 39, 41, 49
Waterloo	*35, 55

KANSAS

Community	Channel No.
Colby	17
Ensign	5
Fort Scott	40
Garden City	16, 18
Goodland	14
Great Bend	22
Hays	*16, 20
Hutchinson	19, *29, 35
Lakin	*23
Lawrence	36
Pittsburg	30
Salina	17
Topeka	*23, 28c, 44, 48
Wichita	21, 26, 31, 45

KENTUCKY

Community	Channel No.
Ashland	*26c, 44
Beattyville	7
Bowling Green	16, *18, 33, *48
Campbellsville	19
Covington	*24
Danville	4
Elizabethtown	*43
Harlan	51

KENTUCKY—Continued

Community	Channel No.
Hazard	12, *16
Lexington	22, 40, *42, 59
Louisville	8, *17, 26, *38, 47, 49, 55
Madisonville	20c, *42
Morehead	*15, 21
Murray	*36
Newport	29
Owensboro	30
Owenton	*44
Paducah	32, 41, 50c
Pikeville	*24
Somerset	*14

LOUISIANA

Community	Channel No.
Alexandria	*26c, 32c, 35
Baton Rouge	*25, 34c, 42, 45c, 46
Columbia	57
Lafayette	16c, *23, 28, 56
Lake Charles	8c,*20, 30c
Monroe	*19, 55
New Orleans	*11, 14, 15, 29, 30, *31, 40, 43, 50c
Shreveport	17, *25c, 28, 34c, 44
Slidell	24
West Monroe	36, 38

MAINE

Community	Channel No.
Augusta	*17
Bangor	14, 19, 25
Biddeford	*45
Calais	*15
Lewiston	28
Orono	*22
Poland Spring	46
Portland	4, 38, 44
Presque Isle	16, *20

MARYLAND

Community	Channel No.
Annapolis	*42
Baltimore	*29, 38, 40, 41, 46c, 52, 59
Frederick	*28
Hagerstown	16, *44, 55
Oakland	*54
Salisbury	21, 53, *56

MASSACHUSETTS

Community	Channel No.
Adams	36
Boston	*19, 20, 30, 31, 32, 39c, 42, *43
Cambridge	41
Lawrence	18
Marlborough	23
New Bedford	22, 49
Norwell	52
Springfield	11, 55, *58c
Vineyard Haven	40

MASSACHUSETTS—Continued

Community	Channel No.
Worcester	29c, *47

MICHIGAN

Community	Channel No.
Alpena	13, *57
Ann Arbor	33
Bad Axe	*15
Battle Creek	20, 44c
Bay City	22
Cadillac	40, 47, *58
Calumet	18
Cheboygan	14
Detroit	14, 21c, 41, *43, 44, 45, 58
East Lansing	*55c
Escanaba	48
Flint	16, 36, *52
Grand Rapids	7, *11, 19, 39
Iron Mountain	22
Jackson	34
Kalamazoo	2, *5, 45
Lansing	38, 51c, 59
Manistee	*17
Marquette	*33, 3
Mount Clemens	39c
Mount Pleasant	*56
Muskegon	24
Onondaga	57
Saginaw	30, 48
Sault Ste. Marie	49, 56
Traverse City	31, 50
University Center.	*18
Vanderbilt	59

MINNESOTA

Community	Channel No.
Alexandria	14, 24
Appleton	*31
Austin	*20, 33
Bemidji	*18
Brainerd	*28
Crookston	*16
Duluth	17, 33, *38, 43
Hibbing	36
Mankato	38
Minneapolis	21, 22, *26, 32, 35, *44
Redwood Falls	27
Rochester	36, 46
St. Cloud	40
St. Paul	*16, *34, 50
Thief River Falls	57
Walker	20
Worthington	*15

MISSISSIPPI

Community	Channel No.
Biloxi	*16, 39
Booneville	*55
Bude	*18c
Columbus	35
Greenville	17
Greenwood	*25, 54
Gulfport	48

MISSISSIPPI—Continued

Community	Channel No.
Hattiesburg	58
Holly Springs	41c
Jackson	*20, 21, 41c, 51, 52
Laurel	28
Meridian	26, 31c, *44, 49
Mississippi State	*38
Natchez	49c
Oxford	*36
Tupelo	57
West Point	16

MISSOURI

Community	Channel No.
Cape Girardeau	22, 57
Columbia	22, 36
Hannibal	29
Jefferson City	12, 20
Joplin	*25, 43, 46
Kansas City	14, *18, 24, 31, 34, 42c, 47, 51c
Kirksville	33
Poplar Bluff	18
Sedalia	15
Springfield	19, *23, 28c, 44, 52
St. Joseph	21, 53
St. Louis	14, 26, 31c, 35, *39, 43, 56

MONTANA

Community	Channel No.
Billings	11, 17, 18
Bozeman	16, *20
Butte	2, 15, 19c
Glendive	15
Great Falls	39, 44, 45
Hardin	22
Helena	14, 29
Kalispell	38
Miles City	13
Missoula	*27, 35, 36, 40

NEBRASKA

Community	Channel No.
Albion	23
Alliance	*24
Bassett	*15
Grand Island	19, 32
Hastings	*14, 21
Hayes Center	18
Kearney	36
Lexington	*26
Lincoln	25, 31, *40
McCook	12
Merriman	*17
Norfolk	*16
North Platte	*16, 22
Omaha	*17, 20, 22, 38, 43c, 45
Scottsbluff	20, 29
Superior	34

NEVADA

Community	Channel No.
Elko	8
Henderson	24
Las Vegas	2, 7, *11c, 16c, 17, 22c, 29
Paradise	40c
Reno	*15, 22c, 23, 26, 32, 34, 44
Winnemucca	12

NEW HAMPSHIRE

Community	Channel No.
Berlin	*15
Concord	33
Derry	35
Durham	*57
Keene	*49c
Littleton	*48
Manchester	59c
Merrimack	34

NEW JERSEY

Community	Channel No.
Atlantic City	46, 49
Burlington	27
Camden	*22
Linden	36
Montclair	*51c
New Brunswick	*18c
Newark	53c, 61
Newton	8c
Paterson	40
Secaucus	38
Trenton	*43
Vineland	66c
West Milford	*29
Wildwood	36

NEW MEXICO

Community	Channel No.
Albuquerque	16, *17, 21, 24c, *25, 26, 42c, 51c
Carlsbad	19
Clovis	20
Farmington	8, 17
Hobbs	16
Las Cruces	*23c, 36
Portales	*32
Roswell	28c, 35, 41
Santa Fe	10, 27, 29
Silver City	12

NEW YORK

Community	Channel No.
Albany	4, 15, 26
Amsterdam	50
Batavia	53
Binghamton	4, 7, 8, *42c
Buffalo	14, *32, 33, 34, 38, 39, *43
Carthage	35
Corning	50
Elmira	2, 55
Garden City	*22c

NEW YORK—Continued

Community	Channel No.
Jamestown	27c
Kingston	21
New York	*24, 28, 30, 33, 44, 45, 56c
North Pole	14
Norwood	*23
Plattsburgh	*38
Poughkeepsie	27
Riverhead	57
Rochester	*16, 28, 45, 58, 59
Schenectady	*34, 39, 43
Smithtown	23
Springville	46
Syracuse	17, 19c, *25c, 44c, 47, 54
Utica	27, 29, 30
Watertown	21c, *41

NORTH CAROLINA

Community	Channel No.
Asheville	*25, 45, 56, 57
Belmont	47c
Burlington	14
Chapel Hill	*59
Charlotte	22, 23, *24, 27, 34
Columbia	*20
Concord	*44
Durham	27, 52
Fayetteville	36, 38
Goldsboro	55
Greensboro	33, 43, 51
Greenville	10c, 21, *23
Hickory	40
High Point	35
Jacksonville	34, *44
Kannapolis	50
Lexington	19
Linville	*54
Lumberton	*25
Morehead City	24
New Bern	48
Raleigh	49, 53, 57
Roanoke Rapids	*39
Rocky Mount	15
Washington	32
Wilmington	*29, 30, 46, 54
Wilson	42
Winston-Salem	29, 31, *32

NORTH DAKOTA

Community	Channel No.
Bismarck	16, *22, 23, 31
Devils Lake	*25, 59
Dickinson	18, 19, *20
Ellendale	*20c
Fargo	19, 21, *23, 58
Grand Forks	*56
Jamestown	14
Minot	15c, 45, *57, 58
Pembina	15
Valley City	38
Williston	14, *51, 52

OHIO

Community	Channel No.
Akron	30, *50c, 59

OHIO—Continued

Community	Channel No.
Alliance	*46c
Athens	*27
Bowling Green	*56
Cambridge	*35
Canton	39, 47
Chillicothe	46
Cincinnati	10c, 31, 33, *34, 35
Cleveland	2, 15, *26c, 31, 34
Columbus	13, 14, 21, 36, *38
Dayton	30, 41, 50, 51, *58
Lima	20, 47
Lorain	28
Mansfield	12
Newark	24
Oxford	*28
Portsmouth	17, *43c
Sandusky	42c
Shaker Heights	10
Springfield	18
Steubenville	57
Toledo	5, 17, 19c, *29, 46, 49c
Youngstown	20c, 36, 41
Zanesville	40

OKLAHOMA

Community	Channel No.
Ada	26
Bartlesville	15
Cheyenne	*8
Claremore	*36c
Enid	18
Eufaula	*31
Lawton	23
Oklahoma City	15c, 16, 24, 27, *32, 33, 39, 42, 50, 51
Okmulgee	28
Shawnee	29
Tulsa	22, *38, 42c, 48c, 49, 55, 56, 58

OREGON

Community	Channel No.
Bend	*11, 18
Coos Bay	21, 22
Corvallis	*39
Eugene	14, 17c, 25, *29c, 31
Klamath Falls	29, *33, 40
La Grande	*5
Medford	15, 27c, 35, 38, *42
Pendleton	8
Portland	*27, 30, 40, 43, 45, 6
Roseburg	18, 19, 45
Salem	20, 33c

PENNSYLVANIA

Community	Channel No.
Allentown	46, *62c
Altoona	24c, 32, 46
Bethlehem	59c
Clearfield	*15
Erie	16, 22, *50, 52, 58
Greensburg	50
Harrisburg	4, *36, 57

PENNSYLVANIA—Continued

Community	Channel No.
Hazleton	9
Johnstown	29, 30, 34
Lancaster	23, 58
Philadelphia	26, 32, *34, 42, 54, 64c, 67
Pittsburgh	25c, *26c, *38, 42, 43, 48, 51
Reading	25
Red Lion	30
Scranton	13, 31, 32, *41, 49
Wilkes-Barre	11
Williamsport	29
York	47

RHODE ISLAND

Community	Channel No.
Block Island	17c
Providence	13c, *21, 51, 54c

SOUTH CAROLINA

Community	Channel No.
Allendale	*33
Anderson	14
Beaufort	*44
Charleston	35, 40, *49, 52, 53, 59
Columbia	8, 17, *32, 41, 48
Conway	*58
Florence	16c, 20, *45, 56
Greenville	*9, 35, 59
Greenwood	*18
Hardeeville	27
Myrtle Beach	18
Rock Hill	15, 39
Spartanburg	43, 53
Sumter	*28c, 38

SOUTH DAKOTA

Community	Channel No.
Aberdeen	*17c, 28
Brookings	*18
Eagle Butte	*25
Florence	25
Huron	22
Lead	29, 30
Lowry	*15
Martin	*23
Mitchell	26
Pierre	19, *21
Rapid City	16c, 18, 22, *26
Reliance	14
Sioux Falls	7, *24c, 29, 32, 40, 47c
Vermillion	*34

TENNESSEE

Community	Channel No.
Chattanooga	*29, 35, 40, 47, 55
Cleveland	42
Cookeville	36, *52
Crossville	50
Greeneville	38
Hendersonville	51c

TENNESSEE—Continued

Community	Channel No.
Jackson	39, 43
Jellico	23
Johnson City	58
Kingsport	27
Knoxville	*17, 26, 30, 31, 34
Lebanon	44
Lexington	*47
Memphis	25c, 28, *29c, 31c, 51c, 52, 53
Murfreesboro	38
Nashville	10, 15, 21, 23, 27, *46, 56
Sneedville	*41

TEXAS

Community	Channel No.
Abilene	24, 29
Alvin	36
Amarillo	9, 15c, 19, *21, 23
Arlington	42
Austin	21, *22, 33, 43c, 49, 56
Baytown	41
Beaumont	21, *33, 50
Belton	47c
Big Spring	33
Brownsville	24c
Bryan	29c, 59
College Station	*12
Conroe	5, 42
Corpus Christi	18, *23, 27, 47, 50
Dallas	9c, *14, 32, 35, 36, 40c, 45
Decatur	30c
Del Rio	28
Denton	*43
Eagle Pass	18
El Paso	15c, 16, 17, 18, 25, *30, *39c, 51
Fort Worth	18, 19, 41, 51
Galveston	*23c, 47
Garland	24c
Greenville	46
Harlingen	31, *34, 38
Houston	*9c, 19, *24, 27c, 31, 32, 35, 38, 44c
Irving	48
Jacksonville	22
Katy	52c
Kerrville	32
Killeen	23
Lake Dallas	54
Laredo	14, 15, 19
Llano	27
Longview	52c
Lubbock	25, 27, 35c, 38, *39, 43
Lufkin	43
McAllen	46
Midland	26
Nacogdoches	18
Odessa	15, *22, 23, 31, 43c
Port Arthur	40
Rio Grande City	20
Rosenberg	46c
San Angelo	11, 16, 19
San Antonio	*16, *20, 30c, 38, 39, 48, 55, 58
Sherman	20
Snyder	10
Sweetwater	20
Temple	50
Texarkana	15

TEXAS—Continued

Community	Channel No.
Tyler	38
Victoria	15, 34
Waco	*20, 26c, 53, 57
Weslaco	13
Wichita Falls	15, 22, 28

UTAH

Community	Channel No.
Cedar City	14
Ogden	29, *34
Provo	17c, *39
Salt Lake City	27, 28, 35, 38, 40, *42
St. George	9

VERMONT

Community	Channel No.
Burlington	16, *32, 43, 53
Hartford	25
Rutland	*56
St. Johnsbury	*18
Windsor	*24

VIRGINIA

Community	Channel No.
Arlington	15c
Ashland	47
Bristol	28
Charlottesville	*14, 32
Danville	41
Fairfax	*57c
Front Royal	*21
Goldvein	*30
Grundy	49
Hampton	41
Hampton-Norfolk.	*16c
Harrisonburg	49
Lynchburg	20, 56
Manassas	43c
Marion	*42
Norfolk	38, 46, 58
Norton	*32
Petersburg	22c
Portsmouth	19, 31
Richmond	*24c, 25, 26, *44, 54
Roanoke	*3, 17, 18, 30, 36
Staunton	*11
Virginia Beach	29

WASHINGTON

Community	Channel No.
Bellevue	32, 50
Bellingham	19, 35
Centralia	*19
Everett	31
Kennewick	44
Pasco	18
Pullman	*17
Richland	26c, *38
Seattle	25, 38, 39, *41, 44, 48

WASHINGTON—Continued

Community	Channel No.
Spokane	13, 15, 20, 30, 36, *39
Tacoma	14, 18, *27, 36, *42
Vancouver	48
Wenatchee	46c
Yakima	14, 16, *21, 33

WEST VIRGINIA

Community	Channel No.
Bluefield	14, 46
Charleston	19, 39, 41
Clarksburg	28, 52
Grandview	*53
Huntington	23, *34c, 54
Lewisburg	48
Martinsburg	12
Morgantown	*33
Oak Hill	50
Parkersburg	49
Weston	58
Wheeling	32

WISCONSIN

Community	Channel No.
Appleton	59
Chippewa Falls	49c
Eagle River	28
Eau Claire	15, 39
Fond Du Lac	44
Green Bay	23, 41, *42, 51, 56
Janesville	32
Kenosha	40
La Crosse	14, 17, *30, 53
Madison	11, 19, *20, 26, 50
Manitowoc	19
Mayville	43
Menomonie	*27
Milwaukee	*8, 22, 25c, 28, 33, 34, *35, 46, 61
Park Falls	*47
Racine	48
Rhinelander	16
Superior	19
Suring	21
Wausau	*24, 29, 40

WYOMING

Community	Channel No.
Casper	15c, 17, 18
Cheyenne	11, 28c, 30
Jackson	14
Lander	7, *8
Rawlins	9
Riverton	16
Rock Springs	21
Sheridan	21

GUAM

Community	Channel No.
Agana	2, 4, 5

GUAM—Continued

Community	Channel No.
Tamuning	17

PUERTO RICO

Community	Channel No.
Aguada	62
Aguadilla	17c, *34, 69
Arecibo	53, 61c
Bayamon	59c
Caguas	56, *57
Carolina	51
Fajardo	*16c, 33
Guayama	45
Humacao	49
Mayaguez	23c, 29c, 35c, 63
Naranjito	65c
Ponce	15c, 19, *25, 43c, 47, 66
San Juan	21, 27c, 28, 31c, 32, *55c
San Sebastian	39c
Yauco	41c

VIRGIN ISLANDS

Community	Channel No.
Charlotte Amalie	*44, 48, 50
Christiansted	5, 20

(c) *Availability of channels.* Applications may be filed to construct DTV broadcast stations only on the channels designated in the DTV Table of Allotments set forth in paragraph (b) of this section, and only in the communities listed therein. Applications that fail to comply with this requirement, whether or not accompanied by a petition to amend the DTV Table, will not be accepted for filing. However, applications specifying channels that accord with publicly announced FCC Orders changing the DTV Table of Allotments will be accepted for filing even if such applications are tendered before the effective dates of such channel change. An application for authority to construct a DTV station on an allotment in the initial DTV table may only be filed by the licensee or permittee of the analog TV station with which that initial allotment is paired, as set forth in Appendix B of the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket 87–268, FCC 98–24 (*Memorandum Opinion and Order*) adopted January 29, 1998. Copies of the *Memorandum Opinion and Order* may be inspected during normal business hours at the: Federal Communications Commission, 1919 M St., N.W., Dockets Branch (Room 239), Washington, DC, 20554. This document is also available through the Internet on the *FCC Home Page* at http://www.fcc.gov. Applications may also be filed to implement an exchange of channel allotments between two or more licensees or permittees of analog TV stations in the same community, the same market, or in adjacent markets provided, however, that the other requirements of this section and § 73.623 are met with respect to each such application.

(d) *Reference points and distance computations.*

(1) The reference coordinates of a DTV allotment included in the initial DTV Table of Allotments are the coordinates of the authorized transmitting antenna site of the associated analog TV station, as set forth in Appendix B of the *Memorandum Opinion and Order* (referenced above). An application for authority to construct or modify DTV facilities on such an allotment may specify an alternate location for the DTV transmitting antenna that is within 5 kilometers of the DTV allotment reference coordinates without consideration of electromagnetic interference to other DTV or analog TV broadcast stations, allotments or applications, provided the application complies with paragraph (f)(2) of this section. Location of the transmitting antenna of such a station at a site more than 5 kilometers from the DTV allotment reference coordinates must comply with the provisions of section 73.623(c). In the case where a DTV station has been granted authority to construct more than 5 kilometers from its reference coordinates pursuant to section 73.623(c), and its authorized coverage area extends in any azimuthal direction beyond the DTV coverage area determined for the DTV allotment reference facilities, then the coordinates of such authorized site are to be used in addition to the coordinates of the DTV allotment to determine protection from new DTV allotments pursuant to § 73.623(d) and from subsequent DTV applications filed pursuant to § 73.623(c).

(2) The reference coordinates of a DTV allotment not included in the initial DTV Table of Allotments shall be the authorized transmitter site, or, where such a transmitter site is not available for use as a reference point, the coordinates as designated in the FCC order modifying the DTV Table of Allotments.

(e) *DTV Service Areas.*

(1) The service area of a DTV station is the geographic area within the station's noise-limited F(50,90) contour where its signal strength is predicted to exceed the noise-limited service level. The noise-limited contour is the area in

which the predicted F(50,90) field strength of the stations's signal, in dB above 1 microvolt per meter (dBu) as determined using the method in section 73.625(d), exceeds the following levels (these are the levels at which reception of DTV service is limited by noise):

	dBu
Channels 2–6	28
Channels 7–13	36
Channels 14–69	41

Within this contour, service is considered available at locations where the station's signal strength, as predicted using the terrain dependent Longley-Rice point-to-point propagation model, exceeds the levels above. Guidance for evaluating coverage areas using the Longley-Rice methodology is provided in *OET Bulletin No. 69*. Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, 1919 M St., N.W., Dockets Branch (Room 239), Washington, DC, 20554. This document is also available through the Internet on the *FCC Home Page* at http://www.fcc.gov.

Note to paragraph (e)(1): During the transition, in cases where the assigned power of a UHF DTV station in the initial DTV Table is 1000 kW, the Grade B contour of the associated analog television station, as authorized on April 3, 1997, shall be used instead of the noise-limited contour of the DTV station in determining the DTV station's service area. In such cases, the DTV service area is the geographic area within the station's analog Grade B contour where its DTV signal strength is predicted to exceed the noise-limited service level, *i.e.* 41 dB, as determined using the Longley-Rice methodology.

(2) For purposes of determining whether interference is caused to a DTV station's service area, the maximum technical facilities, *i.e.*, antenna height above average terrain (antenna HAAT) and effective radiated power (ERP), specified for the station's allotment are to be used in determining its service area.

(f) DTV maximum power and antenna heights.

(1) The maximum, or reference, effective radiated power (ERP) and antenna height above average terrain (antenna HAAT) for an allotment included in the initial DTV Table of Allotments are set forth in Appendix B of the *Memorandum Opinion and Order* (referenced in paragraph (c) of this section). In each azimuthal direction, the reference ERP value is based on the antenna HAAT of the corresponding analog TV station and achieving predicted coverage equal to that analog TV station's predicted Grade B contour, as defined in section 73.683.

(2) An application for authority to construct or modify DTV facilities will not be subject to further consideration of electromagnetic interference to other DTV or analog TV broadcast stations, allotments or applications, provided that:

(i) The proposed ERP in each azimuthal direction is equal to or less than the reference ERP in that direction; and

(ii) The proposed antenna HAAT is equal to or less than the reference antenna HAAT or the proposed antenna HAAT exceeds the reference antenna HAAT by 10 meters or less and the reference ERP in paragraph (f)(2)(i) of this section is adjusted in accordance with paragraph (f)(3) of this section; and

(iii) The application complies with the location provisions in paragraph (d)(1) of this section.

(3)(i) A DTV station may increase its antenna HAAT by up to 10 meters from that specified in Appendix B if it reduces its DTV power to a level at or below the level of adjusted DTV power computed in the following formula:

ERP adjustment in dB = $20\log(H_1/H_2)$

Where H_1 = Reference antenna HAAT specified in the DTV Table, and H_2 = Actual antenna HAAT

(ii) Alternatively, a DTV application that specifies an antenna HAAT within 25 meters below that specified in Appendix B may adjust its power upward to a level at or below the adjusted DTV power in accordance with the formula in paragraph (f)(3)(i) of this section without an interference showing. For a proposed antenna more than 25 meters below the reference antenna HAAT, the DTV station may increase its ERP up to the level permitted for operation with an antenna that is 25 meters below the station's reference antenna HAAT.

(4) UHF DTV stations may request an increase in power, up to a maximum of 1000 kW ERP, to enhance service within their authorized service area through use of antenna beam tilting in excess of 1 degree, as follows:

(i) Field strengths at the outer edge of the station's service area shall be no greater than the levels that would exist if the station were operating at its assigned DTV power.

(ii) Where a station operates at higher power under the provisions of this paragraph, its field strengths at the edge of its service area are to be calculated assuming 1 dB of additional antenna gain over the antenna gain pattern specified by the manufacturer.

(iii) Where a first adjacent channel DTV station or allotment is located closer than 110 km or a first adjacent channel analog TV station is located closer than 106 km from the proposed transmitter site, the application must be accompanied by a technical showing that the proposed operation complies with the technical criteria in § 73.623(c) and thereby will not result in new interference exceeding the *de minimis* standard for new interference set forth in that section, or statements from affected stations agreeing to the proposed operation in accordance with § 73.623(f).

(iv) A licensee desiring to operate at higher power under these provisions shall submit, with its initial application for a DTV construction permit or subsequent application to modify its DTV facilities, an engineering analysis demonstrating that the predicted field strengths and predicted interference within its service area would comport with the requirements of this paragraph. The licensee also must notify, by certified mail, all stations that could potentially be affected by such operation at the time the station files its application for a construction permit or modification of facilities. Potentially affected stations to be notified include stations on co-channel and first-adjacent channel allotments that are located at distances less than the minimum geographic spacing requirements in § 73.623(d)(2). For example, in Zone I a co-channel DTV station within 196.3 km or a first-adjacent channel DTV station within 110 km must be notified. A station that believes that its service is being affected beyond the *de minimis* standard set forth in § 73.623(c) may file an informal objection with the Commission. Such an informal objection shall include an engineering analysis demonstrating that additional impermissible interference would occur. The Commission may condition grant of authority to operate at increased power pursuant to this provision on validation of actual performance through field measurements.

(5) Licensees and permittees assigned a DTV channel in the initial DTV Table of Allotments may request an increase in either ERP in some azimuthal direction or antenna HAAT, or both, that exceed the initial technical facilities specified for the allotment in Appendix B of the *Memorandum Opinion and Order* (referenced in paragraph (c) of this section), up to the maximum permissible limits on DTV power and antenna height set forth in paragraph (f)(6), (f)(7), or (f)(8) of this section, as appropriate, or up to that needed to provide the same geographic coverage area as the largest station within their market, whichever would

allow the largest service area. Such requests must be accompanied by a technical showing that the increase complies with the technical criteria in § 73.623(c), and thereby will not result in new interference exceeding the *de minimis* standard set forth in that section, or statements agreeing to the change from any co-channel or adjacent channel stations that might be affected by potential new interference, in accordance with § 73.623(f). In the case where a DTV station has been granted authority to construct pursuant to § 73.623(c), and its authorized coverage area extends in any azimuthal direction beyond the DTV coverage area determined for the DTV allotment reference facilities, then the authorized DTV facilities are to be used in addition to the assumed facilities of the initial DTV allotment to determine protection from new DTV allotments pursuant to § 73.623(d) and from subsequent DTV applications filed pursuant to § 73.623(c). The provisions of this paragraph regarding increases in the ERP or antenna height of DTV stations on channels in the initial DTV Table of Allotments shall also apply in cases where the licensee or permittee seeks to change the station's channel as well as alter its ERP and antenna HAAT. Licensees and permittees are advised that where a channel change is requested, it may, in fact, be necessary in specific cases for the station to operate with reduced power, a lower antenna, or a directional antenna to avoid causing new interference to another station.

(6) A DTV station that operates on a channel 2–6 allotment created subsequent to the initial DTV Table will be allowed a maximum ERP of 10 kW if its antenna HAAT is at or below 305 meters and it is located in Zone I or a maximum ERP of 45 kW if its antenna HAAT is at or below 305 meters and it is located in Zone II or Zone III. A DTV station that operates on a channel 2–6 allotment included in the initial DTV Table of Allotments may request an increase in power and/or antenna HAAT up to these maximum levels, provided the increase also complies with the provisions of paragraph (f)(5) of this section.

(i) At higher HAAT levels, such DTV stations will be allowed to operate with lower maximum ERP levels in accordance with the following table and formulas (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 2–6

Antenna HAAT (meters)	ERP (kW)
610	10
580	11
550	12
520	14
490	16
460	19
425	22
395	26
365	31
335	37
305	45

(ii) For DTV stations located in Zone I that operate on channels 2–6 with an HAAT that exceeds 305 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=92.57–33.24*\log_{10}(HAAT)$

(iii) For DTV stations located in Zone II or III that operate on channels 2–6 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=57.57–17.08*\log_{10}(HAAT)$

(7) A DTV station that operates on a channel 7–13 allotment created subsequent to the initial DTV Table will be allowed a maximum ERP of 30 kW if its antenna HAAT is at or below 305 meters and it is located in Zone I or a maximum ERP of 160 kW if its antenna HAAT is at or below 305 meters and it is located in Zone II or Zone III. A DTV station that operates on a channel 7–13 allotment included in the initial DTV Table of Allotments may request an increase in power and/or antenna HAAT up to these maximum levels, provided the increase also complies with the provisions of paragraph (f)(5) of this section.

(i) At higher HAAT levels, such DTV stations will be allowed to operate with lower maximum ERP levels in accordance with the following table and formulas (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 7–13

Antenna HAAT (meters)	ERP (kW)
610	30
580	34
550	40
520	47
490	54
460	64
425	76
395	92
365	110
335	132
305	160

(ii) For DTV stations located in Zone I that operate on channels 7–13 with an HAAT that exceeds 305 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=97.35–33.24*\log_{10}(HAAT)$

(iii) For DTV stations located in Zone II or III that operate on channels 7–13 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=62.34–17.08*\log_{10}(HAAT)$

(8) A DTV station that operates on a channel 14–59 allotment created subsequent to the initial DTV Table will be allowed a maximum ERP of 1000 kW if their antenna HAAT is at or below 365 meters. A DTV station that operates on a channel 14–59 allotment included in the initial DTV Table of Allotments may request an increase in power and/or antenna HAAT up to these maximum levels, provided the increase also complies with the provisions of paragraph (f)(5) of this section.

(i) At higher HAAT levels, such DTV stations will be allowed to operates with lower maximum ERP levels in accordance with the following table and formulas (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS ON CHANNELS 14–59, ALL ZONES

Antenna HAAT (meters)	ERP (kW)
610	316
580	350
550	400
520	460
490	540

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS ON CHANNELS 14–59, ALL ZONES—Continued

Antenna HAAT (meters)	ERP (kW)
460	630
425	750
395	900
365	1000

(ii) For DTV stations located in Zone I, II or III that operate on channels 14–59 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=72.57-17.08*\log_{10}(HAAT)$

(g) *DTV stations operating on channels above an analog TV station.*

(1) DTV stations operating on a channel allotment designated with a "c" in paragraph (b) of this section must maintain the pilot carrier frequency of the DTV signal 5.082138 MHz above the visual carrier frequency of any analog TV broadcast station that operates on the lower adjacent channel and is located within 88 kilometers. This frequency difference must be maintained within a tolerance of ±3 Hz.

(2) Unless it conflicts with operation complying with paragraph (g)(1) of this section, where a low power television station or TV translator station is operating on the lower adjacent channel within 32 km of the DTV station and notifies the DTV station that it intends to minimize interference by precisely maintaining its carrier frequencies, the DTV station shall cooperate in locking its carrier frequency to a common reference frequency and shall be responsible for any costs relating to its own transmission system in complying with this provision.

(h)(1) The power level of emissions on frequencies outside the authorized channel of operation must be attenuated no less than the following amounts below the average transmitted power within the authorized channel. In the first 500 kHz from the channel edge the emissions must be attenuated no less than 47 dB. More than 6 MHz from the channel edge, emissions must be attenuated no less than 110 dB. At any frequency between 0.5 and 6 MHz from the channel edge, emissions must be attenuated no less than the value determined by the following formula:

Attenuation in dB = $-11.5(\Delta f + 3.6)$;

Where: Δf = frequency difference in MHz from the edge of the channel.

(2)This attenuation is based on a measurement bandwidth of 500 kHz. Other measurement bandwidths may be used as long as appropriate correction factors are applied. Measurements need not be made any closer to the band edge than one half of the resolution bandwidth of the measuring instrument. Emissions include sidebands, spurious emissions and radio frequency harmonics. Attenuation is to be measured at the output terminals of the transmitter (including any filters that may be employed). In the event of interference caused to any service, greater attenuation may be required.

3. Section 73.623 is amended by revising paragraphs (c), (d), (e) and (f) to read as follows:

§ 73.623 DTV applications and changes to DTV allotments.

* * * * *

(c) *Minimum technical criteria for modification of DTV allotments included in the initial DTV Table of Allotments and for applications filed pursuant to this section.* No petition to modify a channel allotment included in the initial DTV Table of Allotments or application for authority to construct or modify a DTV station assigned to such an allotment, filed pursuant to this section, will be accepted unless it shows compliance with the requirements of this paragraph.

(1) Requests filed pursuant to this paragraph must demonstrate compliance with the principal community coverage requirements of section 73.625(a).

(2) Requests filed pursuant to this paragraph must demonstrate that the requested change would not result in more than an additional 2 percent the population served by another station being subject to interference; provided, however, that no new interference may be caused to any station that already experiences interference to 10 percent or more of its population or that would result in a station receiving interference in excess of 10 percent of its population. The station population values for existing NTSC service and DTV service contained in Appendix B of the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87–268, FCC 98–24, adopted January 29, 1998, referenced in § 73.622(c), are to be used for the purposes of determining whether a power increase or other change is permissible under this de minimis standard. For evaluating compliance with this requirement, interference to populations served is to be predicted based on the procedure set forth in *OET Bulletin No. 69*, including population served within service areas determined in accordance with section 73.622(e), consideration of whether F(50,10) undesired signals will exceed the following desired-to-undesired (D/U) signal ratios, assumed use of a directional receiving antenna, and use of the terrain dependent Longley-Rice point-to-point propagation model. Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, 1919 M St., N.W., Dockets Branch (Room 239), Washington, DC 20554. These documents are also available through the Internet on the *FCC Home Page* at http://www.fcc.gov. The threshold levels at which interference is considered to occur are:

	D/U Ratio
Co-channel:	
DTV-into-analog TV	+34
Analog TV-into-DTV	+2
DTV-into-DTV	+15
First Adjacent Channel:	
Lower DTV-into-analog TV	−14
Upper DTV-into-analog TV	−17
Lower analog TV-into-DTV	−48
Upper analog TV-into-DTV	−49
Lower DTV-into-DTV	−28
Upper DTV-into-DTV	−26
Other Adjacent Channel (Channels 14–69 only)	
DTV-into-analog TV, where N = analog TV channel and DTV Channel:	
N–2	−24
N+2	−28
N–3	−30
N+3	−34
N–4	−34
N+4	−25
N–7	−35
N+7	−43
N–8	−32
N+8	−43
N+14	−33
N+15	−31

(3) The values in paragraph (c)(2) of this section for co-channel interference to DTV service are only valid at locations where the signal-to-noise ratio is 28 dB or greater for interference from DTV and 25 dB or greater for interference from analog TV service. At the edge of the noise-limited service area, where the signal-to-noise (S/N) ratio is 16 dB, these values are 21 dB and 23 dB for interference from analog TV and DTV, respectively. At locations where the S/N ratio is greater than 16 dB but less than 28 dB, D/U values for co-channel interference to DTV are as follows:

(i) For DTV-to-DTV interference, the minimum D/U ratios are computed from the following formula:

$D/U = 15+10\log_{10}[1.0/(1.0-10^{-x/10})]$

Where x = S/N–15.19 (minimum signal to noise ratio)

(ii) For analog-to-DTV interference, the minimum D/U ratios are found from the following Table (for values between measured values, linear interpolation can be used):

Signal-to-noise ratio (dB)	Desired-to-undesired ratio (dB)
16.00	21.00
16.35	19.94
17.35	17.69
18.35	16.44
19.35	7.19
20.35	4.69
21.35	3.69
22.35	2.94
23.35	2.44
25.00	2.00

(4) Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum adjacent channel technical criteria specified in paragraph (c)(2) of this section shall not be applicable to these pairs of channels (see § 73.603(a)).

(d) *Minimum geographic spacing requirements for DTV allotments not included in the initial DTV Table of Allotments.* No petition to add a new channel to the DTV Table of Allotments or modify an allotment not included in the initial DTV Table will be accepted unless it shows compliance with the requirements of this paragraph.

(1) Requests filed pursuant to this paragraph must demonstrate compliance with the principle community coverage requirements of section 73.625(a).

(2) Requests filed pursuant to this paragraph must meet the following requirements for geographic spacing with regard to all other DTV stations, DTV allotments and analog TV stations:

Channel relationship	Separation requirement
VHF Channels 2–13:	
Co-channel, DTV to DTV	Zone I: 244.6 km. Zones II & III: 273.6 km.
Co-channel, DTV to analog TV	Zone I: 244.6 km. Zone II & III: 273.6 km.
Adjacent Channel:	
DTV to DTV	No allotments permitted between: Zone I: 20 km and 110 km. Zones II & III: 23 km and 110 km.
DTV to analog TV	No allotments permitted between: Zone I: 9 km and 125 km. Zone II & III: 11 km and 125 km.
UHF Channels:	
Co-channel, DTV to DTV	Zone I: 196.3 km. Zone II & III: 223.7 km.
Co-channel, DTV to analog TV	Zone I: 217.3 km. Zone II & III: 244.6 km.
Adjacent Channel:	
DTV to DTV	No allotments permitted between: All Zones: 24 km and 110 km.
DTV to analog TV	No allotments permitted between: All Zones: 12 km and 106 km.
Taboo Channels, DTV to analog TV only (DTV channels +/–2, +/–3, +/–4, +/–7, +/–8, and 14 or 15 channels above the analog TV channel).	No allotments permitted between: Zone I: 24.1 km and 80.5 km. Zone II & III: 24.1 km and 96.6 km.

(3) Zones are defined in § 73.609. The minimum distance separation between a DTV station in one zone and an analog TV or DTV station in another zone shall be that of the zone requiring the lower separation.

(4) Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum geographic spacing requirements specified in paragraph (d)(3) of this section shall not be applicable to these pairs of channels (§ 73.603(a)).

(e) *Protection of land mobile operations on channels 14–20.* The Commission will not accept petitions to amend the DTV Table of Allotments, applications for new DTV stations, or applications to change the channel or location of authorized DTV stations that would use channels 14–20 where the distance between the DTV reference point as defined in section 73.622(d), would be located less than 250 km from the city center of a co-channel land mobile operation or 176 km from the city center of an adjacent channel land mobile operation. Petitions to amend the DTV Table, applications for new DTV stations, or requests to modify the DTV Table that do not meet the minimum DTV-to-land mobile spacing standards will, however, be considered where all affected land mobile licensees consent to the requested action. Land mobile operations are authorized on these channels in the following markets:

City	Channels	Latitude	Longitude
Boston, MA	14, 16	42°21′24″	71°03′25″
Chicago, IL	14, 15	41°52′28″	87°38′22″
Dallas, TX	16	32°47′09″	96°47′37″
Houston, TX	17	29°45′26″	95°21′37″

City	Channels	Latitude	Longitude
Los Angeles, CA	14, 16, 20	34°03′15″	118°14′28″
Miami, FL	14	25°46′37″	80°11′32″
New York, NY	14, 15	40°45′06″	73°59′39″
Philadelphia, PA	19, 20	39°56′58″	75°09′21″
Pittsburgh, PA	14, 18	40°26′19″	80°00′00″
San Francisco, CA	16, 17	37°46′39″	122°24′40″
Washington, DC	17, 18	38°53′51″	77°00′33″

(f) *Negotiated agreements on interference.* Notwithstanding the minimum technical criteria for DTV allotments specified above, DTV stations operating on allotments that are included in the initial DTV Table may: operate with increased ERP and/or antenna HAAT that would result in additional interference to another DTV station or an analog TV station if that station agrees, in writing, to accept the additional interference; and/or implement an exchange of channel allotments between two or more licensees or permittees of TV stations in the same community, the same market, or in adjacent markets provided, however, that the other requirements of this section and of section 73.622 are met with respect to each such application. Such agreements must be submitted with the application for authority to construct or modify the affected DTV station or stations. The larger service area resulting from a negotiated change in ERP and/or antenna HAAT will be protected in accordance with the provisions of paragraph (c) of this section. Negotiated agreements under this paragraph can include the exchange of money or other considerations from one station to another, including payments to and from noncommercial television stations assigned reserved channels. Applications submitted pursuant to the provisions of this paragraph will be granted only if the Commission finds that such action is consistent with the public interest.

4. Section 73.625 is amended by adding paragraph (c)(5) to read as follows:

§ 73.625 DTV coverage of principal community and antenna system.

* * * * *

(c) * * *

* * * * * *

(5) Applications proposing the use of electrical beam tilt pursuant to section 73.622(f)(4) must be accompanied by the following:

(i) Complete description of the proposed antenna system, including the manufacturer and model number. Vertical plane radiation patterns conforming with paragraphs (c)(3)(iv), (c)(3)(v) and (c)(3)(vi) of this section.

(ii) For at least 36 evenly spaced radials, including 0 degrees corresponding to true North, a determination of the depression angle between the transmitting antenna center of radiation and the radio horizon using the formula in paragraph (b)(2) of this section.

(iii) For each such radial direction, the ERP at the depression angle, taking into account the effect of the electrical beam tilt, mechanical beam tilt, if used, and directional antenna pattern if a directional antenna is specified.

(iv) The maximum ERP toward the radio horizon determined by this process must be clearly indicated. In addition, a tabulation of the relative fields representing the effective radiation pattern toward the radio horizon in the 36 radial directions must be submitted. A value of 1.0 should be used for the maximum radiation.

5. Section 73.3572 is amended by revising paragraph (a)(2) to read as follows:

§ 73.3572 Processing of TV broadcast, low power TV, TV translator and TV booster applications.

(a) * * *

(2) However, if the proposed modification of facilities, other than a change in frequency, will not increase the signal range of the low power TV, TV translator or TV booster station in any horizontal direction, the modification will not be considered a major change.

(i) Provided that in the case of an authorized low power TV, TV translator or TV booster which is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to § 74.705 or interference with broadcast or other services under § 74.703 or § 74.709, that an application for a change in output channel, together with technical modifications which are necessary to avoid interference (including a change in antenna location of less than 16.1 km), will not be considered as an application for a major change in those facilities.

(ii) Provided further, that a low power TV, TV translator or TV booster station: authorized on a channel from channel 60 to 69, or which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized DTV station pursuant to § 74.706, or which is located within the distances specified below in paragraph (c) of this section to the coordinates of co-channel DTV authorizations (or allotment table coordinates if there are no authorized facilities at different coordinates), may at any time file a displacement relief application for a change in output channel, together with any technical modifications which are necessary to avoid interference or continue serving the station's protected service area. Such an application will not be considered as an application for a major change in those facilities. Where such an application is mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other nondisplacement relief applications for facilities modifications, priority will be afforded to the displacement application(s) to the exclusion of the other applications.

(iii)(A) The geographic separations to co-channel DTV facilities or allotment reference coordinates, as applicable, within which to qualify for displacement relief are the following:

(*1*) Stations on UHF channels: 265 km (162 miles)

(*2*) Stations on VHF channels 2–6: 280 km (171 miles)

(*3*) Stations on VHF channels 7–13: 260 km (159 miles)

(B) Engineering showings of predicted interference may also be submitted to justify the need for displacement relief.

(iv) Provided further, that the FCC may, within 15 days after acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of § 73.3580 of this section and § 1.1111 of this chapter pertaining to major changes.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

5. The authority citation for part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C.154, 303, 336, and 554.

6. Section 74.706 is amended by revising paragraph (d) to read as follows:

§ 74.706 Digital TV (DTV) station protection.

* * * * *

(d) A low power TV, TV translator or TV booster station application will not be accepted if the ratio in dB of its field strength to that of the DTV station (L/D ratio) fails to meet the following:

(1) −2 dB or less for co-channel operations. This maximum L/D ratio for co-channel interference to DTV service is only valid at locations where the signal-to-noise (S/N) ratio is 25 dB or greater. At the edge of the noise-limited service area, where the S/N ratio is 16 dB, the maximum L/D ratio for co-channel interference from analog low power TV, TV translator or TV booster service into DTV service is −21 dB. At locations where the S/N ratio is greater than 16 dB but less than 25 dB, the maximum L/D field strength ratios are found from the following Table (for values between measured values, linear interpolation can be used):

Signal-to-Noise Ratio(dB)	Low Power-to-DTV Ratio(dB)
16.00	21.00
16.35	19.94
17.35	17.69
18.35	16.44
19.35	7.19
20.35	4.69
21.35	3.69
22.35	2.94
23.35	2.44
25.00	2.00

(2) + 48 dB for adjacent channel operations at:

(i) The DTV noise-limited perimeter if a low power TV, TV translator or TV booster station is located outside that perimeter.

(ii) At all points within the DTV noise-limited area if a low power TV or TV translator is located within the DTV noise-limited perimeter, as demonstrated by the applicant.

[FR Doc. 98–6827 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 031398D]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Maine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces the summer flounder commercial quota available to the State of Maine has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Maine for the remainder of calendar year 1998, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this announcement to advise the State of Maine that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Maine.

DATES: Effective 0001 hours, March 20, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Warren, telephone (978) 281–9347.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1998 calendar year was set equal to 11,105,636 lb (5,037,432 kg) (62 FR 66304, December 18, 1997). The percent allocated to vessels landing summer flounder in Maine is 0.04756 percent, or 5,284 lb (2,397 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In calendar year 1997, a total of 2,835 lb (1,286 kg) were landed in Maine, creating a 493 lb (224 kg) overage that was deducted from the amount allocated for landings in the State during 1998 (63 FR 3478, January 23, 1998). The resulting commercial quota for Maine in 1998 is 4,791 lb (2,173 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notice in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Maine has attained its quota for 1998.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours March 20, 1998, further landings of summer flounder in Maine by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1998 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective the date above, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Maine for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 16, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7345 Filed 3–17–98; 2:45 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 54
Friday, March 20, 1998

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AD68

Statutory Bar to Appointment of Persons Who Fail To Register Under Selective Service Law

AGENCY: Office of Personnel Management.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is withdrawing its proposal to revise the regulations on Selective Service registration (published April 29, 1988, 53 FR 15400), which would have permitted executive agencies to determine whether an individual's failure to register with the Selective Service System was knowing and willful. These determinations are currently made by OPM. Because we plan to make additional changes to these regulations, we will publish a revised proposal and invite new public comment.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole on (202) 606–0830.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–7208 Filed 3–19–98; 8:45 am]

BILLING CODE 6325–01–M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AB71

Organization; Balloting and Stockholder Reconsideration Issues

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), proposes to amend its regulations concerning Farm Credit System (System or FCS) voting ballots and the effective dates for mergers, consolidations, or transfers of direct lending authority from a Farm Credit Bank (FCB) or agricultural credit bank (ACB) to a Federal land bank association (FLBA). The proposed amendments would allow the use of identity codes on ballots, as long as the votes are tabulated by an independent third party, and would conform the scope of the regulation to statutory requirements. The amendments would also reduce the earliest effective date of a merger, consolidation, or transfer of lending authority from 50 days to 35 days after stockholder notification, or 15 days after submission of documents to the FCA for final approval, whichever occurs later. The effects of the amendments are to provide more flexibility to institutions regarding the conduct of stockholder votes, to extend security and confidentiality requirements to all stockholder votes, and to accelerate the effective date of the above-described corporate actions.

DATES: Written comments must be received on or before April 20, 1998.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, 1501 Farm Credit Drive, McLean, VA, 22102–5090 or sent by facsimile transmission to (703) 734–5784. Comments may also be submitted via electronic mail to "reg-comm@fca.gov". Copies of all communications received will be available for review by interested parties in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479;
or
Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

The FCA is continuing its efforts to reduce regulatory burdens on System institutions and to retain only regulations that: (1) Implement or interpret the Farm Credit Act of 1971, as amended (Act); or (2) protect the safety and soundness of the System. See 58 FR 34003 (June 23, 1993); 60 FR 57913 (November 24, 1995). The FCA has previously deleted a number of unnecessary or obsolete regulations and has modified others to reduce the burden of compliance. This rule is proposed in response to requests by several System institutions to revise the secret ballot procedures and to accelerate the effective date of certain corporate actions, as more fully described below.

II. Maintaining Secrecy of Ballots

Three institutions have requested that the FCA amend § 611.330 to allow FCS institutions to use identity codes on election ballots. The commenters stated that, in some elections, many stockholders who were confused by the procedures for voting by mail or proxy sent back incomplete or improperly completed ballots or proxies. As a result, their votes were not counted. The associations stated that, if the forms had contained identity codes, the stockholders in question could have been contacted before the stockholders' meeting and permitted to submit properly completed ballots or proxies. The commenters asserted their belief that identity codes, printed names on ballots, or other means of identification would not violate a voter's right to a secret ballot under section 4.20(2) of the Act, if an FCS institution: (1) Ensures that members of an independent tellers' committee abide by confidentiality restrictions; and (2) establishes ballot custody requirements.

Section 4.20 of the Act, which was amended by the Agricultural Credit Act of 1987 (1987 Act), prohibits the use of signed ballots in connection with any election or merger vote or other proceeding subject to a stockholder vote. Section 4.20 also requires FCS institutions to implement measures to protect voters' rights to a secret ballot process. In 1988, the FCA published a final rule that, among other provisions, established standards for the election of directors to comply with section 4.20. See 53 FR 50381 (December 15, 1988). Section 611.330 of that rule requires System institutions to adopt policies and procedures that assure confidentiality in the election of board members and prohibits the use of ballots

or proxy ballots that must be signed or that contain an identifying character or mark that can be used to identify how an individual stockholder's vote is cast.

The FCA proposes to amend § 611.330(b) to allow System institutions to use identity codes on ballots, provided that an independent third party tabulates the votes. The proposed regulation would also require that, in all votes in which an independent third party tabulates the votes, the independent third party must certify in writing that no information regarding how or whether a particular stockholder has voted will be disclosed to any person. However, the independent third party would be required to disclose such information to the FCA, if requested, in the event a vote is contested or otherwise.

The Agency agrees with the commenters that the use of an independent third party to review and count the votes will carry out the purpose of section 4.20 of the Act to preserve the secrecy of stockholder votes in relation to the institution, its directors, employees, and other stockholders. Examples of such third parties are outside auditors, accounting firms, or outside counsel. Tellers' committees that include stockholders or employees would not qualify as independent third parties. This proposed change will provide institutions with the opportunity to address the problem of incorrect ballots.

The FCA also proposes to modify §§ 611.330 and 611.340 to extend the confidentiality and security requirements to all stockholder votes, not just director elections. These changes will conform the scope of the regulations to section 4.20 of the Act, as described above. A provision is added requiring a 5-year retention period for records related to a vote other than a director election. The existing regulation provides for the retention of director election records until the end of the term of office of the director.

In addition, the FCA proposes nonsubstantive changes to § 611.330 regarding the confidentiality of mail or proxy ballots. These changes would clarify that, in mail or proxy balloting, institution procedures must provide for a marked mail ballot or proxy ballot to be returned to the institution in a separate sealed envelope that is placed inside of another envelope for mailing. In proxy voting, the stockholder must return the proxy authorization form along with the sealed envelope containing the proxy ballot. In mail balloting, institutions may, but are not required to, provide for stockholders to verify their eligibility to vote, as long as such verification is not on the ballot or on the sealed envelope containing the ballot. The verification could, for example, be on a separate piece of paper placed in the outside envelope or could be on the outside envelope itself.

III. Change of Effective Date for Merger, Consolidation, or Transfer of Lending Authority

Two institutions suggested that the FCA amend § 611.1122, which establishes timing and disclosure requirements for mergers of FCS institutions. One of the institutions asserted that the regulation mandates excessive periods for review and unnecessarily delays the effective date of such mergers beyond the required stockholder reconsideration period. This institution suggested that the FCA develop new procedures to expedite effective dates of mergers of FCS institutions.

Section 7.9 of the Act, as amended by the 1987 Act, provides for stockholder reconsideration of mergers or consolidations, the transfer of direct lending authority from a bank to an FLBA, and terminations of FCS status. The statute provides that, if the FCA receives a stockholder petition from at least 15 percent of the stockholders for reconsideration of a vote in favor of any such action within 30 days of the date on which stockholders are notified of the results of the vote, the institution in question must call a special stockholders' meeting to vote again on the proposed action. If a petition that meets the statutory requirements is filed, the proposed action (if approved in the second vote) cannot take effect until the expiration of 60 days after the date on which stockholders were notified of the result of the first vote.

Sections 611.505(e) and 611.1122(k), promulgated in 1988 pursuant to section 7.9 of the Act, provide that, in the case of an association merger or a transfer of direct lending authority, the effective date of the merger or transfer must be at least 50 days after the date of mailing of the notification to stockholders of the first vote. In the preamble to those regulations, the FCA explained that the period of 50 days was specified to allow for: (1) A 5-day period for delivery of the notice to stockholders; (2) a 30-day period during which stockholders may file a petition for reconsideration; and (3) fifteen (15) days after the end of the reconsideration period for the FCA to receive and review the institution's documents for final approval. See 53 FR 50389 (December 15, 1988).

At the time of the promulgation of the regulation, the FCA was of the view that a 50-day period was necessary to ensure that the Agency had adequate time to process final approval documents. However, the FCA's experience in processing the final approval documents is that its review and approval can occur during the 30-day reconsideration period if the institutions timely submit such documents to the FCA. Therefore, the FCA proposes to eliminate the additional 15 days intended for Agency review following the end of the reconsideration period and to provide that the effective date of an association merger or a transfer of lending authority may be 35 days after stockholder notification, or 15 days after submission of final documents to the FCA, whichever occurs later.

The FCA also proposes, for purposes of clarification, to restate in §§ 611.505(e) and 611.1122(k) the provision in section 7.9(b)(3)(A) of the Act that, if a valid petition for reconsideration is timely filed with the FCA, the merger or transfer of lending authority cannot take effect until the expiration of 60 days after the date on which stockholders were notified of the final result of the first vote.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 7.0—7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Subpart C is amended by revising the heading to read as follows:

Subpart C—Election of Directors and Other Voting Procedures

3. Section 611.330 is amended by removing the word "election" and adding in its place, the word "voting" in the first sentence of paragraph (a); by removing the words "an election" and adding in their place, the words "a vote" and by removing the comma after the word "contested" in the last sentence of paragraph (a); and by revising the section heading and paragraph (b) to read as follows:

§ 611.330 Confidentiality in voting.

* * * * *

(b) Except as provided in this paragraph, System institutions shall not use ballots or proxy ballots that must be signed by the stockholder or that contain an identifying character or mark that can be used to identify how an individual stockholder's vote is cast.

(1) Institutions may use a form of identity code on the ballot if they also provide for tabulation of the votes by an independent third party.

(2) In mail balloting, institutions may adopt procedures that require the stockholders to sign or otherwise verify their eligibility to vote, so long as the marked ballot is in a separate sealed envelope that accompanies any document that identifies the stockholder.

(3) In proxy voting, an institution's procedures shall provide that the proxy ballot be returned in a separate sealed envelope, which envelope is accompanied by a signed proxy authorization form.

(4) Where the identity of the voting stockholders is necessary to determine the voting weight of ballots, the institution shall use a form of identity code on the ballot and shall require that the votes are tabulated by an independent third party.

(5) In a vote in which identity codes are used on the ballots, the independent third party that tabulates the votes shall certify in writing that such party will not disclose to any person (including the institution, the directors, stockholders, or employees) any information regarding how or whether any stockholder has voted. However, the independent third party shall disclose such information to the Farm Credit Administration, if requested, in the event a vote is contested or otherwise.

* * * * *

4. Section 611.340 is amended by removing the words "the election of directors" and adding in their place, the word "voting" in the heading; by removing the words "the election of board members" and adding in their place, the words "a stockholder vote" in paragraph (a); by removing the word "election" and adding in its place, the word "voting" the first and last place it appears in the first sentence of paragraph (d); by removing the words "an election" and adding in their place, the words "a stockholder vote" in the last sentence of paragraph (d); by removing the word "election" and adding in its place, the word "vote" the last place it appears in the last sentence of paragraph (d); and by revising paragraph (c) to read as follows:

§ 611.340 Security in voting.

* * * * *

(c) Ballots and proxy ballots shall be physically safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the banks and associations until disposal. In an election of directors, ballots, proxy ballots and election records shall be retained until the end of the term of office of the director and promptly destroyed thereafter. In other stockholder votes, ballots, proxy ballots, and records shall be retained for at least 5 years after the vote.

* * * * *

Subpart E—Transfer of Authorities

5. Section 611.505 is amended by revising paragraph (e) to read as follows:

§ 611.505 Farm Credit Administration review.

* * * * *

(e) The effective date of a transfer shall be not less than 35 days after mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after the date of mailing of the notification of stockholder vote, the constituent institutions shall agree on a second effective date to be used in the event the transfer is approved on reconsideration. The second effective date shall be not less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

6. Section 611.1122 is amended by revising paragraph (k) to read as follows:

§ 611.1122 Requirements for mergers or consolidations.

* * * * *

(k) The effective date of a merger or consolidation shall be a date which is not less than 35 days after the date of mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after mailing of the notification to stockholders of the results of the stockholder vote, the constituent institutions shall agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. The second effective date shall be not less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

Dated: March 17, 1998.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 98–7342 Filed 3–19–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–59–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 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 747 series airplanes. This proposal would require an inspection to determine the material type of the stop support fittings of the main entry doors. The proposed AD also would require repetitive visual inspections to detect cracks of certain stop support fittings of the main entry doors, and replacement of any cracked stop support fitting with a certain new stop support fitting. This proposal is prompted by reports that stress corrosion cracking was found on certain stop support fittings of the main entry doors. The actions specified by the proposed AD are intended to detect and correct such stress corrosion cracking, which could lead to failure of the stop support fittings. Failure of the stop support fittings could result in loss of a main entry door and consequent rapid decompression of the airplane.

DATES: Comments must be received by May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–59–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from 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: Bob Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; 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 notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–59–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–59–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports of cracks on the stop support fittings (made from either 7079–T651 or 7075–T651 material) of the numbers 1, 2, 3, and 4 main entry doors on Boeing Model 747 series airplanes. The cause of these cracks has been attributed to stress corrosion. The effects of such stress corrosion cracking, if not detected and corrected in a timely manner, could lead to failure of the stop support fittings. Failure of the stop support fittings could result in loss of a main entry door and consequent rapid decompression of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–53–2358, dated August 26, 1993, which describes procedures for performing a high frequency eddy current (HFEC) inspection to determine the material type of the stop support fittings of the main entry doors. The service bulletin also describes procedures for repetitive visual inspections to detect cracks of the stop support fitting (not made from 7075–T73 material) of the main entry doors, and replacement of any cracked fitting with a new fitting made from 7075–T73 material. In addition, the service bulletin describes procedures for optional replacement of the stop support fittings of the main entry doors with stop support fittings made from 7075–T73 material, which would eliminate the need for repetitive inspections. The new stop support fitting is less susceptible to stress corrosion cracking.

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 an HFEC inspection to determine the material type of the stop support fittings of the main entry doors. The proposed AD also would require repetitive visual inspections to detect cracks of the stop support fitting (not made from 7075–T73 material) of the main entry doors, and replacement of any cracked fitting with a new fitting made from 7075–T73 material. In addition, the proposed AD provides for an optional replacement of the stop support fittings of the main entry doors with stop support fittings made from 7075–T73 material, which would constitute terminating action for the repetitive inspection requirements. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between the Proposal and the Relevant Service Information

Operators should note that the proposed compliance time of 18 months for the repetitive inspections differs from the compliance time recommended in the referenced service bulletin. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the susceptibility of the subject area to stress corrosion cracking. In addition, the FAA finds that a compliance time of 18 months will allow the inspection to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available, if necessary. In consideration of these items, the FAA finds that repetitive visual inspections conducted at the proposed compliance time of 18 months will better ensure that any detrimental effect associated with stress corrosion cracking will be identified and corrected prior to the time that it could adversely affect the stop support fittings of the main entry doors.

In addition, unlike the procedures described in the referenced service bulletin, this proposed AD would not permit further flight with cracking detected in the stop support fittings. The FAA has determined that, due to the safety implications and consequences associated with such cracking, all stop support fittings that are found to be cracked must be replaced prior to further flight.

Furthermore, the FAA is not proposing to mandate the replacement of stop support fittings for several reasons:

1. Accessing the stop support fittings for inspection is easily accomplished.
2. The cracked stop support fittings are easily detectable by means of a visual inspection.
3. The visual inspection will preclude the occurrence of multiple failed stop support fittings, which could result in a catastrophic failure.

The FAA also is not including the option for inspection at an initial compliance time of 6 years since date of manufacture of the airplane, as recommended by the referenced service bulletin. The FAA has determined that all affected airplanes are older than 6 years since date of manufacture of the airplane.

Other Relevant Rulemaking

The FAA has previously issued AD 92–02–01, amendment 39–8137 (57 FR 5373, February 14, 1992), which addresses cracking of certain support fittings on Boeing Model 747 series airplanes having line numbers 001 through 113 inclusive. That AD currently requires repetitive inspections for cracking of the doorstop support fittings at the forward edge of the number 5 main entry door, and replacement, if necessary.

Cost Impact

There are approximately 515 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 164 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per door to accomplish the proposed HFEC inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the HFEC inspection proposed by this AD on U.S. operators is estimated to be $60 per door.

Should an operator be required to accomplish the proposed visual inspection, it would take approximately 2 work hours per door to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection proposed by this AD on U.S. operators is estimated to be $120 per door.

Should an operator elect to accomplish the optional terminating action that would be provided by this proposed AD action, the number of hours required to accomplish it would be approximately 124 work hours per door, at an average labor rate of $60 per work hour. Required parts would cost approximately $13,000 per door. Based on these figures, the cost impact of the optional terminating action on U.S. operators is estimated to be $20,440 per door.

The cost impact figures discussed above are 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 AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 97–NM–59–AD.

Applicability: Model 747–100, –100B, –200, –200B, –200C, –300, –400, and 747SR series airplanes, having line numbers 1 through 830 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 (d) 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 stress corrosion cracking of the stop support fittings of the main entry doors and the resultant failure of the stop support fittings, which could result in loss of a main entry door and consequent rapid decompression of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, perform a high frequency eddy current inspection to determine the material type of the stop support fittings of the main entry doors, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53–2358, dated August 26, 1993.

(1) If the fitting is made from 7075–T73 material, no further action is required by this AD.

(2) If the fitting is NOT made from 7075–T73 material, prior to further flight, perform a visual inspection to detect cracks of the stop support fitting of the main entry doors, in accordance with the service bulletin.

(i) If no crack is detected, repeat the visual inspection thereafter at intervals not to exceed 18 months.

(ii) If any crack is detected, prior to further flight, replace the fitting with a stop support fitting made from 7075–T73 material, in accordance with the service bulletin.

(b) Replacement of the stop support fitting of the main entry doors with a stop support fitting made from 7075–T73 material, in accordance with Boeing Service Bulletin 747–53–2358, dated August 26, 1993, constitutes terminating action for the repetitive inspection requirements of this AD for the replaced fitting.

(c) As of the effective date of this AD, no person shall install a stop support fitting made from either 7079–T651 or 7075–T651 material on any airplane.

(d) 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, 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, 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.

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

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7228 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–139–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes, and Model F27 Mark 050 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 all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–139–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this proposal, beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the 14 in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved airplane flight manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

U.S. Type Certification of the Airplane

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power

levers below the flight idle stop while the airplane is in flight.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 49 Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, 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 $2,940, or $60 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 AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 97–NM–139–AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 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 prevent loss of airplane controllability caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. This action may be accomplished by inserting a copy of this AD into the AFM.

(1) For Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, insert the following:

"Warning: Ground fine pitch must not be selected in flight. This may lead to loss of control from which recovery may not be possible."

(2) For Model F27 Mark 050 series airplanes, insert the following:

"Warning: Do not attempt to select ground idle in flight. In case of failure of the flight idle stop, this would lead to loss of control from which recovery may not be possible."

(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, tandardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(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.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7227 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–15–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 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 Airbus Model A319, A320, and A321 series airplanes. This proposal would require replacing certain toilet rinse valves with modified rinse valves. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent water contamination of the avionics computers, which could result in the display of erroneous or misleading information to the flightcrew, and consequent reduced controllability of the airplane.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–15–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. 98–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that it has received a report indicating that water can leak from the rinse valve of the forward lavatory toilet bowl, and flow down into the flight compartment and possibly onto the avionics computers during nose-down maneuvers. The rinse valve can malfunction in such a way that it allows contaminated waste and corrosion to build up on the inside of the valve, which can allow water to overflow from the toilet bowl and onto the avionics computers. This condition, if not corrected, could result in the display of erroneous or misleading information to the flightcrew, and reduced consequent controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–38–1049, dated January 22, 1997, which describes procedures for replacing certain Monogram toilet rinse valves with modified rinse valves. The modification consists of installation of improved armature elbow assemblies in the rinse valves. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Airbus service bulletin references Monogram Sanitation Service Bulletin 15800–38–06A, Revision 2, dated July 7, 1997, as an additional source of service information.

The DGAC classified Airbus Service Bulletin A320–38–1049, dated January 22, 1997, as mandatory and issued French airworthiness directive 97–269–103(B), dated September 24, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified the Airbus service bulletin described previously.

Cost Impact

The FAA estimates that 16 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,760, or $360 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 AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 98–NM–15–AD.

Applicability: Model A319, A320, and A321 series airplanes; equipped with Monogram rinse valves having part number (P/N) 15800–348, Revision C; and on which Airbus Modification 26145 (reference Airbus Service Bulletin A320–38–1049) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 water contamination of the avionics computers, which could result in the display of erroneous or misleading information to the flightcrew, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, replace all Monogram toilet rinse valves having P/N 15800–348, Revision C, with modified rinse valves in accordance with Airbus Service Bulletin A320–38–1049, dated January 22, 1997.

(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 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.

(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.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–269–103(B), dated September 24, 1997.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7224 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–17–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 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 Airbus Model A310 and A300–600 series airplanes. This proposal would require repetitive visual inspections to detect corrosion on the lower rim area of the fuselage rear pressure bulkhead; and follow-on actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct corrosion at the lower rim area of the fuselage rear pressure bulkhead, which could result in reduced structural integrity of the bulkhead, and consequent decompression of the cabin.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–17–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. 98–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A310 and A300–600 series airplanes. The DGAC advises that, during routine maintenance, severe

corrosion was found in the lower rim area of the aft pressure bulkhead between stringer 27, on the left- and right-hand sides of the airplane. The corrosion was found in two separate areas: on the inner rim angle of the bulkhead in the area of the drainhole, and in the cleat profile splice at the airplane centerline. The corrosion on the inner rim angle of the bulkhead has been attributed to damage of the surface protection when cleaning the drainholes or during the modifications specified in Airbus Service Bulletin A310–53–2025 or A300–53–6006. The corrosion of the cleat profile splice has been attributed to clogged drainholes or incomplete adhesion of sealant during accomplishment of the modifications specified in the service bulletins. Such corrosion, if not detected and corrected in a timely manner, could result in reduced structural integrity of the bulkhead, and consequent decompression of the cabin.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletins A310–53–2092 (for Model A310 series airplanes) and A300–53–6066 (for Model A300–600 series airplanes), both dated October 16, 1996. These service bulletins describe procedures for repetitive visual inspections to detect corrosion on the lower rim area of the fuselage rear pressure bulkhead; and follow-on corrective actions (which include removal of corrosion and repair), if necessary. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 97–061–212(B), dated February 26, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletins

Operators should note that, unlike the procedures previously described in Airbus Service Bulletins A310–53–2092 (for Model A310 series airplanes) and A300–53–6066 (for Model A300–600 series airplanes), both dated October 16, 1996, this proposed AD would not permit further flight if corrosion is detected. The FAA has determined that, because of the safety implications and consequences associated with such corrosion, any subject part of the fuselage and aft pressure bulkhead that is found to have corrosion must be repaired prior to further flight.

Cost Impact

The FAA estimates that 90 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 62 work hours per airplane to accomplish the proposed inspection, 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 $334,800, or $3,720 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 AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AIRBUS: Docket 98–NM–17–AD.

Applicability: Model A310 and A300–600 series airplanes on which Airbus Modification 6788 has not been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion at the lower rim area of the fuselage rear pressure bulkhead, which could result in reduced structural integrity of the bulkhead, and consequent decompression of the cabin, accomplish the following:

(a) Within 18 months after the effective date of this AD: Except as provided by paragraph (b) of this AD, perform a visual inspection to detect corrosion of the lower rim area of the aft pressure bulkhead, in accordance with Airbus Service Bulletin A310–53–2092 (for Model A310 series

airplanes) or Airbus Service Bulletin A300–53–6066 (for Model A300–600 series airplanes), both dated October 16, 1996, as applicable. If any discrepancy is found, prior to further flight, repair in accordance with the applicable service bulletin. Thereafter, repeat the inspection at the interval specified in paragraph (a)(1) or (a)(2), as applicable.

(1) For airplanes on which Airbus Service Bulletin A310–53–2036 or A300–53–6017 has not been accomplished: Repeat the inspection at intervals not to exceed 3 years.

(2) For airplanes on which Airbus Service Bulletin A310–53–2036 or A300–53–6017 has been accomplished: Repeat the inspection at intervals not to exceed 5 years.

(b) If any discrepancy is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

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

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

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

Note 3: The subject of this AD is addressed in French airworthiness directive 97–061–212(B), dated February 26, 1997.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7223 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–24–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–300 and –320, and Model ATR72 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 Aerospatiale Model ATR42–300 and –320, and Model ATR72 series airplanes. This proposal would require modification of the engine fuel drainage system. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fuel from overflowing into the engine nacelle, which could result in a fire in the nacelle.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–24–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–24–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. 98–NM–24–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–300 and –320, and Model ATR72 series airplanes. The DGAC advises that the existing design of the engine fuel drainage system could allow the drainage system to clog. If the engine fuel drainage system is clogged, fuel leakage from the nozzles or turbine may result in fuel overflowing into the engine nacelle. This condition, if not corrected, could result in a fire in the nacelle.

Explanation of Relevant Service Information

Aerospatiale has issued Service Bulletin ATR42–71–0010, Revision 4, dated October 23, 1996 (for Model ATR42 series airplanes), which describes procedures for modifying the engine fuel drainage system to allow improved drainage. This modification involves bypassing the manifold by disconnecting the drain pipe from the engine nozzle to the manifold, installing a plug on the manifold where the drain pipe was connected, and connecting a new drain hose from the engine nozzle drain point directly to the breather tube outlet.

Aerospatiale also has issued Service Bulletin ATR72–71–1006, Revision 1, dated October 21, 1996 (for Model ATR72 series airplanes), which describes procedures for modifying the engine fuel drainage system. This modification involves isolating the engine turbine drain pipe from the collector manifold by installing a new

drain pipe, which bypasses the manifold.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 96–109–063 (B) and 96–110–030 (B), both dated June 5, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 145 airplanes of U.S. registry would be affected by this proposed AD.

For Model ATR42–300 and –320 series airplanes (106 airplanes), it would take approximately 8 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $50,880, or $480 per airplane.

For Model ATR72 series airplanes (39 airplanes), it would take approximately 15 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,499 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $93,561, or $2,399 per airplane.

The cost impact figures discussed above are 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 AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket 98–NM–24–AD.

Applicability: Model ATR42–300 and –320 series airplanes, on which Aerospatiale Modification 1696 (reference Aerospatiale Service Bulletin ATR42–71–0010) has not been accomplished; and Model ATR72–101, –201, –102, –202, –211, and –212 series airplanes, on which Aerospatiale Modification 3742 (reference Aerospatiale Service Bulletin ATR72–71–1006) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 fuel from overflowing into the engine nacelle, which could result in a fire in the nacelle, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the engine fuel drainage system, in accordance with Aerospatiale Service Bulletin ATR42–71–0010, Revision 4, dated October 23, 1996 (for Model ATR42 series airplanes), or Aerospatiale Service Bulletin ATR72–71–1006, Revision 1, dated October 21, 1996 (for Model ATR72 series airplanes), as applicable.

(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 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.

(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.

Note 3: The subject of this AD is addressed in French airworthiness directives 96–109–063 (B) and 96–110–030 (B), both dated June 5, 1996.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7222 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–26–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 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 Airbus Model A320 series airplanes. This proposal would require replacement of the existing mounting rack for the Digital Flight Data Recorder (DFDR) with a new rack having improved damping, and installation of a new bracket for re-routing the wiring harness. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the possible loss of data recorded on the DFDR as a result of vibrations and/or accelerations during flight.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–26–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. 98–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that, when using the standard LORAL Ground Support Equipment (GSE) for data retrieval, the data may not be successfully retrieved by the GSE when the data has been recorded under dynamic conditions (such as vibrations or accelerations) that may occur during airplane operation. This condition, if not corrected, could result in the loss of data recorded on the Digital Flight Data Recorder (DFDR).

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–31–1088, Revision 2, dated September 16, 1996, which describes procedures for replacement of the existing mounting rack for the DFDR with a new rack having improved capability for damping of vibration; and installation of a new bracket for re-routing the wiring harness of the DFDR. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–272–098(B)R1, dated January 2, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be furnished by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,920, or $180 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 AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 98–NM–26–AD.

Applicability: Model A320 series airplanes; equipped with a LORAL Digital Flight Data Recorder (DFDR), and on which Airbus Modification 24959 (Airbus Service Bulletin A320–31–1088, Revision 1, dated September 16, 1996) has not been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the possible loss of data recorded on the DFDR as a result of vibrations and/or accelerations during flight, accomplish the following:

(a) Within 15 months after the effective date of this AD, remove the existing DFDR vibration mounting rack, install a new rack having improved damping, and install a new bracket for re-routing of the cable harness, in accordance with Airbus Service Bulletin A320–31–1088, Revision 2, dated September 16, 1996.

(b) As of the effective date of this AD, no person shall install a DFDR rack having part number 404–050L1DPX2–1 or V2E2433L07F, on any airplane.

(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.

(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.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–272–098(B)R1, dated January 2, 1997.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7213 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–40–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 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 Dornier Model 328–100 series airplanes. This proposal would require a one-time inspection of the double shuttle valve in the upper fuselage fairing for incorrectly labeled part numbers, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to ensure replacement of the double shuttle valves when they have reached their maximum life limit; incorrectly labeled part numbers of the double shuttle valves that are not replaced could result in the failure of the roll control spoilers, and, consequently, lead to reduced controllability of the airplane.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

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

considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–40–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. 98-NM–40-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received a report indicating that, during an inspection of an in-service airplane, the double shuttle valves in the upper fuselage fairing were found to have exceeded their maximum life limit due to the inability of maintenance personnel to identify the correct part numbers. If the double shuttle valves are not replaced in a timely manner, the roll control spoilers could fail, and, consequently, lead to reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–27–236, Revision 1, dated November 5, 1997, which describes procedures for performing a one-time visual inspection of the double shuttle valve in the upper fuselage fairing for incorrectly labeled part numbers. The service bulletin also describes procedures for revising the valve identification label of incorrectly labeled double shuttle valves, and deleting any reference to operating pressure (i.e., BAR 205). In addition, the service bulletin describes procedures for verifying that incorrectly labeled double shuttle valves are within certain time limits, and replacing any double shuttle value that is outside that limit with a new part. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 1997–321/2, dated January 15, 1998, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed inspection at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $3,000, or $60 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 AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dorier Luftfahrt GmbH: Docket 98–NM–40–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3086 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 ensure replacement of the double shuttle valves when they have reached their maxmimum life limit, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time visual inspection of the double shuttle valve in the upper fuselage fairing to determine if the part number of the valve is labeled correctly, in accordance with Dornier Service Bulletin SB–328–27–236, Revision 1, dated November 5, 1997.

(b) If the inspection required by paragraph (a) of this AD reveals that the installed double shuttle valve is labeled incorrectly, prior to further flight, accomplish paragraphs (b)(1) and (b)(2) of this AD, in accordance with Dornier Service Bulletin SB–328–27–236, Revision 1, dated November 5, 1997.

(1) Revise the valve identification label to correctly identify the part number of the double shuttle valve, and delete any reference to operating pressure (i.e., BAR 205).

(2) Verify that the installed valve is within the limits specified for that particular part number in accordance with the service bulletin. If the installed double shuttle valve is outside the limits, prior to further flight, replace the double shuttle valve with a new part.

(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.

(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.

Note 3: The subject of this AD is addressed in German airworthiness directive 1997–321/2, dated January 15, 1998.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7212 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–20–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes. This proposal would require repetitive inspections to detect fatigue cracking of certain fuselage skin panels, and repair, if necessary. For certain airplanes, the proposed AD also provides for an optional preventative modification, which, if accomplished, would terminate the repetitive inspections. This proposal is prompted by reports of fatigue cracking of certain fuselage skin panels. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the airplane, and consequent loss of pressurization.

DATES: Comments must be received by May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–20–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90846; telephone (562) 627–5237; fax (562)–627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–20–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–20–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that fatigue cracking of the fuselage skin has been detected on several McDonnell Douglas Model DC–9–30 series airplanes. The cracking was located along the line of attachments that secure the fuselage skin to longeron 22. The cracking emanated from multiple attachment holes at 45-degree angles. On one airplane, cracking extended for approximately 12 inches in length. Investigation and laboratory analysis of skin segments have revealed that the cracking was due to material fatigue. Furthermore, during repair of one airplane, additional damage was

found on longerons 23L and 24L at station Y=200.000. The affected airplanes had accumulated between 44,618 and 74,043 flight hours, and 45,210 and 88,093 landings at the time of inspection. Fatigue cracking of certain fuselage skin panels, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane, and consequent loss of pressurization.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas MD–80 Service Bulletin 53–253, dated March 31, 1994. The service bulletin describes procedures for performing repetitive high frequency eddy current (HFEC) inspections to detect fatigue cracking of the forward lower left fuselage skin panels between stations Y=160.000 and Y=200.000; and repair, if necessary. The service bulletin describes procedures for a permanent repair for cracking within certain limitations, which would eliminate the need for repetitive HFEC inspections. Additionally, the service bulletin describes procedures for an optional preventative modification for airplanes on which no cracking is detected. The preventative modification includes cold working holes and installing oversize fasteners, which would minimize the possibility of cracking. Accomplishment of the preventative modification would eliminate the need for the repetitive HFEC inspections.

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 repetitive HFEC inspections to detect fatigue cracking of the forward lower left fuselage skin panels between station Y=160.000 and Y=200.000; and repair, if necessary. The proposed AD also provides for an optional preventative modification for airplanes on which no cracking is detected, which, if accomplished, would terminate the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between this Rule and the Relevant Service Bulletin

Operators should note that, although the service bulletin recommends contacting the manufacturer for any cracking that extends forward of frame station Y=160.000 or aft of station Y=200.000, this proposed AD requires that such cracking be repaired in accordance with a method approved by the FAA.

Cost Impact

There are approximately 1,200 McDonnell Douglas Model DC–9–80 and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 800 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $1,152,000, or $1,440 per airplane, per inspection cycle.

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 AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 97–NM–20–AD.

Applicability: Model DC–9–80 series airplanes and Model MD–88 airplanes, as listed in McDonnell Douglas Service Bulletin 53–253, dated March 31, 1994; 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 (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.

To prevent loss of pressurization due to reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 44,500 total landings, or within 4,500 landings after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current (HFEC) inspection to detect fatigue cracking of the fuselage skin panels between stations Y=160.000 and Y=200.000 at the left side of longeron 22 below the airstair door cutout, in accordance with McDonnell Douglas Service Bulletin 53–253, dated March 31, 1994.

(b) If no cracking is detected, accomplish the actions specified in either paragraph (b)(1) or (b)(2) of this AD, in accordance with McDonnell Douglas Service Bulletin 53–253, dated March 31, 1994, at the time specified.

(1) Perform the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 4,500 landings until the requirements of paragraph (b)(2) of this AD have been accomplished. Or,

(2) Prior to further flight, install the preventative modification in accordance with the service bulletin. Accomplishment of the preventative modification prior to detection of any cracking constitutes terminating action for the repetitive inspection requirements of this AD.

(c) If any cracking is detected within frame stations Y=160.000 and Y=200.000, accomplish the actions specified in either paragraph (c)(1) or (c)(2) of this AD, in

accordance with McDonnell Douglas Service Bulletin 53–253, dated March 31, 1994.

(1) Accomplish the actions specified in paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (c)(1)(iv) of this AD at the times specified.

(i) Prior to further flight, install the temporary repair in accordance with the service bulletin.

(ii) Within 3,000 landings after installation of the temporary repair, and thereafter, at intervals not to exceed 3,000 landings, perform visual inspections to detect cracking of the repaired area, in accordance with the service bulletin.

(iii) Within 4,500 landings after installation of the temporary repair, and thereafter, at intervals not to exceed 4,500 landings, perform HFEC inspections to detect cracking of any area not covered by the temporary doubler repair, in accordance with the service bulletin.

(iv) Within 8,000 landings after installation of the temporary repair, accomplish the permanent repair in accordance with the service bulletin. Accomplishment of the permanent repair constitutes terminating action for the repetitive inspection requirements of this AD.

(2) Prior to further flight, accomplish the permanent repair in accordance with the service bulletin. Accomplishment of the permanent repair constitutes terminating action for the repetitive inspection requirements of this AD.

(d) If any cracking is detected that extends forward of station Y=160.000 or aft of station Y=200.000, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(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, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

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

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7229 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–09–AD]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–500M Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Model DG–500M gliders. The proposed AD would require installing a rudder gap seal and modifying the cooling liquid reservoir mount. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent rudder vibrations caused by flow separation at the rudder gap, which could result in flutter with consequent loss of rudder control.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–09–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information also may be examined at the Rules Docket at the address above.

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

SUPPLEMENTARY INFORMATION:

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, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–09–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, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–09–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all Glaser-Dirks Model DG–500M gliders. The LBA reports that rudder vibrations could occur at high speeds. These vibrations are caused by flow separation at the rudder gap. This condition was detected during high speed flight tests.

These conditions, if not corrected, could result in flutter with consequent loss of rudder control.

Relevant Service Information

Glaser-Dirks has issued Technical Note (TN) No. 843/5, dated November 30, 1992, which specifies installing a rudder gap seal and modifying the cooling liquid reservoir mount. Procedures for installing the rudder gap seal are included in the applicable maintenance manual, and procedures for modifying the cooling liquid reservoir mount are included in Glaser-

Dirks Working Instruction No. 1 for TN 843/5, dated November 5, 1992.

The LBA classified this service bulletin as mandatory and issued German AD 93–010 Glaser-Dirks, dated January 5, 1993, in order to assure the continued airworthiness of these airplanes in Germany.

The FAA's Determination

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Glaser-Dirks Model DG–500M gliders of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require installing a rudder gap seal and modifying the cooling liquid reservoir mount. Accomplishment of the proposed installation would be required in accordance with the maintenance manual. Accomplishment of the proposed modification would be required in accordance with Glaser-Dirks Working Instruction No. 1 for TN 843/5, dated November 5, 1992, as referenced in Glaser-Dirks TN No. 843/5, dated November 30, 1992.

Compliance Time of the Proposed AD

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

Cost Impact

The FAA estimates that 5 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $40 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,400, or $280 per glider.

Regulatory Impact

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

For the reasons discussed above, I certify that this 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) 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 has been placed 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 (AD) to read as follows:

Glaser-Dirks Flugzeugbau GMBH: Docket No. 98–CE–09–AD.

Applicability: Model DG–500M gliders, all serial numbers, certificated in any category.

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

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

To prevent rudder vibrations caused by flow separation at the rudder gap, which could result in flutter with consequent loss of rudder control, accomplish the following:

(a) Install a rudder gap seal in accordance with the instructions in the maintenance manual, as referenced in Glaser-Dirks Technical Note (TN) No. 843/5, dated November 30, 1992.

(b) Modify the cooling liquid reservoir mount in accordance with Glaser-Dirks Working Instruction No. 1 for TN 843/5, dated November 5, 1992, as referenced in Glaser-Dirks TN No. 843/5, dated November 30, 1992.

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

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

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

(e) Questions or technical information related to Glaser-Dirks Technical Note No. 843/5, dated November 30, 1992, should be directed to DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 93–010, dated January 5, 1993.

Issued in Kansas City, Missouri, on March 11, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7250 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 858]

RIN 1512–AA07

Chiles Valley Viticultural Area (96F–111)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition for the establishment of a viticultural area in Napa County, California, to be known as "Chiles Valley." This proposal is the result of a petition submitted by Mr. Volker Eisele, owner of the Volker Eisele Vineyard and Winery.

DATES: Written comments must be received by May 19, 1998.

ADDRESSES: Send written comments to: Chief, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, D.C. 20091–0221 (Attn: Notice No. 858). Copies of the petition, the proposed regulation, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas B. Busey, Specialist, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, D.C. 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in Subpart C of part 9.

Section 4.25(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale, and;

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF has received a petition from Mr. Volker Eisele, representing the Chiles Valley District Committee proposing to establish a new viticultural area in Napa County, California to be known as "Chiles Valley District." The proposed Chiles Valley District viticultural area is located entirely within the Napa Valley. The proposed viticultural area is located in the eastern portion of Napa Valley between and on the same latitude as St. Helena and Rutherford. It contains approximately 6,000 acres, of which 1,000 are planted to vineyards. Four wineries are currently active within the proposed viticultural area.

Evidence That the Name of the Area Is Locally or Nationally Known

An historical survey written by Charles Sullivan spells out the historical use of the name Chiles Valley and vineyard plantings dating back to the late 1800's. Numerous references exist indicating the general use of the name "Chiles Valley" to refer to the petitioned area. The petitioner included copies of title pages of various publications, guide and tour book references, public and private phone book listings and Federal and State agency maps, to illustrate the use of the name.

In the petitioner's original proposal, the term "district" was included as part of the viticultural area name (i.e., Chiles Valley District). Although the petitioner stated that there was no historical evidence for the use of the term "district" in conjunction with Chiles Valley, the committee felt that the use of this term was important to emphasize that the Chiles Valley was part of a larger valley, in this case the Napa Valley, which totally surrounds the proposed viticultural area. Under California state law an appellation that is totally surrounded by the Napa Valley appellation can only use the name conjunctively with the name Napa Valley on any wine label. ATF has permitted the addition of the term "District" to the proposed names of viticultural areas before. See Stag's Leap District, 27 CFR 9.117; San Ysidro District, 27 CFR 9.130; and, Spring Mountain District, 27 CFR 9.143. However, in each of these there was evidence submitted to justify the use of the term "district" as part of the viticultural area name.

ATF does not believe the petitioner has submitted sufficient evidence to support the use of the term "District" with Chiles Valley. Consequently, the name of the proposed viticultural area is being proposed as "Chiles Valley." However, ATF encourages the submission of any specific comments on the issue of whether the term "district" in the proposed name is appropriate.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

According to the petitioner, the boundaries establish a grape producing area with an identifiable character and quality, based on climate, topography, and historical tradition. The historical evidence can be dated to the mid 1800's with a land grant from the Mexican government to Joseph Ballinger Chiles, whose name the valley would later bear. The land grant was called Rancho Catacula and these lands all lie within the proposed appellation boundaries. The boundaries of the land grant are still recognized on U.S.G.S. maps of the area. A vineyard planting was one of the earliest agricultural operations conducted. For the most part the

boundaries of the proposed area use the land grant (Rancho line) boundary lines. This area includes virtually all lands that in any way might be used for agricultural purposes. Beyond the Rancho line are very steep slopes, which are mostly part of the serpentine chaparral soil formation. Historically it is also fairly clear the land grant boundaries were drawn to include usable land rather than the watershed, which, on all sides of the old Rancho Catacula is much further up the slopes. In sum, the petitioner believes the proposed boundaries encompass an area of remarkable uniformity with respect to soils, climate and elevation that produce a unique microclimate within the Napa Valley.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

According to the petitioner, the geographical features of the proposed viticultural area set it apart from the surrounding area in the Napa Valley and produce a unique microclimate.

The lands within the proposed boundaries generally lie between the 800 and 1000 feet altitudes above sea level. The valley runs northwest to southeast and is therefore an open funnel for the prevailing northwesterly winds. This fairly constant northwesterly flow produces substantial cooling during the day and, in combination with the altitude, relatively dry air. During the night, this drier air leads to more rapid cooling than in most of the Napa Valley. In addition, the narrow valley surrounded by the hills up to 2200 feet concentrates the cooler air flowing down the hillsides toward the valley floor where the vineyards are located.

Also, the relative distance from the San Pablo Bay and the Pacific Ocean allows the summer fog to move in much later than in the main Napa Valley. By the time the fog does reach the Chiles Valley the air temperatures have dropped much more dramatically than in the Napa Valley, thereby causing much lower temperatures during the night. Late fog ceiling, combined with low minimums, cause a very slow heat buildup during the day, again producing relatively cooler average temperature than is found in many places of the Napa Valley.

Available data indicates a "Region Two" according to the U.C. Davis climate classification. The growing season starts later than in the Napa Valley due to a more continental winter with temperatures dropping below 20 degrees F. The high incidence of spring frost is another indication of the generally cooler climate conditions.

In the areas immediately adjacent to the proposed boundaries, the micro-climate changes significantly. As one moves up the hillsides on either side of Chiles Valley the summer fog blanket gets thinner and thinner and disappears altogether at approximately 1400 to 1500 feet elevation.

Since the cold air drains down into the Chiles Valley, the night time temperatures are quite a bit higher on the steep slopes than on the valley floor. In addition, the lack of fog allows a much faster temperature build up during the day, reaching the daily high two to three hours earlier than on the valley floor. Not only is the temperature drop at nightfall less, but also much more gradual so that during a 24 hour period the heat summation is substantially higher on the slopes than within the proposed boundaries. In winter, the situation is reversed. Strong winds tend to chill the uplands creating much more of a continental climate than on the valley floor. Snowfall above 1400 feet has been observed many times.

The microclimatic limitations combined with enormous steepness and very poor soil (serpentine, heavy sandstone formations, and shale out croppings) create an abrupt change from the proposed viticultural area to the areas surrounding it.

The petitioner believes that Pope Valley to the north of the proposed viticultural area is also significantly different. A combination of a lower elevation valley floor and substantially higher mountains on the western side causes the formation of inversion layers which result in substantially higher average temperatures during the growing season and significantly lower ones in the winter. In addition, the summer fog from the Pacific Ocean never reaches the Pope Valley.

The petitioner also states that the particular interplay between climate and soil make for unique growing conditions in the proposed area. The soils within the proposed appellation are uncommonly well drained and of medium fertility. The overall terrain gently slopes toward a series of creeks which act as natural drainage for surface as well as subterranean water. The petitioner believes this is a good basis for high quality grapes.

Uniform elevation and relatively uniform soil make the proposed viticultural area a clearly identifiable growing area. Almost all vineyards lie between 800 and 1000 feet elevation. As a general rule the soils in the Chiles Valley all belong to the Tehama Series: Nearly level to gently slopping, well drained Silt loams on flood plains and alluvial fans.

The total planted acreage in 1996 was roughly 1000 acres. The remaining plantable area does not exceed 500 acres. This small size illuminates the petitioner's goal of a well defined, specific appellation.

Proposed Boundaries

The boundaries of the proposed Chiles Valley viticultural area may be found on four 1:24,000 scale U.S.G.S. maps titled: St. Helena, CA (1960); Rutherford, CA (1968); Chiles Valley, CA (1980); and Yountville, CA (1968).

Public Participation-Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing data will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) Are legible; (2) are 8½" x 11" in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from the region.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this executive order.

Drafting Information

The principal author of this document is Thomas B. Busey, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27 Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.154 to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

§ 9.154 Chiles Valley

(a) *Name.* The name of the viticultural area described in this section is "Chiles Valley."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Chiles Valley viticultural area are four 1:24,000 Scale U.S.G.S. topography maps. They are titled:

(1) St. Helena, CA 1960 photorevised 1980

(2) Rutherford, CA 1951 photorevised 1968

(3) Chiles Valley, CA 1958 photorevised 1980

(4) Yountville, CA 1951 photorevised 1968

(c) *Boundary.* The Chiles Valley viticultural area is located in the State of California, entirely within the Napa Valley viticultural area. The boundaries of the Chiles Valley viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps follow. The local names of roads are identified by name.

(1) Beginning on the St. Helena, CA quadrangle map at the northernmost corner of Rancho Catacula in Section 34, Township 9 North (T9N), Range 5 West (R5W), Mount Diablo Base and Meridian (MDBM);

(2) Then in southwesterly direction along the Rancho Catacula boundary line to its intersection with the Rancho La Jota boundary line;

(3) Then in a south-southeasterly direction approximately 3,800 feet along the Rancho Catacula/Rancho La Jota boundary line to the point where the Rancho Catacula boundary separates from the common boundary with Rancho La Jota;

(4) Then in a southeasterly direction continuing along the Rancho Catacula boundary approximately 23,600 feet to a point of intersection, in the NE ¼ Sec. 19, T8N, R4W, on the Chiles Valley quadrangle map, with a county road known locally as Chiles and Pope Valley Road;

(5) Then in a southwesterly direction along Chiles and Pope Valley Road to a point where it first crosses an unnamed blueline stream in the SE ¼ Section 19, T8N, R4W;

(6) Then following the unnamed stream in generally southeast direction to its intersection with the 1200 foot contour;

(7) Then following the 1200 foot contour in a northeasterly direction to a point of intersection with the Rancho Catacula boundary in section 20, T8N, R4W;

(8) Then in a southeasterly direction along the Rancho Catcula boundary approximately 17,500 feet to the southwest corner of Rancho Catacula in section 34, T8N, R4W on the Yountville, CA, quadrangle map;

(9) Then in a northeasterly direction along the Rancho Catacula boundary approximately 650 feet to its intersection with the 1040 foot contour;

(10) Then along the 1040 foot contour in a generally east and northeast direction to its intersection with the Rancho Catacula boundary;

(11) Then in a northeasterly direction along the Rancho Catacula boundary approximately 1100 feet to its intersection with the 1040 foot contour;

(12) Then along the 1040 foot contour in an easterly direction and then in a northwesterly direction to its intersection of the Rancho Catacula boundary;

(13) Then in a southwesterly direction along the Rancho Catacula boundary approximately 300 feet to a point of intersection with a line of high voltage power lines;

(14) Then in a westerly direction along the high voltage line approximately 650 feet to its intersection with the 1000 foot contour;

(15) Then continuing along the 1000 foot contour in a generally northwesterly direction to the point of intersection with the first unnamed blueline stream;

(16) Then along the unnamed stream in a northerly direction to its point of intersection with the 1200 foot contour;

(17) Then along the 1200 foot contour in a northwesterly direction to its points of intersection with the Rancho Catacula boundary in Section 35, T9N, R5W on the St. Helena, CA, quadrangle map;

(18) Then along the Rancho Catacula boundary in a northwesterly direction approximately 5,350 feet to a northernmost corner of Rancho Catacula, the beginning point on the St. Helena quadrangle map a the northernmost corner of Rancho Catacula in Section 34, T9N, R5W, MDBM.

Signed: February 20, 1998.

John W. Magaw,

Director.

[FR Doc. 98–7200 Filed 3–19–98; 8:45 am]

BILLING CODE 4810–71–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Subchapter S

[CGD 97–066]

Federal Requirements for Education in Recreational Boating Safety

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; request for comments; reopening of comment period.

SUMMARY: In a document published on October 23, 1997, the Coast Guard requested comments from interested people, groups, and businesses about the need for, and alternatives to, Federal requirements or incentives for boaters to take courses in boating safety. The Coast Guard will consider all comments, and consult with the National Boating Safety Advisory Council (NBSAC), in determining how best to reduce the number of deaths among boaters caused by a lack of boating safety training. This document reopens the comment period.

DATE: Comments must reach the Coast Guard on or before May 29, 1998.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 97–066], U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Moore, Project Manager, Office of Boating Safety, Program Development and Implementation Division, (202) 267–0577. You may obtain a copy of this Notice or of the original one by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read either on the Internet, at the Web Site for the office of Boating Safety, at URL address www.uscgboating.org.

SUPPLEMENTARY INFORMATION:

Background and Purpose

In a Notice published on October 23, 1997 (62 FR 55199), the Coast Guard set the original close of the comment period at February 2, 1998, to allow summarizing the comments received and providing the summaries to the members of NBSAC before the scheduled meeting on April 27, 1998. Because of reported delays in publication of that Notice in several recreational boating periodicals, the number of comments received just before and just after the close of the comment period, and a request by the Boat Owners Association of the United States, the Coast Guard is reopening the comment period to provide additional time for submission of public comment. All comments submitted in response to the original Notice are already in the docket. The Coast Guard will summarize all comments it receives during the comment period in response to this Notice and the original one, place a copy of the summary in the public docket, and provide copies to the members of NBSAC for them to consider at their meeting in October, 1998. (The Coast Guard will publish details of the exact time and place of the meeting in the **Federal Register** at a later date. The meeting will be open to the public.) It will itself consider all relevant comments in the formulation of any regulatory or nonregulatory measures that may follow from this notice.

Request for Comments

The Coast Guard encourages you to submit comments about the need for, and alternatives to, Federal requirements or incentives for boaters to participate in boating safety education. In particular, it encourages you to answer the specific questions about these requirements or incentives for taking courses in boating safety, which it developed in consultation with members of NBSAC at the meeting in April 1997. It also solicits comments from all segments of the boating community, State boating safety authorities, NBSAC, the national Association of State Boating Law Administrators (NASBLA), and other interested people, groups, and businesses on the economic and other impacts of Federal requirements or incentives for boating safety education.

Please include your name and address, identify this rulemaking [CGD 97–066] and the specific question or area of concern to which each comment applies, and give the reason(s) for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, to help us with copying and electronic filing. If you want us to acknowledge receipt of your comments, please enclose a stamped, self-addressed postcard or envelope.

Dated: March 12, 1998.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 98–7061 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[CGD 97–059]

Recreational Boating Safety—Federal Requirements for Wearing Personal Flotation Devices

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; request for comments; reopening of comment period.

SUMMARY: In a document published on September 25, 1997, the Coast Guard requested comments from interested people, groups, and businesses about the need for, and alternatives to, Federal requirements or incentives for boaters to wear lifejackets. The Coast Guard will consider all comments, and consult with the National Boating Safety Advisory Council (NBSAC), in determining how best to reduce the number of boaters who drown. This document reopens the comment period.

DATES: Comments must reach the Coast Guard on or before May 29, 1998.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 97–059], U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carlton Perry, Project Manager, Office of Boating Safety, Program Management Division, (202) 267–0979. You may obtain a copy of this Notice or of the original one by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read either on the Internet, at the Web Site for the Office of Boating Safety, at URL address www.uscgboating.org.

SUPPLEMENTARY INFORMATION:

Background and Purpose

In a Notice published on September 25, 1997 [62 FR 50280], the Coast Guard set the original close of the comment period at February 2, 1998, to allow summarizing the comments received

and providing the summaries to the members of NBSAC before the scheduled meeting on April 27, 1998. Because of reported delays in publication of that Notice in several recreational boating periodicals and the number of comments received just before and just after the close of the comment period, the Coast Guard is reopening the comment period to provide additional time for submission of public comment. All comments submitted in response to the original Notice are already in the docket. The Coast Guard will summarize all comments it receives during the comment period in response to this Notice and the original one, place a copy of the summary in the public docket, and provide copies to the members of NBSAC for them to consider at their meeting in October, 1998 (The Coast Guard will publish details of the exact time and place of the meeting in the **Federal Register** at a later date. The meeting will be open to the public.) It will itself consider all relevant comments in the formulation of any regulatory or nonregulatory measures that may follow from this notice.

Request for Comments

The Coast Guard encourages you to submit comments about the need for, and alternatives to, Federal requirements or incentives for boaters to wear lifejackets (personal flotation devices, or PFDs). In particular, it encourages you to answer the specific questions about these requirements or incentives for wearing lifejackets, which it developed in consultation with members of NBSAC at the meeting in April 1997. It also solicits comments from all segments of the boating community, State boating safety authorities, NBSAC, the National Association of State Boating Law Administrators (NASBLA), and other interested people, groups, and businesses on the economic and other impacts of Federal requirements or incentives for wearing PFDs.

Please include your name and address, identify this rulemaking [CGD 97–059] and the specific question or area of concern to which each comment applies, and give the reason(s) for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, to help us with copying and electronic filing. If you want us to acknowledge receipt of your comments, please enclose a stamped, self-addressed postcard or envelope.

Dated: March 12, 1998.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 98–7062 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–169–0065b; FRL–5979–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). This action is an administrative change which revised various definitions in South Coast Air Quality Management District (SCAQMD) Rule 102, Definition of Terms.

The intended effect of proposing approval of this action is to incorporate changes to the definitions for clarity and consistency with revised Federal and state definitions. EPA is proposing approval of this revision to be incorporated into the California SIP for the attainment of the National ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this administrative change as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this 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 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. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 20, 1998.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule is available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revision is also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District Rule 102, Definition of Terms. This rule was submitted to EPA on March 26, 1996 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

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

Dated: February 13, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 98–7006 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–5976–4]

National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to revise monitoring, recordkeeping, and reporting requirements and correct equations of the "National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries", which was issued as a final rule on August 18, 1995. This rule is commonly known as

the Petroleum Refineries NESHAP. Because the revisions reduce the burden of complying with the NESHAP without altering its applicability, stringency, or schedule, the Agency does not anticipate receiving adverse comments. Consequently the revisions are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no significant adverse comments are timely received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

DATES: Comments. Comments must be received on or before April 20, 1998. Additionally, a hearing will be convened if requests to speak are received by April 6, 1998. If a hearing is held, it will take place on April 13, 1998 beginning at 10:00 a.m. and the record on the hearing will remain open for 30 days after the hearing to provide an opportunity for submission of rebuttal and supplementary information.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–48 (see docket section below), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Electronic Submittal of Comments

Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–93–48. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina or at an alternate site nearby. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. JoLynn Collins, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5671.

Docket. Docket No. A–93–48, containing the supporting information for the original NESHAP and this action, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington DC 20460, or by calling (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Durham, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5672.

SUPPLEMENTARY INFORMATION: On August 18, 1995, the EPA promulgated the "National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries" (the "Petroleum Refineries NESHAP"). The NEHSAP regulates hazardous air pollutants (HAP) emitted from new and existing refineries that are major sources of HAP emissions. The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry ..	Petroleum Refineries (Standard Industrial Classification Code 2911).

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.640. If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule, and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If significant adverse comments are received the direct final rule will be withdrawn and all public comment received will be addressed in a subsequent final rule based on this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Administrative Requirements

A. Executive Order 12866 Review

Under Executive Order 12866 [58 FR 51735, (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or land programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because today's action revises monitoring, recordkeeping, and reporting requirements without altering the stringency or schedule of the Petroleum Refineries NESHAP or the ability of regulating authorities to ensure compliance with NESHAP, this rule was classified "non-significant" under Executive Order 12866 and, therefore was not reviewed by the Office of Management and Budget.

B. Paperwork Reduction Act

The information collection requirements in the promulgated Petroleum Refineries NESHAP rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq and have been assigned a control number 2060–0340. However, this approval has expired and the information collection request is currently in the reinstatement process. The information collection request has been revised to reflect the revisions to monitoring, recordkeeping and reporting requirements made by today's action. The collection of information has an estimated annual reporting and recordkeeping burden averaging 3,000 hours per respondent. This estimate includes time for reviewing

instructions; developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting existing ways to comply with any previously applicable instructions and requirements; completing and reviewing the collection of information; and reviewing the collection of information; and transmitting or otherwise disclosing the information.

The burden estimate reflects an annual reduction of 13,200 technical hours, as compared to the estimate at promulgation, resulting from the revisions made by today's action.

C. 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 this 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 proposed rule would not have a significant impact on a substantial number of small entities because it decreases monitoring, recordkeeping, and reporting requirements and reduces the associated burden for all affected facilities, including small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

At the time of promulgation, EPA determined that the petroleum refineries NESHAP 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 determination is not altered by today's action, the purpose of which is to reduce the burden associated with monitoring, recordkeeping, and reporting requirements. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Petroleum refineries, Reporting and recordkeeping requirements, Storage vessels.

Dated: March 4, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–6872 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[KS 044–1044b; FRL–5979–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the Kansas state 111(d) plan for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. The plan was submitted to fulfill the requirements of the Clean Air Act. The state plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

In the final rules section of the **Federal Register**, the 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 proposed rule, no further activity is contemplated and the direct final rule will become effective. If the 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 rule. The EPA will not institute a second comment period on this document. 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 April 20, 1998.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, 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: February 24, 1998.

Diane K. Callier,

Acting Regional Administrator, Region VII.

[FR Doc. 98–7135 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400 and 421

[HCFA–7020–P]

RIN 0938–AI09

Medicare Program; Medicare Integrity Program, Intermediary and Carrier Functions, and Conflict of Interest Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 1893 of the Social Security Act (the Act) by establishing the Medicare integrity program (MIP) to carry out Medicare program integrity activities that are funded from the Medicare Trust Funds. Section 1893 expands our contracting authority to allow us to contract with "eligible entities" to perform Medicare program integrity activities. These activities include review of provider and supplier activities, including medical, fraud, and utilization review; cost report audits; Medicare secondary payer determinations; education of providers, suppliers, beneficiaries, and other persons regarding payment integrity and benefit quality assurance issues; and developing and updating a list of durable medical equipment items that are subject to prior authorization. This proposed rule would set forth the definition of eligible entities, services to be procured, competitive requirements based on Federal acquisition regulations and exceptions (guidelines for automatic renewal), procedures for identification, evaluation, and resolution of conflicts of interest, and limitations on contractor liability.

In addition, this proposed rule would bring certain sections of the Medicare regulations concerning fiscal intermediaries and carriers into conformity with the Act. The rule would distinguish between those functions that the statute requires be included in agreements with intermediaries and those that may be included in the agreements. It would also provide that some or all of the listed functions may be included in carrier contracts. Currently all these functions are mandatory for carrier contracts. These changes would give us the flexibility to transfer functions from one intermediary or carrier to another or to otherwise limit the functions an intermediary or carrier performs if we determine that to do so would result in more effective and efficient program administration.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 19, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–7020–P, P.O. Box 26676, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–7020–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Brenda Thew (410) 786–4889.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Medicare Contracting Environment

The current Medicare contracting authorities have been in place since the inception of the Medicare program in 1965. At that time, the health insurance and medical communities raised concerns that the enactment of Medicare could result in a large Federal presence in the provision of health care. In response, under sections 1816(a) and 1842(a) of the Social Security Act (the Act), Congress provided that public or private entities and agencies may participate in the administration of the Medicare program under agreements or contracts entered into with us.

These Medicare contractors are known as intermediaries (section 1816(a) of the Act) and carriers (section 1842(a) of the Act). With certain exceptions, intermediaries perform bill processing and benefit payment functions for Part A of the program (Hospital Insurance) and carriers perform claims processing and benefit payment functions for Part B of the program (Supplementary Medical Insurance).

(For the following discussion, the terms "provider" and "supplier" are used as those terms are defined in 42 CFR 400.202. That is, a provider is a hospital, rural care primary hospital, skilled nursing facility, home health agency, or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has a similar agreement to furnish outpatient physical therapy or speech pathology services. Supplier is defined as a physician or other practitioner or an entity other than a "provider," that furnishes health care services under Medicare.)

Section 1842(a) of the Act authorizes us to contract with private entities (carriers) for the purpose of administering the Medicare Part B program. Medicare carriers determine payment amounts and make payments for services (including items) furnished by physicians and other suppliers such as nonphysician practitioners, laboratories, and durable medical equipment suppliers. In addition, carriers perform other functions required for the efficient and effective administration of the Part B program. Section 1842(f) of the Act provides that a carrier must be a "voluntary association, corporation, partnership, or other nongovernmental entity which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee entity." No entity may be considered for carrier contracts unless it can demonstrate that it meets this definition of carrier.

Section 1842(b) provides us with the discretion to enter into carrier contracts without regard to any provision of the law requiring competitive bidding. Other provisions of generally applicable Federal contract law and regulations, as well as HHS procurement regulations, remain in effect for carrier contracts.

Section 1816(a) of the Act authorizes us to enter into agreements with private agencies or entities (intermediaries) for the purpose of administering Medicare Part A. These entities are responsible for determining the amount of payment due to providers in consideration of services provided to beneficiaries and for making

these payments. We may enter into an agreement with an entity to serve as an intermediary if the entity has first been "nominated" by a group or association of providers to make Medicare payments to it. Other portions of section 1816 of the Act provide further details concerning the "nomination process" and assignment and reassignment of providers to intermediaries.

Our regulations at § 421.100 require that the agreement between us and an intermediary specify the functions the intermediary must perform. In addition to requiring any items specified by us in the agreement that are unique to that intermediary, our regulations require that all intermediaries perform activities relating to determining and making payments for covered Medicare services, fiscal management, provider audits, utilization patterns, resolution of cost report disputes, and reconsideration of determinations. Finally, our regulations require that all intermediaries furnish information and reports, perform certain functions with respect to provider-based home health agencies and provider-based hospices, and comply with all applicable laws and regulations and with any other terms and conditions included in their agreements.

Similarly, § 421.200 of our regulations, requires that the contract between us and a Part B carrier specify the functions the carrier must perform. In addition to requiring any items specified by us in the contract that are unique to that carrier, our regulations require that all Part B carriers perform activities relating to determining and making payments (on a cost or charge basis) for covered Medicare services, fiscal management, provider audits, utilization patterns, and Part B beneficiary hearings. In addition, § 421.200 requires that all carriers furnish information and reports, maintain and make available records, and comply with any other terms and conditions included in their contracts.

It is within the above context that Medicare intermediary and carrier contracts are significantly different from standard Federal Government contracts.

Specifically, the Medicare intermediary and carrier contracts are normally renewed automatically from year to year, in contrast to the typical Government contract that is recompeted at the conclusion of the contract term. Congress, in providing for the nomination process under section 1816 of the Act, and authorizing the automatic renewal of the carrier contracts in section 1842(b)(5) of the Act, contemplated a contracting process that would permit us to noncompetitively renew the Medicare contracts from year to year.

For both intermediaries and carriers, § 421.5 states that we have the authority not to renew a Part A agreement or a Part B contract when it expires. Section 421.126 provides for termination of the intermediary agreements in certain circumstances, and, similarly, § 421.205 provides for termination of carrier contracts.

Each year, Congress appropriates funds to support Medicare contractor activities. These funds are distributed to the contractors through an annual Budget Performance Requirements process, which allocates funds by program activity to each of the current 69 Medicare contractors. Historically, approximately one-half of the funds have been for payment for the processing of claims; one-quarter of the funds have been for "payment safeguard" activities to fund activities such as conducting medical review of claims to determine whether services are medically necessary and constitute an appropriate level of care, deterring and detecting Medicare fraud, auditing provider cost reports, and ensuring that Medicare acts as a secondary payer when a beneficiary has primary coverage through other insurance. The remainder of the funds have been allocated for beneficiary and provider/supplier services and for various productivity investments.

B. The Medicare Integrity Program

The Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) was enacted on August 21, 1996. Section 202 of Public Law 104–191 adds a new section 1893 to the Act establishing the Medicare integrity program (MIP). This program is funded from the Medicare Hospital Insurance Trust Fund for activities related to both Part A and Part B of Medicare. Specifically, section 1893 of the Act expands our contracting authority to allow us to contract with eligible entities to perform Medicare program integrity activities performed currently by intermediaries and carriers. These activities include medical, fraud, and utilization review; cost report audits; Medicare secondary payer determinations; overpayment recovery; education of providers, suppliers, beneficiaries, and other persons regarding payment integrity and benefit quality assurance issues; and developing and updating a list of durable medical equipment items that, under section 1834(a)(15) of the Act, are subject to prior authorization.

Section 1893(d) of the Act requires us to set forth, through regulations, procedures for entering into contracts for the performance of specific Medicare program integrity activities. These procedures are to include the following:

(1) A process for identifying, evaluating, and resolving organizational conflicts of interest that are generally applicable to Federal acquisition and procurement.

(2) Competitive procedures for entering into new contracts under section 1893 of the Act, a process for entering into contracts that may result in the elimination of responsibilities of an individual intermediary or carrier, and other procedures we deem appropriate.

(3) A process for renewing contracts entered into under section 1893 of the Act.

Section 1893(d) also provides that we may enter into these contracts without publication of final rules.

In addition, section 1893(e) of the Act requires us to set forth, through regulations, the limitation of a contractor's liability for actions taken to carry out a contract.

Congress established section 1893 of the Act to strengthen our ability to deter fraud and abuse in the Medicare program in a number of ways. First, it provides a separate and stable long-term funding mechanism for MIP activities. Historically, Medicare contractor budgets had been subject to wide fluctuations in funding levels from year to year. The variations in funding did not have anything to do with the underlying requirements for program integrity activities. This instability made it difficult for us to invest in innovative strategies to control fraud and abuse. Our contractors also found it difficult to attract, train, and retain qualified professional staff, including auditors and fraud investigators. A dependable funding source allows us the flexibility to invest in innovative strategies to combat fraud and abuse. It will help us shift emphasis from post-payment recoveries on fraudulent claims to prepayment strategies designed to ensure that more claims are paid correctly the first time.

Second, to allow us to more aggressively carry out the MIP functions and to require us to use procedures and technologies that exceed those currently being used, section 1893 greatly expands our contracting authority. Previously, we had a limited pool of entities with whom to contract. This limited our ability to maximize efforts to effectively carry out the MIP functions. Section 1893 now permits us to attract a variety of offerors with potentially new and different skill sets and will allow those offerors to propose

innovative approaches to implement MIP to deter fraud and abuse. By using competitive procedures, as established in the FAR, our ability to manage the MIP activities is greatly enhanced, and the Government can seek to obtain the best value for its contracted services.

Third, section 1893 requires us to address potential conflicts of interest among potential MIP contractors before entering into any contracting arrangements with them. By requiring offerors/contractors to report situations that may constitute conflicts of interest, we can minimize the number of situations where there is either an actual or an apparent conflict of interest. This is a concern particularly when intermediaries and carriers processing Medicare claims are also private health insurance companies.

From the inception of the Medicare program, intermediary and carrier contracts have contained provisions that have precluded contractors from using their Medicare contract to benefit their private lines of business. These conflicts of interest were rarely a problem in the early years of Medicare because these companies did only health insurance business within prescribed market areas. In recent years, however, Medicare intermediaries and carriers, like most health insuring organizations, have expanded their businesses and product lines to become large integrated health care delivery systems. Some organizations have diversified into corporations with many subsidiaries and a variety of arrangements. These range from overlapping ownership of other insurers, third party administrators, providers, and managed care entities to the marketing of management services and software products. This creates a conflict of interest when the contractor reviews claims, identifies Medicare secondary payer instances, and performs other payment safeguard activities for its own providers and suppliers as well as for its provider's and supplier's competitors.

We have been criticized for the lack of effective mechanisms to mitigate these conflicts of interest. Even when we are assured that proper mechanisms are in place, the appearance of a conflict remains in the eyes of competitors. An even more difficult problem arises with respect to program integrity activities. Medicare contractors exercise considerable discretion in their audit functions, the use of prepayment screens, the conduct of fraud investigations, and referrals to law enforcement agencies regarding incidences of fraud and abuse. These activities depend upon the ability of the contractor to conduct independent reviews, negotiate disputes, and to manipulate data with great sophistication to discover situations where providers and suppliers are engaged in fraudulent activity. These activities would be largely ineffective if contractor-owned providers and suppliers benefit from bias or forewarning.

When a Medicare contractor owns a provider or supplier, it necessarily finds itself in a situation in which potential conflicts of interest could arise. On the one hand, it has a fiduciary duty to its stockholders to use its best efforts to capture market share and to maximize profits. On the other hand, it has an obligation to Medicare and to the public not to take advantage of its position as a Medicare contractor. For example, the Medicare contractor—

- Has access to information about beneficiaries, providers, and suppliers that would be enormously useful in marketing and other business decisions, including provider/supplier information that is considered "proprietary."
- As the claims administrator for an area, it has extraordinary leverage over providers and suppliers. That leverage could be used, implicitly or explicitly, to persuade providers and suppliers to join a network or to agree to business arrangements that are favorable to the Medicare contractor.
- Has knowledge and experience as a Medicare claims administrator that would give it a competitive advantage in knowing how to submit claims to avoid payment screens and in having other information that is not available to other providers/suppliers that could assist in maximizing payments to its own providers/suppliers.
- May also offer other health insurance coverage that is primary or supplemental to Medicare. In this situation, there is always the temptation to let Medicare pay first, knowing that even if the mistaken Medicare payment is later discovered and reimbursed, the contractor has received a temporary interest free loan from the Government.

The MIP, however, allows us to separate payment safeguard functions from all of the functions now being performed by current intermediaries and carriers. This allows current contractors that are performing important functions such as beneficiary and provider/supplier services well to continue to do so, or possibly to review claims from providers/suppliers with which they have no financial relationship.

Conflict of interest situations can also occur when Medicare contractors own managed care entities, for example health maintenance organizations (HMOs). The mere ownership of an HMO by a Medicare contractor would seem to create no conflict of interest concerns since the HMO would be dealing directly with the Government. However, in the situation in which a physician both works for a contractor-owned HMO and maintains a fee-for-service practice, the contractor could give the physician a "bonus" by doing a less thorough review of his or her claims. Additionally, the contractor-owned HMO could use its Medicare beneficiary database to perform health screening of beneficiaries, or its utilization data, marketing information, etc. for its commercial benefit. It could also influence the HMO market by promoting itself as the local intermediary or carrier.

Medicare contractors also provide management services and develop software to facilitate the filing of claims and compliance with Medicare requirements. Since Medicare contractors have an intimate knowledge of Medicare claims systems and administration, they may derive an unfair competitive advantage if they were to sell information that is not generally available to the public. They may also shift development and training costs to Medicare for services they market to the public.

For all these reasons this legislation is providing us an opportunity to increase our ability to protect the Medicare program from instances of fraud and abuse by establishing procedures for identifying, evaluating, and resolving organizational conflicts of interest.

II. Provisions of the Proposed Rule

This regulation is part of our overall contracting strategy, which is designed to build on the strengths of the marketplace. We intend to implement the MIP incrementally in a manner that will provide a way to test alternatives and to transition integrity activities to MIP contractors. We are committed to conducting procurements using full and open competition that will provide opportunities for a wide range of contractors to participate in the program. We will continue to encourage new and innovative approaches in the marketplace to protect the Medicare Trust Funds.

A. The Medicare Integrity Program

1. Basis, Scope, and Applicability

In accordance with section 1893 of the Act, this proposed rule would amend part 421 by adding a new subpart D entitled, "Medicare Integrity Program Contractors". This subpart would define the types of entities

eligible to become MIP contractors; identify the program integrity functions a MIP contractor may perform; describe procedures for awarding and renewing contracts; establish procedures for identifying, evaluating, and resolving organizational conflicts of interest; prescribe responsibilities; and set forth limitations on MIP contractor liability. The provisions of this subpart supplement the Federal acquisition regulations set forth at 48 CFR chapter 1 and the Department's acquisition regulations at 48 CFR chapter 3. Subpart D would be applicable to entities that seek to compete for or receive award of a contract under section 1893 of the Act including entities that perform functions under this subpart emanating from the processing of claims for individuals entitled to benefits as qualified railroad retirement beneficiaries. We would set forth the basis, scope, and applicability of subpart D in § 421.300.

2. Definition of Eligible Entities

As discussed earlier, under sections 1816(a) and 1842(a) of the Act, public or private entities and agencies (Medicare intermediaries and carriers) participate in the administration of the Medicare program under agreements or contracts entered into with us (on the Secretary's behalf). Basically, the carrier must be a voluntary association, corporation, partnership, or other nongovernmental entity lawfully engaged in providing or paying for health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements. In general, the intermediary must be an entity that has an agreement with us and has been nominated by a provider to determine and make Medicare Part A payments and to perform other related functions. Current regulations at §§ 421.110 and 421.202 specify the eligibility requirements current Medicare contractors must meet before entering into or renewing an agreement or contract.

In accordance with section 1893(c) of the Act, proposed § 421.302 would provide that an entity is eligible to enter into a MIP contract if, in general, it demonstrates the capability to perform MIP contractor functions; it agrees to cooperate with the Office of Inspector General (OIG), the Attorney General, and other law enforcement agencies in the investigation and deterrence of fraud and abuse of the Medicare program, including making referrals; it complies with the conflict of interest standards in 48 CFR Chapters 1 and 3 and is not excluded under the conflict of interest provisions established by this rule; and it meets other requirements that we may impose. Also, in accordance with the undesignated paragraph following section 1893(c)(4) of the Act, we would specify that Medicare carriers are deemed to be eligible to perform the activity of developing and periodically updating a list of durable medical equipment items that are subject to prior authorization.

Note that, in accordance with section 1893(d) of the Act, we may continue to contract, for the performance of MIP activities, with intermediaries and carriers that had a contract with us on August 21, 1996 (the effective date of enactment of Public Law 104–191). However, in accordance with section 1816(l) or section 1842(c)(6) of the Act (both added by Public Law 104–191), they may not duplicate activities under both an intermediary agreement or carrier contract and a MIP contract, with one excepted activity. The exception permits a carrier to develop and update a list of items of durable medical equipment that are subject to prior authorization both under the MIP contract and its contract under section 1842 of the Act.

3. Definition of MIP Contractor

We propose to define "Medicare integrity program contractor," at § 400.202 (Definitions specific to Medicare), as an entity that has a contract with us under section 1893 of the Act to perform program integrity activities.

4. Services to be Procured

A MIP contractor may perform some or all of the MIP activities performed currently by intermediaries and carriers. Section 421.304 would state that the contract between HCFA and a MIP contractor specifies the functions the contractor performs. In accordance with section 1893(b) of the Act, proposed § 421.304 identifies the following as MIP activities.

a. Medical, utilization, and fraud review. Medical and utilization review includes the processes necessary to ensure both the appropriate utilization of services and that services meet the professionally recognized standards of care. These processes include review of claims, medical records, and medical necessity documentation and analysis of patterns of utilization to identify inappropriate utilization of services. This would include reviewing the activities of providers/suppliers and other individuals and entities (including health maintenance organizations, competitive medical plans, and health care prepayment plans). This function results in the identification of overpayments, prepayment denials, recommendations for changes in national coverage policy, changes in local medical review policies and payment screens, referrals for fraud and abuse, and the identification of the education needs of beneficiaries, providers, and suppliers.

Fraud review includes fraud prevention initiatives, responding to external customer complaints of alleged fraud, the development of strategies to detect potentially fraudulent activities that may result in improper Medicare payment, and the identification and development of fraud cases for referral to law enforcement. Each solicitation will specify when cases should be referred to the OIG. In general, however, identified overpayments exceeding a threshold amount set by the OIG, recurring acts of improper billing, and substantiated allegations of fraudulent activity will be promptly referred to a Regional Office of Investigation.

b. Cost report audits. Providers and managed care plans receiving Medicare payments are subject to audit for all payments applicable to services furnished to beneficiaries. The audit ensures that proper payments are made for covered services, provides verified financial information for making a final determination of allowable costs, identifies potential instances of fraud and abuse, and ensures the completion of special projects.

This functional area includes the receipt, processing, and settlement of cost reports based on reasonable costs, prospective payment, or any other basis, and the establishment or adjustment of the interim payment rate using cost report or other information.

c. Medicare secondary payer activities. The Medicare secondary payer function is a process developed as a payment safeguard to protect the Medicare program against mistaken primary payments. The focus of this process is to ensure that the Medicare program pays only to the extent required by statute. Entities under a MIP contract that includes Medicare secondary payer functions would be responsible for identifying Medicare secondary payer situations and/or pursuing recovery of mistaken payments from the appropriate entity or individual, depending on the specifics of the contract.

This functional area includes the processes performed to identify beneficiaries for whom there is coverage which is primary to Medicare. Through these processes, information may be acquired for subsequent use in

beneficiary claims adjudication, recovery, and litigation.

d. Education. This functional area includes educating beneficiaries, providers, suppliers, and other individuals regarding payment integrity and benefit quality assurance issues.

e. Developing prior authorization lists. This functional area includes developing and periodically updating a list of durable medical equipment items that, in accordance with section 1834(a)(15) of the Act, are subject to prior authorization. Section 1834(a)(15) requires prior authorization to be performed on the following items of durable medical equipment: Items identified as subject to unnecessary utilization; items supplied by suppliers that have had a substantial number of claims denied under section 1862(a)(1) of the Act as not reasonable or necessary or for whom a pattern of overutilization has been identified; or a customized item if the beneficiary or supplier has requested an advance determination. Prior authorization is a determination that an item of durable medical equipment is covered prior to when the equipment is delivered to the Medicare beneficiary.

Application of MIP—It should be noted that the MIP functions are not limited to services furnished under fee-for-service payment methodologies. MIP functions are applicable to all types of claims. They are also applicable to all types of payment systems including, but not limited to, managed care and demonstration projects.

5. Competitive Requirements

We would specify, in § 421.306(a), that MIP contracts will be awarded in accordance with 48 CFR chapters 1 and 3, 42 CFR part 421 subpart D, and all other applicable laws and regulations. Further, in accordance with section 1893(d)(2) of the Act, we would specify that the procedures set forth in these authorities will be used: (1) When entering into new contracts; (2) when entering into contracts that may result in the elimination of responsibilities of an individual intermediary or carrier; and (3) at any other time we consider appropriate.

In proposed section 421.306(b), we would establish an exception to competition which allows a successor in interest to an intermediary agreement or carrier contract to be awarded a contract for MIP functions without competition, if its predecessor performed program integrity functions under the transferred agreement or contract and the resources, including personnel, which were involved in performing those functions, were transferred to the successor.

This proposal is made in anticipation that some intermediaries and carriers may engage in transactions under which the recognition of a successor in interest by means of a novation agreement may be appropriate, and the resources involved in the intermediary's or carrier's MIP activities are transferred along with its other Medicare-related resources to the successor in interest. For example, the intermediary or carrier may undergo a corporate reorganization under which the corporation's Medicare business is transferred entirely to a new subsidiary corporation. When all of a contractor's resources or the entire portion of the resources involved in performing a contract are transferred to a third party, HCFA may recognize the third party as the successor in interest to the contract through approval of a novation agreement. See 48 CFR 42.12.

If the intermediary or carrier were performing MIP activities under its contract on August 21, 1996, the date of the enactment of the MIP legislation, the statute permits HCFA to continue to contract with the intermediary or carrier for the performance of those activities without using competitive procedures. In the context of a corporate reorganization, under which all of the resources involved in performing the contract, including those involved in performing MIP activities, are transferred to a successor in interest, HCFA may determine that breaking out the MIP activities and competing them separately would not be in the best interest of the government.

Inherent in the requirement of section 1893(d) of the Act that the Secretary establish competitive procedures to be used when entering into contracts for MIP functions is the authority to establish exceptions to those procedures. See 48 CFR 6.3. Moreover, intermediary agreements and carrier contracts have, by statute, been noncompetitively awarded under sections 1816(a) and 1842(b)(1) of the Act. Furthermore, those agreements and contracts have in recent years prior to the enactment of the MIP legislation included program integrity activities, a fact that the Congress acknowledged in section 1893(d)(2) of the Act. We believe that creating an exception to the use of competition for cases in which the same resources, including the same personnel, continue to be used by a third party as successor in interest to an intermediary agreement or carrier contract is consistent with Congress' authorization to forgo competition when the contracting entity was carrying out the MIP functions on the date of enactment of the MIP legislation. Section 421.306(b) would provide an interim solution to permit continuity in the performance of the MIP functions until such time as we are prepared to procure MIP functions on the basis of full and open competition.

We would further specify, in § 421.306(c), that an entity must meet the eligibility requirements established in proposed § 421.302 to be eligible to be awarded a MIP contract.

We would state, in § 421.308(a), that we specify an initial contract term in the MIP contract and that contracts may contain renewal clauses. Contract renewal provides a mutual benefit to both parties. Renewing a contract, when appropriate, results in continuity both for us and the contractor and is in the best interest of the Medicare program. The benefits are realized through early communication of our intention whether to renew a contract, which permits both parties to plan for any necessary changes in the event of nonrenewal. Furthermore, as a prudent administrator of the Medicare program, we must ensure that we have sufficient time to transfer the MIP functions should a reassignment of the functions be necessary (either because the contractor has given notice of its intent to nonrenew or because we have determined that reassignment is in the best interest of the Medicare program). Therefore, in § 421.308(a), we would specify that we may renew a MIP contract, as we determine appropriate, by giving the contractor notice, within timeframes specified in the contract, of our intention to do so. (The solicitation document that resulted in the contract will contain further details regarding this provision.)

Based on section 1893(d)(3) of the Act, we would specify, in paragraph (b) of § 421.308, that we may renew a MIP contract without competition if the contractor continues to meet all the requirements of proposed subpart D of part 421, the contractor meets or exceeds all performance standards and requirements in the contract, and it is in the best interest of the Government.

We would provide, at § 421.308(c), that, if we do not renew the contract, the contract will end in accordance with its terms, and the contractor does not have a right to a hearing or judicial review regarding the nonrenewal. This is consistent with our longstanding policy with regard to intermediary and carrier contracts.

6. Conflict of Interest Rules

This proposed rule would establish the process for identifying, evaluating, and resolving conflicts of interest as required by section 1893(d)(1) of the Act. The process has been designed to

ensure that the more diversified business arrangements of potential contractors do not inhibit competition between providers/suppliers or in other types of businesses related to the insurance industry or have the potential for harming Government interests.

On December 6, 1996, we held an open forum discussion with certain organizations and groups that may, or whose members may, be directly affected by contracts awarded to perform functions under the MIP. During the forum, participants discussed whether certain examples were conflicts of interest and how the conflicts, when present, could be mitigated. In addition, the conflict of interest situations were made available for public review on our Internet home page.

In general, some of the participants had concerns that a MIP contractor could not perform audit or review functions on itself, its subsidiaries, its direct competitors, or its private sector clients without the presence of a potential conflict of interest. The conflicts of interest described could make it impossible for contractor personnel to be objective in performing contract work or to provide impartial assistance or advice to the Government or could give the contractor an unfair competitive advantage.

Some of the participants recommended that the conflict of interest standards we establish restrict a MIP contractor from having an ownership interest or contractual relationship with any provider it will be auditing or reviewing. Also, the participants generally agreed that requirements dictating disclosure of a contractor's financial interests would help mitigate conflicts of interest and that each contractor's situation should be considered on a case-by-case basis.

In developing the conflict of interest requirements, we had several options. We could refuse to contract with any entity if a conflict of interest situation either exists or is perceived to exist, or we could choose not to contract with any health-care related entities. We could try to develop a list of all potential situations where a conflict of interest could possibly arise.

We rejected all of these options and adopted a "process approach." While the process described below employs a greater test than generally prescribed in the Federal acquisition regulations for conflict of interest situations, we believe that the sensitive nature of the work to be performed under the contract, the need to preserve the public trust, and the history of fraud and abuse in the Medicare program merits these further requirements. The emphasis on process requires—

- Disclosure by the offeror or contractor via an Organizational Conflicts of Interest Certificate;
- The offeror or contractor to submit a plan to mitigate situations that could be considered potential conflicts of interest;
- The offeror to describe a program that it will establish, if awarded the contract, to monitor its compliance with any plans approved by us to resolve conflicts of interest; and
- The offeror to describe plans to have a compliance audit completed by an independent auditor.

Specifically, in § 421.310(b), we would state the general rule that, except as provided in § 421.310(d), we do not enter into a MIP contract with an offeror or contractor that we have determined has, or has the potential for, an unresolved organizational conflict of interest. Paragraph (d) of § 421.310 would provide that we may contract with an offeror or contractor that has an unresolved conflict if we determine that it is in the best interest of the Government to do so. We would define "organizational conflict of interest," at § 421.310(a), basing our definition on the definition of that term contained in the FAR at 48 CFR 9.501(d). That definition states that organizational conflict of interest means "that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage." To clarify how this definition would apply to the MIP contract, we would add that, for purposes of the MIP contract, the activities and relationships described include those of the offeror or contractor itself and other business related to it and those of its officers, directors (including medical directors), managers, and subcontractors.

In paragraph (c) of § 421.310, we would state that we determine that an offeror or contractor has an organizational conflict of interest, or a potential for the conflict exists, if the offeror or contractor either is, or has a present, or known future, direct or indirect financial relationship with, an entity we describe in § 421.310(c)(3), which is discussed later in this preamble. In paragraph (a) of § 421.310, we would define "financial relationship" as (1) a direct or indirect ownership or investment interest (including an option or nonvested interest) in any entity that exists through equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest, or (2) a compensation arrangement with an entity. This definition is similar to the definition at § 411.351, which is used for purposes of the provision which generally prohibits physicians from making referrals for Medicare services to entities with which the physician or a member of the physician's immediate family has a financial relationship. The definition at § 411.351 was based on section 1877(a)(2) of the Act as it read before January 1, 1995. To reflect the current reading of section 1877(a)(2), we have added, in our proposed definition, that an indirect interest can exist through multiple levels.

In paragraph (c)(2) of § 421.310, we would specify that a financial relationship may exist either through an offeror's or contractor's parent companies, subsidiaries, affiliates, subcontractors, or current clients. We would also specify that a financial relationship may exist from the activities and relationships of the officers, directors (including medical directors), or managers of the offeror or contractor and may be either direct or indirect. We would define an indirect financial relationship as an ownership or investment interest that is held in the name of another but provides benefits to the officer, director, or manager.

In § 421.310(c)(3), we would provide that an offeror or contractor has a conflict of interest, or a potential conflict of interest, if it is, or has a present or known future financial relationship with, an entity that—

- Provides, insures, or pays for health benefits, with the exception of health plans provided as the entity's employee fringe benefit;
- Conducts audits of health benefit payments or cost reports;
- Conducts statistical analysis of health benefit utilization;
- Would review or does review, under the contract, Medicare services furnished by a provider or supplier that is a direct competitor of the offeror or contractor;
- Prepared work or is under contract to prepare work that would be reviewed under the MIP contract; or
- Is affiliated, as that term is explained in 48 CFR 19.101, with a provider or supplier to be reviewed under the MIP contract. (Section 19.101 of 48 CFR states that—

* * * business concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control

both. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; provided, that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to control the franchisee, if the franchisee has the right to profit from its effort, commensurate with ownership, and bears the risk of loss of failure. Any business entity may be found to be an affiliate, whether or not it is organized for profit or located inside the United States.

Section 19.101 explains that control may exist through stock ownership, stock options, convertible debentures, voting trusts, common management, and contractual relationships.)

We would be interested in receiving comments as to how we might better identify those situations that create a conflict of interest. For example, we had originally considered including all entities that provide, insure, or pay for health benefits. We have, however, identified the situation in which an offeror or contractor provides health benefits as an employee fringe benefit as being one where the likelihood of a conflict would not exist. We would be interested in receiving comments as to whether it would be appropriate to create other exceptions.

In § 421.310(c)(4), we would specify that we may determine that an offeror or contractor has an organizational conflict of interest, or the potential for one exists, based on apparent organizational conflicts of interest or on other contracts and grants with the Federal Government. We would provide that an apparent conflict of interest exists if a prudent business person has cause to believe that the offeror or contractor would have a conflict of interest in performing the requirements of the MIP contract. We would further provide that no inappropriate action by the offeror or contractor is necessary for an apparent conflict to exist. We believe it is necessary to consider the offeror's or contractor's other contracts and grants with the Federal Government to determine whether the offeror's or contractor's financial dependence upon the Government could influence the likelihood that it would provide unbiased opinions, conclusions, and work products.

In paragraph (e) of § 421.310, we would specify that an offeror or contractor is responsible for determining whether an organizational conflict of interest exists in any of its proposed or actual subcontractors and consultants at any tier. We also would specify that the offeror or contractor is responsible for ensuring that its subcontractors and consultants have mitigated any conflicts or potential conflicts.

In paragraph (f) of § 421.310, we would state that we consider that a conflict of interest has occurred if, during the term of the contract, the contractor received any fee, compensation, gift, payment of expenses, or any other thing of value from an entity that is reviewed, audited, investigated, or contacted during the normal course of performing activities under the MIP contract. We have considered creating an exception for those compensations, fees, gifts, and other things of value that are in an amount that would not affect a contractor's impartiality or objectivity in carrying out its responsibilities under the MIP contract. We would be interested in receiving comments suggesting how we might determine an appropriate dollar amount for such an exception.

We would also specify in paragraph (f) of § 421.310 that a conflict of interest has occurred during the term of the contract if we determine that the contractor's activities are creating a conflict. In addition, we would specify that, if we determine that a conflict of interest exists, among other actions, we may, as we deem appropriate—

- Not renew the contract for an additional term;
- Modify the contract; or
- Terminate the contract.

In § 421.312(a), we would specify that offerors and MIP contractors must submit an Organizational Conflicts of Interest Certificate that contains the following information unless it has otherwise been provided in the proposal, in which case it must be referenced:

- A description of all business or contractual relationships or activities that may be viewed by a prudent business person as a conflict of interest.
- A description of the methods the offeror or contractor will apply to mitigate any situation listed in the Certificate that could be identified as a conflict of interest.
- A description of the offeror's or contractor's program to monitor its compliance and the compliance of its proposed and actual subcontractors and consultants with the conflict of interest requirements as identified in the relevant solicitation.
- A description of the offeror's or contractor's plans to contract for a compliance audit to be conducted by an independent auditor would be required for all MIP contractor procurements.
- An affirmation, using language that we may prescribe, signed by an official authorized to bind the offeror or contractor, that the offeror or contractor understands that we may consider any deception or omission in the Certificate grounds for nonconsideration for contract award in the procurement process, termination of the contract, or other contract action.
- Corporate and organizational structure.
- Financial interests in other entities, including the following:

+ Percentage of ownership in any other entity.

+ Income generated from other sources.

+ A list of current or known future contracts or arrangements, regardless of size, with any insurance organization; subcontractor of an insurance organization; or providers or suppliers furnishing services for which payment may be made under the Medicare program. This information is to include the dollar amount of the contracts or arrangements, the type of work performed, and the period of performance.

- Information regarding potential conflicts of interest and financial information regarding certain contracts for all of the offeror's or contractor's officers, directors (including medical directors), and managers who would be or are involved in the performance of the MIP contract. We may also require officers, directors (including medical directors) and managers to provide financial information regarding their ownership in other entities and their income from other sources.

We would also specify that the solicitation may require more detailed information than identified above. Our proposed provisions do not describe all of the information that may be required, or the level of detail that would be required, because we wish to have the flexibility to tailor the disclosure requirements to each specific procurement.

With regard to ownership, we invite public comments to establish the level of financial interest that could be considered a material interest in different situations. While we would not establish this level in the final rule, it may be included in solicitations for specific contract situations.

We intend to reduce the reporting and recordkeeping requirements as much as is feasible, while taking into consideration our need to have assurance that a conflict of interest does not exist in the MIP contractors.

By providing documentation of potential conflicts of interest and how the offeror plans to mitigate those conflicts in the Certificate, the offeror gives us enough information to determine on a case-by-case basis if conflicts of interest have been adequately mitigated or should preclude award of MIP contracts. The burden associated with providing the requested information is justified by the large expansion of competition the process allows.

We propose, in § 421.312(b) that the Organizational Conflicts of Interest Certificate be disclosed—

- With the offeror's proposal;
- When the HCFA Contracting Officer requests a revision in the Certificate;
- As part of a compliance audit by the independent auditor;
- Forty-five days before any change in the information submitted on the Certificate. In this case, only changed information must be submitted.

We would state, in § 421.312(c), that we evaluate organizational conflicts of interest and potential conflicts using the information provided in the Certificate.

Because potential offerors may have questions about whether information submitted in response to a solicitation, including the Organizational Conflicts of Interest Certificate, may be redisclosed under the Freedom of Information Act, we provide the following information.

To the extent that a proposal containing the Organizational Conflicts of Interest Certificate is submitted to us as a requirement of a competitive solicitation under 41 U.S.C. Chapter 4, Subchapter IV, we will withhold the proposal when requested under the Freedom of Information Act. This withholding is based upon 41 U.S.C. § 253b(m). However, there is one exception to this policy. It involves any proposal that is set forth or incorporated by reference in the contract awarded to the proposing bidder. Such a proposal may not receive categorical protection. Rather, we will withhold, under 5 U.S.C. 552(b)(4), information within the proposal (and Certificate) that is required to be submitted that constitutes trade secrets or commercial or financial information that is privileged or confidential provided the criteria established by *National Parks & Conservation Association* v. *Morton*, 498 F.2d 765 (D.C. Cir 1974), as applicable, are met. For any such proposal, we will follow pre-disclosure notification procedures set forth at 45 CFR 5.65(d). In addition, we will protect under 5 U.S.C. 552(b)(6) any information within the Certificate that is of a highly sensitive personal nature.

Any proposal containing the Organizational Conflicts of Interest Certificate submitted to us under an authority other than 41 U.S.C. Chapter 4, Subchapter IV, and any Certificate or information submitted independent of a proposal will be evaluated solely on the criteria established by *National Parks & Conservation Association* v. *Morton* and other appropriate authorities to determine if the proposal or Certificate in whole or in part contains trade secrets or commercial or financial information that is privileged or confidential and protected from disclosure under 5 U.S.C. 552(b)(4). Again, for any such proposal or Certificate, we will follow pre-disclosure notification procedures set forth at 45 CFR 5.65(d) and will also invoke 5 U.S.C. 552(b)(6) to protect information that is of a highly sensitive personal nature.

We already protect information we receive in the contracting process. However, to allay any fears potential offerors might have about disclosure, we propose to provide, at § 421.312(d), that we protect disclosed proprietary information as allowed under the Freedom of Information Act and that we require signed statements from our personnel with access to proprietary information that prohibit personal use during the procurement process and term of the contract.

In proposed § 421.314, we describe how conflicts of interest are resolved. We specify that we establish a Conflicts of Interest Review Board to resolve conflicts of interest and that we determine when the Board is convened. We would define resolution of an organizational conflict of interest as a determination that——

- The conflict has been mitigated;
- The conflict precludes award of a contract to the offeror;
- The conflict requires that we modify an existing contract;
- The conflict requires that we terminate an existing contract; or
- It is in the best interest of the Government to contract with the offeror or contractor even though the conflict exists.

Examples of methods an offeror or contractor may use to mitigate organizational conflicts of interest, including those created as a result of the financial relationships of individuals within the organization are shown below. These examples are not intended to be an exhaustive list of all the possible methods to mitigate conflicts of interest nor are we obligated to approve a mitigation method that uses one or more of these examples. An offeror's or contractor's method of mitigating conflicts of interest would be evaluated on a case-by-case basis.

- Divestiture of or reduction in the amount of the financial relationship the organization has in another organization to a level acceptable to us and appropriate for the situation.
- If shared responsibilities create the conflict, a plan, included in the Organizational Conflicts of Interest Certificate and approved by us, to separate lines of business and management or critical staff from work on the MIP contract.
- If the conflict exists because of the amount of financial dependence upon the Federal Government, negotiating a phasing out of other contracts or grants that continue in effect at the start of the MIP contract.
- If the conflict exists because of the financial relationships of individuals within the organization, divestiture of the relationships by the individual involved.
- If the conflict exists because of an individual's indirect interest, divestiture of the interest to levels acceptable to us or removal of the individual from the work under the MIP contract.

In the procurement process, we determine which proposals are in a "competitive range." The competitive range is based on cost or price and other factors that are stated in the solicitation and includes all proposals that have a reasonable chance for contract award. Using the process proposed in this regulation, offerors will not be excluded from the competitive range based solely on conflicts of interest. If we determine that an offeror in the competitive range has a conflict of interest that is not adequately mitigated, we would inform the offeror of the deficiency and give it an opportunity to submit a revised Certificate. At any time during the procurement process, we may convene the Conflict of Interest Review Board to evaluate and resolve conflicts of interest.

By providing a better process for the identification, evaluation, and resolution of conflicts of interest, we not only protect Government interests but help ensure that contractors will not restrict competition in their service areas by using their position as a MIP contractor.

7. Limitation on MIP Contractor Liability and Payment of Legal Expenses

As discussed earlier, contractors who perform activities under the MIP contract will be reviewing activities of providers and suppliers that provide services to Medicare beneficiaries. Their contracts will authorize them to evaluate the performance of providers,

suppliers, individuals, and other entities that may subsequently challenge their decisions. To reduce or eliminate a MIP contractor's exposure to possible legal action from those it reviews, section 1893(e) of the Act requires that we, by regulation, limit a MIP contractor's liability for actions taken in carrying out its contract. We must establish, to the extent we find appropriate, standards and other substantive and procedural provisions that are the same as, or comparable to, those contained in section 1157 of the Act.

Section 1157 of the Act limits liability and provides for the payment of legal expenses of an Utilization and Quality Control Peer Review Organization (PRO) that contracts to carry out functions under section 1154(e) of the Act. Specifically, section 1157 provides that PROs, their employees, fiduciaries, and anyone who furnishes professional services to a PRO are protected from civil and criminal liability in performing their duties under the Act or their contract, provided these duties are performed with due care. Following the mandate of section 1893(e), this proposed rule, at § 421.316(a), would protect MIP contractors from liability in the performance of their contracts provided they carry out their contractual duties with care.

In accordance with section 1893(e), we propose to employ the same standards for the payment of legal expenses as are contained in section 1157(d) of the Act. Therefore, § 421.316(b) will provide that we will make payment to MIP contractors, their members, employees, and anyone who provides them legal counsel or services for expenses incurred in the defense of any legal action related to the performance of a MIP contract. We propose that the payment be limited to the reasonable amount of expenses incurred, as determined by us, provided funds are available and that the payment is otherwise allowable under the terms of the contract.

In drafting § 421.316(2), we considered employing a standard for the limitation of liability other than the due care standard. For example, we considered whether it would be appropriate to provide that a contractor would not be criminally or civilly liable by reason of the performance of any duty, function, or activity under its contract provided the contractor was not grossly negligent in that performance. However, section 1893(e) requires that we employ the same or comparable standards and provisions as are contained in section 1157 of the Act. We do not believe that it would be appropriate to expand the scope of immunity to a standard of gross negligence, as it would not be a comparable standard to that set forth in section 1157(b) of the Act.

We also considered indemnifying MIP contractors employing provisions similar to those contained in the current Medicare intermediary agreements and carrier contracts. Generally, intermediaries and carriers are indemnified for any liability arising from the performance of contract functions provided the intermediary's or carrier's conduct was not grossly negligent, fraudulent, or criminal. However, we may indemnify a MIP contractor only to the extent we have specific statutory authority to do so. Section 1893(e) does not provide that authority. In addition, § 421.316(a) provides for immunity from liability in connection with the performance of a MIP contract provided the contractor exercised due care. Indemnification is not necessary since the MIP contractors will have immunity from liability under § 421.316(a).

B. Intermediary and Carrier Functions

Section 1816(a) of the Act, which provides that providers may nominate an intermediary, requires only that nominated intermediaries perform the functions of determining payment amounts and making payment, and section 1842(a) of the Act requires only that carriers perform "some or all" of the functions cited in that section. Our requirements at §§ 421.100 and 421.200 concerning functions to be included in intermediary agreements and carrier contracts far exceed those of the statute. Therefore, on February 22, 1994, we published a proposed rule (59 FR 8446) that would distinguish between those functions that the statute requires be included in agreements with intermediaries and those functions, which although not required to be performed by intermediaries, may be included in intermediary agreements at our discretion. We also proposed that any functions included in carrier contracts would be included at our discretion. In addition, we proposed to add payment on a fee schedule basis as a new function that may be performed by carriers.

In light of the expansion of our contracting authority by section 1893 of the Act to allow us to contract with eligible entities to perform Medicare program integrity activities performed currently by intermediaries and carriers, we have decided not to finalize the February 1994 proposed rule. Instead, in this proposed rule we are setting forth a new proposal to bring those sections of the regulations that concern the functions Medicare intermediaries and carriers perform into conformity with the provisions of sections 1816(a), 1842(a), and 1893(b) of the Act.

As noted in section I.A. of this preamble, our regulations at § 421.100 specify a list of functions that must, at a minimum, be included in all intermediary agreements. Similarly, § 421.200 specifies a list of functions that must, at a minimum, be included in all carrier contracts. These requirements far exceed those of the statute.

Section 1816(a) of the Act requires only that an intermediary agreement provide for determination of the amount of payments to be made to providers and for the making of the payments. Section 1816(a) permits, but does not require, an intermediary agreement to include provisions for the intermediary to provide consultative services to providers to enable them to establish and maintain fiscal records or to otherwise qualify as providers. It also provides that, for those providers to which the intermediary makes payments, the intermediary may serve as a channel of communications between us and the providers, may make audits of the records of the providers, and may perform other functions as are necessary.

We believe that section 1816(a) mandates only that an intermediary make payment determinations and make payments and that, because of the nomination provision of section 1816(a), these functions must remain with intermediaries. We believe that section 1816(a) does not require that the other functions set forth at § 421.100 (c) through (i) be included in all intermediary agreements. Further, section 1893 of the Act permits the performance of functions related to Medicare program integrity by other entities. Thus, § 421.100 needs to be revised to be consistent with section 1893 and the implementing regulation. We also believe that mandatory inclusion of all functions in all agreements limits our ability to efficiently and effectively administer the Medicare program. For example, if an otherwise competent intermediary performs a single function poorly, it would be efficient and effective to have that function transferred to another contractor that could carry it out in a satisfactory manner. The alternative is to not renew or to terminate the agreement of that intermediary and to transfer all functions to a new contractor that may not have had an ongoing relationship with the local provider community.

Therefore, we would revise § 421.100 to specify that an agreement between us and an intermediary specifies the functions to be performed by the intermediary and that these must include determining the amount of payments to be made to providers for covered services furnished to Medicare beneficiaries and making the payments and may include any or all of the following functions:

- Any or all of the MIP functions identified in proposed § 421.304, provided that they are continuing to be performed under an agreement entered into under section 1816 of the Act that was in effect on August 21, 1996, and they do not duplicate work being performed under a MIP contract.
- Undertaking to adjust overpayments and underpayments and to recover overpayments when it has been determined that an overpayment has been made.
- Furnishing to us timely information and reports that we request in order to carry out our responsibilities in the administration of the Medicare program.
- Establishing and maintaining procedures that we approve for the review and reconsideration of payment determinations.
- Maintaining records and making available to us the records necessary for verification of payments and for other related purposes.
- Upon inquiry, assisting individuals with respect to matters pertaining to an intermediary contract.
- Serving as a channel of communication to and from us of information, instructions, and other material as necessary for the effective and efficient performance of an intermediary contract.
- Undertaking other functions as mutually agreed to by us and the intermediary.

In § 421.100(c), we would specify that, with respect to the responsibility for services to a provider-based HHA or a provider-based hospice, when different intermediaries serve the HHA or hospice and its parent provider under § 421.117, the designated regional intermediary determines the amount of payment and makes payments to the HHA or hospice. The intermediary and/or MIP contractor serving the parent provider performs fiscal functions, including audits and settlement of the Medicare cost reports and the HHA and hospice supplement worksheets.

Section 1842(a), which pertains to carrier contracts, requires that the contract provide for some or all of the functions listed in that paragraph, but does not specify any functions that must be included in a carrier contract. As in the case of intermediary agreements, our experience has been that mandatory inclusion of a long list of functions in all contracts restricts our ability to administer the carrier contracts with optimum efficiency and effectiveness. We believe that the requirements of the regulations for both intermediaries and carriers should be brought into conformity with the statutory requirements. Therefore, we would revise existing § 421.200, "Carrier functions," to make it consistent with section 1893 of the Act and the implementing regulations. We would provide that a contract between HCFA and a carrier specifies the functions to be performed by the carrier, which may include the following:

- Any or all of the MIP functions described in § 421.304 if the following conditions are met: (1) The carrier is continuing those functions under a contract entered into under section 1842 of the Act that was in effect on August 21, 1996; and (2) they do not duplicate work being performed under a MIP contract, except that the function related to developing and maintaining a list of durable medical equipment may be performed under both a carrier contract and a MIP contract.
- Receiving, disbursing, and accounting for funds in making payments for services furnished to eligible individuals within the jurisdiction of the carrier.
- Determining the amount of payment for services furnished to an eligible individual.
- Undertaking to adjust incorrect payments and recover overpayments when it has been determined that an overpayment has been made.
- Furnishing to us timely information and reports that we request in order to carry out our responsibilities in the administration of the Medicare program.
- Maintaining records and making available to us the records necessary for verification of payments and for other related purposes.
- Establishing and maintaining procedures under which an individual enrolled under Part B will be granted an opportunity for a fair hearing.
- Upon inquiry, assisting individuals with matters pertaining to a carrier contract.
- Serving as a channel of communication to and from us of information, instructions, and other material as necessary for the effective and efficient performance of a carrier contract.
- Undertaking other functions as mutually agreed to by us and the carrier.

C. Technical and Editorial Changes

Because we propose to add a new subpart D to part 421 that would apply to MIP contractors, we propose to change the title of part 421 from "Intermediaries and Carriers" to "Medicare Contracting". We also propose to revise § 421.1, which sets forth the basis, scope, and applicability of part 421. We would revise this section to add section 1893 of the Act to the list of provisions upon which the part is based. We would also make editorial and other changes (such as reorganizing the contents of the section and providing headings) that improve the readability of the section without affecting its substance.

In addition, numerous sections of our regulations specifically refer to an action being taken by an intermediary or a carrier. If the action being described may now be performed by a MIP contractor that is not an intermediary or a carrier, we would revise those sections to indicate that this is the case. As an example, § 424.11, which sets forth the responsibilities of a provider, specifies, in paragraph (a)(2), that the provider must keep certification and recertification statements on file for verification by the intermediary. A MIP contractor now may also perform the verification. Therefore, we would revise § 424.11(a)(2) to specify that the provider must keep certification and recertification statements on file for verification by the intermediary or MIP contractor. Because our regulations are continuously being revised and sections redesignated, we have not identified all such sections that will have technical changes in this rule, but we will do so in the final rule. If we determine that substantive changes to our regulations are necessary, we will make those changes through separate rulemaking.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a

collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of the issues for sections §§ 421.310 and 421.312 of this document, which contain information collection requirements.

Section 421.310 Conflict of Interest Identification

Section 421.310(e) requires offerors to determine if an organizational conflict of interest exists in any of its proposed or actual subcontractors at any tier and to ensure that the subcontractors have mitigated any conflict of interest or potential conflict of interest. As discussed below, the information collection requirements for § 421.312 also require an offeror to list in an Organizational Conflicts of Interest Certificate situations that could be identified as conflicts of interest and to describe methods it would apply to mitigate those situations. Based on our best estimate, we believe that the requirement will impose a burden of 80 hours on each offeror with respect to information it provides for its own organization. It is assumed that offerors will impose the same or similar disclosure requirements on their proposed or actual subcontractors as imposed by us on offerors, with the understanding that we would not expect them to require that independent auditors perform compliance audits on subcontractors. Based on this assumption, an offeror's burden with respect to its subcontractors is estimated to be one-half the burden imposed on an offeror with respect to its own organization.

We expect 15 offerors for each type of MIP contract. We estimate that the requirement of this provision will impose a burden of 40 hours per subcontractor on each offeror to identify and mitigate any organizational conflicts of interest for its subcontractors at any tier. We believe that, on average, each offeror will need to evaluate three subcontractors. The total burden referenced in § 421.310(e) with respect to an offeror's subcontractors is 1,800 burden hours.

Section 421.312 Conflict of Interest Evaluation

Section 421.312 requires offerors that wish to be eligible for the award of a contract under this subpart and MIP contractors to submit an Organizational Conflicts of Interest Certificate for pre- and post-award purposes.

Based on comments provided by the public on possible methods we could use to identify, evaluate, and resolve potential conflicts of interest, we found that only by imposing the information collection requirements referenced in this section could competition remain open to all interested parties regardless of their current lines of business and, at the same time provide us with enough information to determine on a case-by-case basis if conflicts of interest have been properly identified and adequately mitigated. Only by imposing these information collection requirements can we determine whether an offeror should be awarded a MIP contract.

Below is a summary of the proposed Organizational Conflict of Interest Certificate disclosure requirements and related burden required with the offeror's proposal. The items of information described below will be required for all MIP contractor procurements, unless the information is otherwise provided in the proposal, in which case it must be referenced. The last item identifies some information that officers, directors, and managers will be required to provide in all MIP procurements and some information that they may be required to provide in a MIP procurement.

- *A description of all business or contractual relationships or activities that a prudent business person may view as a conflict of interest.*

We have received comments from the insurance industry and affiliated sources that some situations that we may not readily identify as conflicts nonetheless appear to create conflicts of interest. If a prudent business person could believe a conflict of interest exists in a situation, the entity is required to report the situation even if we have not created a "classification" for the situation. We would use this information to evaluate the situation and to determine if it is adequately mitigated or requires no mitigation. In addition, we would use this information to adapt to changing environments and to modify the conflict of interest requirements.

- *A description of the methods the offeror/contractor will apply to mitigate any situations listed in the Certification that could be identified as conflicts of interest.*

We would use the description of the methods the offeror/contractor will apply to mitigate any situations listed in the Certification that could be identified as conflicts of interest to determine if conflicts would be neutralized effectively by the methods described. Generally, we consider a conflict of interest to exist when a contractor's ability to make impartial decisions or perform its work under its contract objectively has been or may be compromised. The offeror/contractor could propose to mitigate a conflict of interest by using methods such as divestiture or reduction of a conflicting financial interest, reassignment of work responsibilities to exclude individuals with conflicting interests from performing work under the contract, or separating lines of business. We would assess the effectiveness of the mitigation method using the information disclosed regarding an offeror's/contractor's organizational structure, financial interests, or other relationships as may be required in a solicitation as discussed below.

- *A description of the offeror's/contractor's program to monitor its compliance and the compliance of its proposed and actual subcontractors with the conflict of interest requirements as identified in the relevant solicitation.*

We would evaluate the proposed compliance program to determine if the program would enable an offeror/contractor to effectively monitor its compliance and its subcontractors' compliance with conflict of interest requirements specific to the contract. This requirement is integrally connected with an entity's description of its method to mitigate conflicts. Once conflicts are mitigated at the inception of a contract, an entity must be vigilant to ensure that the methods are followed and that new conflicts of interest that arise during the term of the contract are identified and mitigated. We would use the compliance program to ensure we award contracts only to offerors that will follow proposed methods for mitigation of conflicts and that offerors establish an administrative mechanism for disclosure of changing situations that may require contract modifications.

- *An affirmation, using language that we may prescribe, that the offeror/contractor understands that we may consider any deception or omission in the Certificate grounds for nonconsideration in the procurement*

process, termination of the contract, or other contract action.

The affirmation places a higher degree of accountability on the entity for the accuracy of the information disclosed than would otherwise be afforded. By signing the affirmation, the offeror/contractor will be put on notice of the consequences for any false statement or omission of information regarding conflicts of interest. The person signing the affirmation will be put on notice of the offeror's/contractor's responsibility for ensuring the veracity of the information disclosed. We would consider the provision of false or deceptive information in the affirmation as possible grounds for elimination of an offeror from consideration in the procurement process or taking other appropriate contract or legal action.

• *A description of the offeror's/contractor's plans to contract with an independent auditor to conduct a compliance audit.*

We would use this information to ensure that the offeror has an arrangement with an independent source that will verify compliance with conflict of interest requirements.

• *Corporate and organizational structure.*

We would require this information to determine if legal entities are connected through partnerships, joint ventures, or other legal arrangements. We would assess the types of relationships, evaluate an offeror's/contractor's mitigation methods, and determine if the conflicts of interest based on an offeror's/contractor's relationships have been resolved as part of the procurement process. This information would also be used during the term of the contract to evaluate the mitigation of conflicts when structures change.

• *Financial interests in other entities, including the following:*

+ *Percentage of ownership in any other entity.*

We would use the percentage of ownership interest and the dollar value of financial interests to evaluate reported conflicts of interest and the adequacy of an offeror's/contractor's mitigation methods. Both these measures were suggested by the participants in the 1996 open forum discussion as appropriate considerations in evaluating conflicts of interest. We would perform the evaluation on a case-by-case basis.

• *Income generated from other sources.*

We would use this information to determine if the offeror/contractor could be unduly influenced by other financial relationships it may have with possible customers, competitors, or other parties interested in influencing the performance of the MIP contractor. Income can be generated in a variety of ways, for example, as fees, salaries, reimbursements, or stock options. This information would enable us to evaluate the adequacy of an offeror's/contractor's proposed mitigation methods for conflicts of interest that arise from financial dependence on other entities.

• *A list of current or known future contracts or arrangements, regardless of size, with any insurance organization; subcontractor of an insurance organization; or provider or supplier furnishing services for which payment may be made under the Medicare program. This information is to include the dollar amount of the contracts or arrangements, the type of work performed, and the period of performance.*

We would use this information to evaluate an offeror's/contractor's conflicts that are based on contractual arrangements and to assess the adequacy of its mitigation method. The offeror/contractor would be required to disclose future contracts so that we can assess whether mitigation methods address conflicts that will develop during the procurement process or during the term of the contract.

• *Information regarding potential conflicts of interest and financial information regarding certain contracts for all of the offeror's/contractor's officers, directors (including medical directors), and managers who would be or are involved in the performance of the MIP contract.*

We would evaluate this information to determine if individuals who can control the outcome of work performed under a MIP contract may be unduly influenced by their own or their close relatives' business relationships or contracts. We need the information to protect the monies disbursed for both program and administrative services and to ensure that an offeror's/contractor's mitigation methods adequately eliminate any conflicts that exist due to relationships of an offeror's/contractor's officers, directors, or managers.

Private sector participants at the December 6, 1996 open forum discussion expressed the opinion that full disclosure of all of an offeror's/contractor's relationships would ameliorate conflicts of interest. We considered that, while this might be appropriate in some MIP contractor procurements, it would be unduly burdensome and unnecessary as a blanket requirement in all MIP procurements. Instead, we identified information, described above, that we believe to be essential to the process and require this information to be disclosed in MIP procurements.

The amount of burden associated with these requirements will generally decrease as the size of the offeror/contractor decreases. Smaller offerors/contractors and those not involved in the insurance industry may have no potential conflicts of interest to report if they do not participate in other lines of business and/or if they do not participate in lines of business related to the insurance, health, and health management and consulting industries that are likely to have potential conflicts of interest.

Therefore, based on comments provided by the public and our prior experience, we expect the Certificate and supporting materials will take approximately 80 hours to prepare by each offeror/contractor for its own organization. This estimate is based on the fact that the majority of these disclosure requirements will be compiled using existing data, which an offeror/contractor uses to satisfy other business needs, and the assumption that approximately one-third of the offerors will not have any potential conflicts of interest to report. We expect 15 offerors for each MIP contract. The total burden referenced in this section is 1,200 burden hours.

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to the Office of Management and Budget (OMB) for its review of these information collection requirements.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attn: John Burke, Attn: HCFA–7020–P, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer

V. Regulatory Impact Statement

A. Introduction

We have examined the impacts of this proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and,

when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Intermediaries and carriers are not considered to be small entities.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

B. Summary of the Proposed Rule

As discussed in detail above, this rule implements section 1893 of the Act, which encourages proactive measures to combat waste, fraud, and abuse and to protect the integrity of the Medicare program. The objective of the proposed regulation is to provide a procurement procedure to supplement the requirements of the FAR and specifically address contracts to perform MIP functions identified in the law.

As part of their existing contractual duties, both intermediaries and carriers must perform certain program integrity activities or payment safeguard activities. These activities include, but are not limited to, conducting review of claims to determine whether services were reasonable and necessary, deterring and detecting Medicare fraud, auditing provider cost reports, and ensuring that Medicare pays the appropriate amount when a beneficiary has other health insurance. This rule provides that these functions, as specified below, will be performed under new MIP contracts:

- Review of provider activities such as medical review, utilization review, and fraud review.
- Audit of cost reports.
- Medicare secondary payer review and payment recovery.
- Provider and beneficiary education on payment integrity and benefit quality assurance issues.
- Developing and updating lists of durable medical equipment items that are to be subject to prior approval provisions.

C. Discussion of Impact

We expect that this rule will have a positive impact on the Medicare program, Medicare beneficiaries, providers, suppliers, and entities that have not previously contracted with us. It is possible that some providers and suppliers may experience a slight increase in administrative costs as their claims are subjected to closer review. Current intermediaries and carriers that seek award of MIP contracts may incur costs in complying with new requirements set forth in the rule, but the effect is not expected to be material. To the extent that small entities could be affected by the rule, and because the rule raises certain policy issues with respect to conflict of interest standards, we provide an impact analysis for those entities we believe will be most heavily affected by the rule.

We believe that this rule will have an impact, although not a significant one, in five general areas. The Medicare program and Health Insurance Trust Funds, Medicare beneficiaries and taxpayers, entities that have not previously contracted with us, and Medicare providers and suppliers would benefit from the rule. Current intermediaries and carriers may experience a somewhat negative impact, although the effect on these organization should be tempered by the benefits the new rule will confer.

1. The Medicare Program and Health Insurance Trust Funds

In recent years, sizable cuts in intermediaries' and carriers' budgets for program safeguards have diminished efforts to thwart improper billing practices. The Health Insurance Portability and Accountability Act provides for a direct apportionment from the Health Insurance Trust Funds for carrying out the MIP. Appropriations totaled $440 million for FY 1998 and $500 million for FY 1998. By FY 2003, appropriations are expected to grow to $720 million.

Creating a separate and dependable long-term funding source for MIP will allow us the flexibility to invest in innovative strategies to combat the fraud and abuse drain on the Trust Funds. By shifting emphasis from post-payment recoveries on incorrectly paid claims to pre-payment strategies, most claims will be paid correctly the first time.

Improper billing and health care fraud are difficult to quantify because of their hidden nature. However, a General Accounting Office (GAO) report on Medicare (GAO/HR–91–10, February 1997) suggests that by reducing unnecessary or inappropriate payments, the Federal Government would realize large savings and help slow the growth in Medicare costs. In this report, the GAO states that estimates of "the costs of fraud and abuse ranging from 3 to 10 percent have been cited for health expenditures nationwide, so applying this range to Medicare suggests that such losses in fiscal year 1996 could have been from $6 billion to as much as $20 billion."

The savings realized from our payment safeguard activities for FYs 1988–1996 were as follows:

Year	Total cost *	Total savings *	Return on investment
FY1988	$313.6	$3,654.1	12:1
FY1989	376.3	3,961.6	11:1
FY1990	348.7	5,234.4	15:1
FY1991	360.7	5,703.4	16:1
FY1992	350.7	5,153.2	15:1
FY1993	406.3	6,506.6	16:1
FY1994	412.4	5,412.7	13:1
FY1995	428.3	6,314.9	15:1
FY1996	441.1	6,190.4	14:1

* Dollars in millions.

In our Justification of Estimates for Appropriations Committees for fiscal year 1998, we projected the return on investment for various payment safeguard activities under MIP. Overall, we expect that every dollar expended in fiscal year 1998 to perform integrity functions will save $12 for the Medicare program. We estimate that medical review and utilization review performed under MIP will produce a return on investment of 8:1 for Part A claims and 14:1 for Part B claims. Every dollar spent on audit functions under MIP is expected to save $6 for the Medicare program. For Medicare secondary payer functions, we project a 50:1 return on investment for Part A claims and a 9:1 return for Part B claims. The overall return for Medicare secondary payer functions performed under MIP is estimated to be 26:1.

In addition to these economic advantages, the Medicare program will benefit in a qualitative way. MIP, as this proposed rule would implement it, gives us a tool to better administer the Medicare program and accomplish our mission of providing access to quality health care for Medicare beneficiaries. Under this rule, program integrity activities will be performed under specialized contracts that are subject to more stringent conflict of interest standards than were previously employed. In addition, for the first time we will be able to use competitive procedures to separately contract for the performance of integrity functions. In general, economic theory postulates that competition results in a better price for the consumer who, in this instance, is HCFA on behalf of Medicare beneficiaries and taxpayers. Competition should also encourage the use of innovative techniques to perform integrity functions that will, in turn, result in more efficient and effective safeguards for the Trust Funds.

2. Medicare Beneficiaries and Taxpayers

We expect that overall this rule would have a positive effect on Medicare beneficiaries and taxpayers. Beneficiaries pay deductibles and Part B Medicare premiums. Taxpayers, including those who are not yet eligible for Medicare, contribute part of their earnings to the Part A Trust Fund. Taxpayers and beneficiaries contribute indirectly to the Part B Trust Funds because it is funded, in part, from general tax revenues. Consistent performance of program integrity activities will ensure that less money is wasted on inappropriate treatment or unnecessary services. As a result, current and future beneficiaries will obtain more value for every Medicare dollar spent.

Medicare contractors estimate that of the 130,000 calls they receive yearly concerning potential fraud and abuse, 94,000 are from beneficiaries, many of whom call to question the propriety of claims made on their behalf. Beneficiary education monies, especially when used to provide more Medicare "scam alerts," will enhance a beneficiary's attention to detail and increase savings.

Beneficiaries may experience higher denial rates due to the more stringent claims review. It is expected, however, that most of the potential increase in denials will result from a determination that the services provided were not reasonable and necessary under Medicare authorities and guidelines. There are established limitations on beneficiary liability when claims are denied on this basis; thus the impact on beneficiaries will be minimized.

3. Current Intermediaries and Carriers

Although intermediaries and carriers are not considered small entities for purposes of the RFA, we are providing the following analysis. There are currently 43 Medicare intermediaries and 27 Medicare carriers plus 4 durable medical equipment regional contractors. All but 13 of these contractors are Blue Cross/Blue Shield plans. Presently, all contractors perform payment safeguard activities, and, in FY 1996, approximately 28 percent of the total contractor budget was dedicated to program integrity.

We considered prohibiting current intermediaries and carriers from entering into MIP contracts. We also considered entering into contracts with new organizations to perform all functions while simultaneously removing all payment safeguard functions from current contractors. Neither of these options appeared viable because the effect on the Medicare program would have been unduly disruptive. We do, however, expect to reduce the number of contractors when we shift and consolidate the integrity functions to MIP contractors, but the exact number cannot be determined until we begin implementing the program. The reduction in the number of contractors performing integrity functions does not mean that local contractor presence will be eliminated. Medical directors would continue to play an important role in benefit integrity activities, and we intend to retain locally-based medical directors to continue our relationship with local physicians by using groups like Carrier Advisory Committees. Locally-based fraud investigators and auditors are also likely to be used. Review policies will be coordinated across contractors to ensure consistency, but local practice will be incorporated where appropriate.

This rule may have a negative impact on current intermediaries and carriers in some respects. Current contractors will lose a portion of their Medicare business as payment safeguard functions are transferred to MIP contractors. Although their workload will be reduced, the effect on current contractors will be gradual because we have a long-term strategy for the implementation of MIP. As discussed above, we believe that it would be too disruptive to the Medicare program to make a sudden, across-the-board change in contractors. The change will be made over time, in an incremental fashion, as MIP contracts are awarded; therefore, we cannot quantify the effect.

On the other hand, current contractors would benefit from this proposed rule because, under its provisions, they are eligible to compete for MIP contracts as long as they comply with all conflict of interest and other requirements. (Current contractors may not receive payment for performing the same program integrity activities under both a MIP contract and their existing contract.) We considered proposing rules that identified specific conflict of interest situations that would prohibit the award of a MIP contract. We also considered prohibiting a MIP contractor whose contract was completed or terminated from competing for another MIP contract for a certain period. Instead, the proposed rule would establish a process for evaluating, on a case-by-case basis, situations that may constitute conflicts of interest. It permits current contractors to position themselves to be eligible for a MIP contract by mitigating any conflicts of interest they may have in order to compete. The economic impact on intermediaries and carriers is lessened by the proposed approach when compared to the alternatives we considered.

The current contractors who are awarded MIP contracts will also benefit from the consistent funding provided by the law for program integrity activities. This stable, long-term funding mechanism will allow Medicare contractors to attract, train, and retain qualified professional staff to perform claims review and audit, to identify and refer fraud cases to law enforcement agencies and to support the ongoing development of these cases for prosecution by the Department of Justice.

There will be an economic impact on current contractors that propose to

perform MIP contracts using subcontractors. MIP contractors would be required to determine if any of their subcontractors, at any tier, have conflicts of interest and to ensure that any conflicts are mitigated. A MIP contractor would apply to its subcontractors the same conflict of interest standard to which it must adhere. It is impossible to assess the precise economic impact of this portion of the proposed rule because a MIP contractor is free to contract with any subcontractor. A MIP contractor may seek out subcontractors that are conflict free, which would reduce or eliminate the time expended monitoring conflict of interest situations.

4. New Contracting Entities

Entities that have not previously performed Medicare payment safeguard activities will experience a positive effect from this rule. Integrity functions such as audit, medical review, and fraud investigation may be consolidated in a MIP contract to allow suspect claims to be identified and investigated from all angles. Contractors may subcontract for these specific integrity functions, thus creating new markets and opportunities for small, small disadvantaged, and woman-owned businesses.

Use of full and open competition to award MIP contracts may encourage innovation and the creation of new technology. Historically, cutting edge technologies and analytical methodologies created for the Medicare program have benefitted the private insurance arena.

This proposed rule, however, could also have an adverse economic impact on newly-contracting entities. They, like existing contractors, will be required to absorb the cost of mitigating conflicts of interest and complying with conflict of interest requirements.

5. Providers and Suppliers

There could be some burden imposed on providers and suppliers that are small businesses or not-for-profit organizations by the need to deal with a new set of contractors. There are approximately 1 million health care providers and suppliers (depending on how group practices and multiple locations are counted) that bill independently. The proposed rule does not necessarily impose any action on the part of these providers and suppliers. It is possible that some of them would have to devote more effort in responding to MIP contractors' inquiries generated by more stringent claims review and that they could incur a modest increase in administrative costs. In our analysis of possible administrative costs to providers and suppliers, we assumed that a contractor would make two follow-up inquiries to a provider or supplier for each potential recovery of an incorrect payment. Assuming that the response to each inquiry would require a provider or supplier to expend 30 minutes of clerical time, at $10 per hour, and 15 minutes of professional time, at $100 per hour, we estimate that the average response to an inquiry would cost $30. The resulting added cost to providers and suppliers would be under $10 million annually.

Most Medicare contractors do not maintain toll-free lines for providers or suppliers. A provider's or supplier's telephone bill could increase if it must contact a MIP contractor that is out of its calling area. However, it is possible that a provider's or supplier's intermediary or carrier may also be its MIP contractor. We believe that the centralization of certain functions would result in more consistent policy and lessen the need for a provider or supplier to communicate with its contractor. Since we plan to phase-in the transfer of the MIP activities, we do not anticipate a significant annual impact on telephone bills.

Overall, we expect that providers and suppliers will benefit qualitatively from this proposed rule. Many providers and suppliers perceive that their reputations are tarnished by the few dishonest providers and suppliers that take advantage of the Medicare program. The media often focus on the most egregious cases of Medicare fraud and abuse, leaving the public with the perception that physicians and other health care practitioners routinely make improper claims. This rule would allow us to take a more effective and wider ranging approach to identifying, stopping, and recovering from unscrupulous providers and suppliers. As the number of dishonest providers and suppliers and improper claims diminishes, ethical providers and suppliers will benefit.

This proposed rule could be considered to have a negative impact on any provider or supplier that routinely submits questionable claims and would impact those that have been receiving inappropriate payments. Since the objective of this proposed rule is to eliminate improper payments, we will not analyze the effect the rule may have on unscrupulous providers or suppliers. We do not believe that this rule will reduce a provider's or supplier's legitimate income from Medicare. As claims are more closely and systematically reviewed, providers and suppliers may experience an increase in the number of claims denied. This slight negative impact should decrease as providers become more knowledgeable regarding what claims are appropriate.

D. Conclusion

We conclude that money would be saved and the solvency of the Trust Funds extended as a result of this proposed rule. The dynamic nature of fraud and abuse is illustrated by the fact that wrongdoers continue to find ways to evade safeguards. This supports the need for constant vigilance and increasingly sophisticated ways to protect against "gaming" of the system. We solicit public comments as well as data on the extent to which any of the affected entities would be significantly economically affected by this proposed rule. However, based on the above analysis, we have determined, and certify, that this proposed rule would not have a significant economic impact on a substantial number of small entities. We also have determined, and certify, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals. In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 400

Grant programs—health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements..

42 CFR chapter IV would be amended as follows:

A. Part 400

PART 400—INTRODUCTION; DEFINITIONS

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

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Section 400.202 is amended by adding the following definition in alphabetical order, to read as follows:

§ 400.202 Definitions specific to Medicare.

* * * * *

Medicare integrity program contractor means an entity that has a contract with

HCFA under section 1893 of the Act to perform program integrity activities.

* * * * *

B. Part 421

PART 421—MEDICARE CONTRACTING

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

2. The authority citation for part 421 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

3. Section 421.1 is revised to read as follows:

§ 421.1 Basis, applicability, and scope.

(a) *Basis.* This part is based on the indicated provisions of the following sections of the Act:

1124—Requirements for disclosure of certain information.

1816 and 1842—Use of organizations and agencies in making Medicare payments to providers and suppliers of services.

1893—Requirements for protecting the integrity of the Medicare program.

(b) *Additional basis.* Section 421.118 is also based on 42 U.S.C. 1395(b)–1(a)(1)(F), which authorizes demonstration projects involving intermediary agreements and carrier contracts.

(c) *Applicability.* The provisions of this part apply to agreements with Part A (Hospital Insurance) intermediaries, contracts with Part B (Supplementary Medical Insurance) carriers, and contracts with Medicare integrity program contractors that perform program integrity functions.

(d) *Scope.* The provisions of this part state that HCFA may perform certain functions directly or by contract. They specify criteria and standards HCFA uses in selecting intermediaries and evaluating their performance, in assigning or reassigning a provider or providers to particular intermediaries, and in designating regional or national intermediaries for certain classes of providers. The provisions provide the opportunity for a hearing for intermediaries and carriers affected by certain adverse actions. They also provide adversely affected intermediaries an opportunity for judicial review of certain hearing decisions. They also set forth requirements related to contracts with Medicare integrity program contractors.

4. Section 421.100 is revised to read as follows:

§ 421.100 Intermediary functions.

An agreement between HCFA and an intermediary specifies the functions to be performed by the intermediary.

(a) *Mandatory functions.* The contract must include the following functions:

(1) Determining the amount of payments to be made to providers for covered services furnished to Medicare beneficiaries.

(2) Making the payments.

(b) *Additional functions.* The contract may include any or all of the following functions:

(1) Any or all of the program integrity functions described in § 421.304, provided the intermediary is continuing those functions under an agreement entered into under section 1816 of the Act that was in effect on August 21, 1996, and they do not duplicate work being performed under a Medicare integrity program contract.

(2) Undertaking to adjust incorrect payments and recover overpayments when it has been determined that an overpayment has been made.

(3) Furnishing to HCFA timely information and reports that HCFA requests in order to carry out its responsibilities in the administration of the Medicare program.

(4) Establishing and maintaining procedures as approved by HCFA for the review and reconsideration of payment determinations.

(5) Maintaining records and making available to HCFA the records necessary for verification of payments and for other related purposes.

(6) Upon inquiry, assisting individuals with respect to matters pertaining to an intermediary contract.

(7) Serving as a channel of communication to and from HCFA of information, instructions, and other material as necessary for the effective and efficient performance of an intermediary agreement.

(8) Undertaking other functions as mutually agreed to by HCFA and the intermediary.

(c) *Dual intermediary responsibilities.* With respect to the responsibility for services to a provider-based HHA or a provider-based hospice, when different intermediaries serve the HHA or hospice and its parent provider under § 421.117, the designated regional intermediary determines the amount of payment and makes payments to the HHA or hospice. The intermediary and/or Medicare integrity program contractor serving the parent provider performs fiscal functions, including audits and settlement of the Medicare cost reports and the HHA and hospice supplement worksheets.

5. Section 421.200 is revised to read as follows:

§ 421.200 Carrier functions.

A contract between HCFA and a carrier specifies the functions to be performed by the carrier. The contract may include any or all of the following functions:

(a) Any or all of the program integrity functions described in § 421.304 provided—

(1) The carrier is continuing those functions under a contract entered into under section 1842 of the Act that was in effect on August 21, 1996; and

(2) The functions do not duplicate work being performed under a Medicare integrity program contract, except that the function related to developing and maintaining a list of durable medical equipment may be performed under both a carrier contract and a Medicare integrity program contract.

(b) Receiving, disbursing, and accounting for funds in making payments for services furnished to eligible individuals within the jurisdiction of the carrier.

(c) Determining the amount of payment for services furnished to an eligible individual.

(d) Undertaking to adjust incorrect payments and recover overpayments when it has been determined that an overpayment has been made.

(e) Furnishing to HCFA timely information and reports that HCFA requests in order to carry out its responsibilities in the administration of the Medicare program.

(f) Maintaining records and making available to HCFA the records necessary for verification of payments and for other related purposes.

(g) Establishing and maintaining procedures under which an individual enrolled under Part B will be granted an opportunity for a fair hearing.

(h) Upon inquiry, assisting individuals with matters pertaining to a carrier contract.

(i) Serving as a channel of communication to and from HCFA of information, instructions, and other material as necessary for the effective and efficient performance of a carrier contract.

(j) Undertaking other functions as mutually agreed to by HCFA and the carrier.

6. A new subpart D is added to part 421 to read as follows:

Subpart D—Medicare Integrity Program Contractors

Sec.

Subpart D—Medicare Integrity Program Contractors

§ 421.300 Basis, applicability, and scope.

(a) *Basis.* This subpart implements section 1893 of the Act, which requires HCFA to protect the integrity of the Medicare program by entering into contracts with eligible entities to carry out Medicare integrity program functions.

(b) *Applicability.* This subpart applies to entities that seek to compete or receive award of a contract under section 1893 of the Act including entities that perform functions under this subpart emanating from the processing of claims for individuals entitled to benefits as qualified railroad retirement beneficiaries.

(c) *Scope.* This subpart defines the types of entities eligible to become Medicare integrity program contractors; identifies the program integrity functions a Medicare integrity program contractor performs; describes procedures for awarding and renewing contracts; establishes procedures for identifying, evaluating, and resolving organizational conflicts of interest; prescribes responsibilities; and sets forth limitations on contractor liability. The provisions of this subpart are based on the acquisition regulations set forth at 48 CFR Chapters 1 and 3.

§ 421.302 Eligibility requirements for Medicare integrity program contractors.

If an entity meets the following conditions, HCFA may enter into a contract with it to perform the functions described in § 421.304:

(a) Demonstrates the ability to perform the Medicare integrity program contractor functions described in § 421.304. For purposes of developing and periodically updating a list of DME under § 421.304(e), an entity is deemed to be eligible to enter into a contract under the Medicare integrity program to perform the function if the entity is a carrier with a contract in effect under section 1842 of the Act.

(b) Agrees to cooperate with the OIG, the Attorney General, and other law enforcement agencies, as appropriate, including making referrals, in the investigation and deterrence of fraud and abuse of the Medicare program.

(c) Complies with conflict of interest provisions in 48 CFR Chapters 1 and 3 and is not excluded under the conflict of interest provision at § 421.310.

(d) Meets other requirements that HCFA establishes.

§ 421.304 Medicare integrity program contractor functions.

The contract between HCFA and a Medicare integrity program contractor specifies the functions the contractor performs. The contract may include any or all of the following functions:

(a) Conducting medical reviews, utilization reviews, and fraud reviews related to the activities of providers of services and other individuals and entities (including entities contracting with HCFA under part 417 of this chapter) furnishing services for Medicare payment. These reviews include medical, utilization, and fraud reviews.

(b) Auditing cost reports of providers of services, or other individuals or entities (including entities contracting with HCFA under part 417 of this chapter), as necessary to ensure proper Medicare payment.

(c) Determining appropriate Medicare payment to be made for services, as specified in section 1862(b) of the Act, and taking action to recover inappropriate payments.

(d) Educating providers, suppliers, beneficiaries, and other persons regarding payment integrity and benefit quality assurance issues.

(e) Developing, and periodically updating, a list of items of durable medical equipment that are frequently subject to unnecessary utilization throughout the contractor's entire service area or a portion of the area, in accordance with section 1834(a)(15)(A) of the Act.

§ 421.306 Awarding of a contract.

(a) HCFA awards Medicare integrity program contracts in accordance with acquisition regulations set forth at 48 CFR chapters 1 and 3, this subpart, and all other applicable laws and regulations. These requirements for awarding Medicare integrity program contracts are used—

(1) When entering into new contracts;

(2) When entering into contracts that may result in the elimination of responsibilities of an individual intermediary or carrier under section 1816(l) or section 1842(c) of the Act, respectively; and

(3) At any other time HCFA considers appropriate.

(b) HCFA may award an entity a Medicare integrity program contract without competition if—

(1) Through approval of a novation agreement, HCFA recognizes the entity as the successor in interest to an intermediary agreement or carrier contract under which the intermediary or carrier was performing activities described in section 1893(b) of the Act on August 21, 1996;

(2) The intermediary or carrier has transferred to the entity all of the resources, including personnel, that were involved in performance under the intermediary agreement or carrier contract and performance of Medicare integrity program activities; and

(3) The intermediary or carrier continued to perform Medicare integrity program activities until transferring the resources to the entity.

(c) An entity is eligible to be awarded a Medicare integrity program contract only if it meets the eligibility requirements established in § 421.302.

§ 421.308 Renewal of a contract.

(a) HCFA specifies an initial contract term in the Medicare integrity program contract. Contracts under this subpart may contain renewal clauses. HCFA may renew the Medicare integrity program contract, without regard to any provision of law requiring competition, as it determines to be appropriate, by giving the contractor notice, within timeframes specified in the contract, of its intent to do so.

(b) HCFA may renew a Medicare integrity program contract without competition if—

(1) The Medicare integrity program contractor continues to meet the requirements established in this subpart;

(2) The Medicare integrity program contractor meets or exceeds all of the performance requirements established in its current contract; and

(3) It is in the best interest of the Government.

(c) If HCFA does not renew a contract, the contract will end in accordance with its terms, and the contractor does not have the right to a hearing or judicial review of the nonrenewal decision.

§ 421.310 Conflict of interest identification.

(a) *Definitions.* As used in this subpart, the following definitions apply:

Financial relationship means—

(1) A direct or indirect ownership or investment interest (including an option or nonvested interest) in any entity that exists through equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest; or

(2) A compensation arrangement with an entity.

Organizational conflict of interest has the meaning given at 48 CFR 9.501, except that, for purposes of this subpart, the activities and relationships described include those of the offeror or contractor itself and other business

related to it and those of its officers, directors (including medical directors), managers, and subcontractors.

(b) *General.* Except as provided in paragraph (d) of this section, HCFA does not enter into a contract under this subpart with an offeror or contractor that HCFA determines has, or has the potential for, an unresolved organizational conflict of interest.

(c) *Identification of conflict.* (1) HCFA determines that an offeror or contractor has an organizational conflict of interest, or the potential for the conflict exists, if—

(i) The offeror or contractor is an entity described in paragraph (c)(3) of this section; or

(ii) The offeror or contractor has a present, or known future, direct or indirect financial relationship with an entity described in paragraph (c)(3) of this section.

(2) A financial relationship may exist either—

(i) Through an offeror's or contractor's parent companies, subsidiaries, affiliates, subcontractors, or current clients; or

(ii) From the activities and relationships of the officers, directors (including medical directors), or managers of the offeror or contractor and may be either direct or indirect. An officer, director, or manager has an indirect financial relationship if an ownership or investment interest is held in the name of another but provides benefits to the officer, director, or manager. Examples of indirect financial relationships are holdings in the name of a spouse or dependent child of the officer, director, or manager and holdings of other relatives who reside with the officer, director, or manager.

(3) For purposes of paragraphs (c)(1)(i) and (c)(1)(ii) of this section, the entity is one that—

(i) Provides, insures, or pays for health benefits, with the exception of health plans provided as the entity's employee fringe benefit;

(ii) Conducts audits of health benefit payments or cost reports;

(iii) Conducts statistical analysis of health benefit utilization;

(iv) Would review or does review, under the contract, Medicare services furnished by a provider or supplier that is a direct competitor of the offeror or contractor;

(v) Prepared work or is under contract to prepare work that would be reviewed under the Medicare program integrity contract;

(vi) Is affiliated, as that term is explained in 48 CFR 19.101, with a provider or supplier to be reviewed under the contract.

(4) HCFA may determine that an offeror or contractor has an organizational conflict of interest, or the potential for a conflict exists, based on the following:

(i) Apparent organizational conflicts of interest. An apparent organizational conflict of interest exists if a prudent business person has cause to believe that the offeror or contractor would have a conflict of interest in performing the requirements of a contract under this subpart. No inappropriate action by the offeror or contractor is necessary for an apparent organizational conflict of interest to exist.

(ii) Other contracts and grants with the Federal Government.

(d) *Exception.* HCFA may contract with an offeror or contractor that has an unresolved conflict of interest if HCFA determines that it is in the best interest of the Government to do so.

(e) *Offeror's or contractor's responsibility with regard to subcontractors.* An offeror or contractor is responsible for determining whether an organizational conflict of interest exists in any of its proposed or actual subcontractors at any tier and is responsible for ensuring that the subcontractors have mitigated any conflict of interest or potential conflict of interest.

(f) *Post-award conflicts of interest.* (1) In addition to the conflicts identified in paragraph (c) of this section, HCFA considers that a conflict of interest has occurred if during the term of the contract—

(i) The contractor receives any fee, compensation, gift, payment of expenses, or any other thing of value from any entity that is reviewed, audited, investigated, or contacted during the normal course of performing activities under the Medicare integrity program contract; or

(ii) HCFA determines that the contractor's activities are creating a conflict of interest.

(2) In the event HCFA determines that a conflict of interest exists during the term of the contract, among other actions, it may, as it deems appropriate—

(i) Not renew the contract for an additional term;

(ii) Modify the contract; or

(iii) Terminate the contract.

§ 421.312 Conflict of interest evaluation.

(a) *Disclosure.* Offerors that wish to be eligible for the award of a contract under this subpart and Medicare integrity program contractors must submit, at times specified in paragraph (b) of this section, an Organizational Conflicts of Interest Certificate. The Certificate must contain the information specified in paragraphs (a)(1) through (a)(8) of this section, unless the information has otherwise been provided in the proposal, in which case it must be referenced. Each solicitation issued for a contract under this subpart contains the requirements for disclosure for pre- and post-award purposes. The solicitation may require more detailed information than identified in this section.

(1) A description of all business or contractual relationships or activities that may be viewed by a prudent business person as a conflict of interest.

(2) A description of the methods the offeror or contractor will apply to mitigate any situations listed in the Certificate that could be identified as a conflict of interest.

(3) A description of the offeror's or contractor's program to monitor its compliance and the compliance of its proposed and actual subcontractors with the conflict of interest requirements as identified in the relevant solicitation.

(4) A description of the offeror's or contractor's plans to contract with an independent auditor to conduct a compliance audit.

(5) An affirmation, using language that HCFA may prescribe, signed by an official authorized to bind the contractor, that the offeror or contractor understands that HCFA may consider any deception or omission in the Certificate grounds for nonconsideration for contract award in the procurement process, termination of the contract, or other contract or legal action.

(6) Corporate and organizational structure.

(7) Financial interests in other entities, including the following:

(i) Percentage of ownership in any other entity.

(ii) Income generated from other sources.

(iii) A list of current or known future contracts or arrangements, regardless of size, with any—

(A) Insurance organization or subcontractor of an insurance organization; or

(B) Providers or suppliers furnishing health services for which payment may be made under the Medicare program.

(iv) In the case of contracts or arrangements identified in accordance with paragraph (a)(7)(iii) of this section, the dollar amount of the contracts or arrangements, the type of work performed, and the period of performance.

(8) The following information for all of the offeror's or contractor's officers, directors (including medical directors),

and managers who would be or are involved with the performance of the Medicare integrity program contract:

(i) The information required under paragraphs (a)(1), (a)(7)(iii), and (a)(7)(iv) of this section.

(ii) If required by the solicitation, the information specified in paragraphs (a)(7)(i) and (a)(7)(ii) of this section.

(b) *When disclosure is made.* The Organizational Conflicts of Interest Certificate is submitted—

(1) With the offeror's proposal;

(2) When the HCFA Contracting Officer requests a revision in the Certificate;

(3) As part of a compliance audit by an independent auditor; and

(4) 45 days before any change in the information submitted in accordance with paragraph (a) or paragraph (b) of this section. Only changed information must be submitted.

(c) *Evaluation.* HCFA evaluates organizational conflicts of interest and potential conflicts, using the information provided in the Organizational Conflicts of Interest Certificate, in order to promote the effective and efficient administration of the Medicare program.

(d) *Protection of proprietary information disclosed.* (1) HCFA protects disclosed proprietary information as allowed under the Freedom of Information Act (5 U.S.C. 552).

(2) HCFA requires signed statements from HCFA personnel with access to proprietary information that prohibit personal use during the procurement process and term of the contract.

§ 421.314 Conflict of interest resolution.

(a) *Review Board.* HCFA establishes a Conflicts of Interest Review Board to resolve organizational conflicts of interest and determines when the Board is convened.

(b) *Resolution.* Resolution of an organizational conflict of interest is a determination that—

(1) The conflict has been mitigated;

(2) The conflict precludes award of a contract to the offeror;

(3) The conflict requires that HCFA modify an existing contract;

(4) The conflict requires that HCFA terminate an existing contract; or

(5) It is in the best interest of the Government to contract with the offeror or contractor even though the conflict exists.

§ 421.316 Limitation on Medicare integrity program contractor liability.

(a) None of the following will be held by reason of the performance of any duty, function, or activity required or authorized under this subpart or under a valid contract entered into under this subpart to have violated any criminal law or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided due care was exercised in that performance:

(1) An entity having a contract with HCFA under this subpart (that is, a contractor under this subpart).

(2) A person employed by or who has a fiduciary relationship with or who furnishes professional services to a contractor under this subpart.

(b) HCFA makes payment, to a contractor under this subpart, or to a member or employee of the contractor, or to any person who furnishes legal counsel or services to the contractor, of an amount equal to the reasonable amount of the expenses incurred in connection with the defense of a suit, action, or proceeding, as determined by HCFA, if—

(1) The suit, action, or proceeding was brought against the contractor, or a member or employee of the contractor, by a third party and relates to the performance by the contractor, member, or employee of any duty, function, or activity under a contract entered into with HCFA under this subpart;

(2) The funds are available; and

(3) The expenses are otherwise allowable under the terms of the contract.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 5, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: March 16, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–7190 Filed 3–16–98; 5:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4200

[WO–130–1820–00–24 1A]

RIN 1004–AC70

Grazing Administration: Alaska; Livestock

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to remove the regulations which implement the livestock grazing program on BLM lands in Alaska because they are obsolete. There are currently no livestock grazing operations under BLM's program, and we do not anticipate receiving any more applications. Due to Native and State of Alaska land selections, the amount of BLM lands suitable for livestock grazing has decreased dramatically. If applicants wish to apply to graze livestock other than reindeer, BLM may still issue special use permits.

DATES: BLM must receive your comments at the address below on or before May 19, 1998. BLM will not necessarily consider any comments received after the above date during its decision on the proposed rule.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240. You may also comment via the Internet to WOComment@wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "attn: AC70" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030. Finally, you may hand-deliver comments to BLM at 1620 L Street, N.W., Room 401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Peggy Fox, Alaska State Office, Bureau of Land Management, U.S. Department of the Interior, 222 West 7th Avenue, #13, Anchorage, Alaska 99513–7599; Telephone: 907–271–3346 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the

Administrative Record for the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality, which BLM will consider on a case-by-case basis. If you wish to request that BLM consider withholding your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

II. Background

The current part 4200 regulations were written in order to carry into effect the provisions of the Act of March 4, 1927 (the Alaska Livestock Grazing Act, or the Act). The Alaska Livestock Grazing Act declared that it is Congressional policy to:

- Promote the conservation of the natural resources of Alaska;
- Provide for the protection and development of forage plants; and
- Provide for the beneficial use of the land for grazing by livestock.

The Act authorized the Secretary of the Interior to lease the grazing privileges on the grazing districts established to qualified applicants. The Act states that the use of Federal lands in Alaska for grazing must be subordinated to the following uses:

- Development of the mineral resources;
- Protection, development and use of forests;
- Protection, development, and use of water resources;
- Agriculture; and
- Protection, development and use of other resources that may be of greater benefit to the public.

There are currently no lease holders under BLM's livestock grazing program in Alaska, and BLM does not anticipate receiving more applications. Due to Native and State of Alaska land selections, the amount of BLM lands suitable for livestock grazing has decreased dramatically. The regulations at part 4200 are therefore unnecessary. Any new applicants who wish to graze livestock may apply to BLM, and BLM could issue special use permits. The part 4200 regulations are specific to Alaska. Their removal would have no effect on any grazing regulations elsewhere in the United States.

III. Discussion of Proposed Rule

The proposed rule would remove the current regulations, but BLM's authorization to issue grazing leases would remain. If, for some reason, new applicants wanted to apply for a lease, the Act still authorizes BLM to issue leases at its discretion. Even more unlikely, if BLM were to acquire more land and needed regulations to administer the program, it could promulgate new regulations.

The proposed rule would remove the present regulations at part 4200, and replace them with the following:

The Bureau of Land Management (BLM) is authorized under the Alaska Livestock Grazing Act (The Act of March 4, 1927, 43 U.S.C. 316, 316a–316o) to lease the grazing privileges on the grazing districts established in Alaska to qualified applicants. BLM previously had regulations governing this program [See Code of Federal Regulations (CFR) for 43 CFR Part 4200, revised as of October 1, 1996]. Due to a lack of interest in the program, BLM removed these regulations. For applicants wishing to apply for permits to graze livestock other than reindeer, BLM may issue special use permits.

IV. Procedural Matters

National Environmental Policy Act

BLM has determined that the action of removing the Alaska livestock grazing regulations will have no measurable effect on the human environment. As explained above, there are currently no lease holders under BLM's livestock grazing program. BLM considers the proposed rule an administrative action to remove unnecessary regulations for a program that is no longer used. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10. In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This rule contains no information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the discussion contained in this preamble above, the rule will not affect the public, because there are no lease holders at present. Any new applicants would have an opportunity to graze livestock under BLM-issued special use permits. Therefore, BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Removal of 43 CFR part 4200 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The proposed rule 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, in accordance with Executive Order 12612, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. The rule would not cause a taking of private property or require further discussion of

takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this rule is Frank Burno, Bureau of Land Management, Regulatory Affairs Group, Room 401LS, 1849 C. Street, N.W., Washington, D.C. 20240; Telephone: 202–452–0352 (Commercial or FTS).

List of Subjects in 43 CFR Part 4200

Administrative practice and procedure, Alaska, Grazing lands, Livestock, Range management.

Dated: February 18, 1998.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set forth above, and under the authority of 43 U.S.C. 316n, BLM proposes to revise part 4200, Group 4200, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations to read as follows:

PART 4200—GRAZING ADMINISTRATION; ALASKA; LIVESTOCK

Authority: 43 U.S.C. 316, 316a–316o; 43 U.S.C. 1701 *et seq.*

§ 4200.1 The Bureau of Land Management (BLM) is authorized under the Alaska Livestock Grazing Act (The Act of March 4, 1927, 43 U.S.C. 316, 316a–316o) to lease the grazing privileges on the grazing districts established in Alaska to qualified applicants. BLM previously had regulations governing this program [See Code of Federal Regulations (CFR), 43 CFR Parts 1000 to End, revised as of October 1, 1997]. Due to a lack of interest in the program, BLM removed these regulations. For applicants wishing to apply for permits to graze livestock other than reindeer, BLM may issue special use permits.

[FR Doc. 98–7328 Filed 3–19–98; 8:45 am]
BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MM Docket 97–182; DA No. 98–458]

Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities

AGENCY: Federal Communications Commission.

ACTION: Supplemental proposed rule.

SUMMARY: The Commission has received a petition from the National Audubon Society ("Audubon") requesting the preparation of an Environmental Impact Statement pursuant to the National Environmental Policy Act, in connection with the Commission's *Notice of Proposed Rule Making* in the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities. By this Public Notice, interested parties are invited to file comments as to whether the rule proposed would have a significant environmental impact and what that impact would be.

DATES: Comments must be filed on or before April 14, 1998, Reply Comments must be filed on or before April 29, 1998.

ADDRESSES: All comments should be addressed to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Amy Nathan or Susanna Zwerling, Policy and Rules Division, Mass Media Bureau (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a summary of the Mass Media Bureau's Public Notice. Also included in this notice is the Initial Regulatory Flexibility Analysis for the NPRM. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street N.W., Washington, D.C. The complete text of this Notice may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of Notice

The Commission has received a petition from Audubon requesting the preparation of an Environmental Impact Statement pursuant to the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4332, in connection with the Commission's *Notice of Proposed Rule Making* In the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities (FCC No. 97–296, MM Docket No. 97–182) ("NPRM"). Pursuant to 47 CFR 1.1307(c), Audubon is entitled to file such petition, and the Mass Media Bureau is required to "review the petition and consider the environmental concerns that have been raised." This Public Notice addresses only the environmental issues raised by Audubon's petition, and represents just one part of the Commission's ongoing proceeding in MM Docket No. 97–182.

The NPRM requested comment on whether and in what circumstances the Commission should preempt certain state and local actions on zoning and land use ordinances which present an obstacle to the rapid implementation of digital television service. The Commission released the NPRM on August 19, 1997 published September 2, 1997 (62 FR 46241), comments were due October 30, 1997, and reply comments were due December 1, 1997.

Audubon filed its petition on December 1, 1997, requesting that the Commission prepare an Environmental Impact Statement ("EIS") and solicit public comment on that EIS. Audubon alleges that the rule proposed by the NPRM constitutes a major federal action affecting the environment, and therefore requiring the preparation of an EIS pursuant to NEPA. In addition, Audubon alleges that the Commission's regulations require an environmental analysis of any action that may affect a listed species or may lead to construction in wetlands. 47 CFR 1.1307(c)

By this Public Notice, we seek comment as to first, whether the proposal contained in the NPRM would have a significant environmental effect such that an EIS should be prepared; and second, what would be the environmental effect of the proposal.

The initiation of this proceeding is not intended to affect in any way the expeditious processing of digital television construction permit applications. This proceeding also will not affect the current requirement that licensees represent that their applications meet the requirements of NEPA. The Mass Media Bureau takes very seriously the responsibilities conferred by NEPA to evaluate the effects of its actions on the quality of the environment. The Bureau continues to review applicants' representations of

compliance with section 1.1307 and with NEPA.

Comments on this Public Notice must be filed on or before April 14, 1998, and reply comments must be filed by April 29, 1998. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. All comments should reference FCC Docket No. 97–296 and MM Docket No. 97–182 and should be addressed to: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

Initial Regulatory Flexibility Analysis

The Federal Register notice for the NPRM, released August 19, 1997, omitted the Initial Regulatory Flexibility Analysis ("IRFA") connected with the NPRM. A synopsis of that IRFA follows.

As required by section 603 of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603, the Commission is incorporating an IRFA of the expected impact on small entities of the policies and proposals in the NRPM. Written public comments concerning the effect of the proposals in the NRPM including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Office of Public Affairs shall send a copy of the NPRM, including the IRA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

Reasons Why Agency Action is Being Considered

In its *Fifth Report and Order* in its digital television proceeding (MM Docket No. 87–268) the Commission adopted an accelerated roll-out schedule for digital television stations. That schedule requires the top four network affiliates in the top ten television markets to construct their digital television facility and begin emitting signals by May 1, 1999. Affiliates of these four networks in markets 11–30 must be on the air by November 1, 1999. All other commercial stations will have to construct their DTV facilities by May 1, 2002, and noncommercial stations by May 1, 2003. The Commission found this accelerated schedule necessary to promote the success of DTV and allow for spectrum recovery, a goal shared by Congress. In a rule making petition filed by the National Association of Broadcasters and the Association of Maximum Service Television the Petitioners claim that state and local zoning and land use laws, ordinances, and procedures may have a delaying effect on the siting, placement and construction of new television towers that will be needed for DTV. Additionally, they contend, the antennas of many FM radio stations will need to be displaced from existing towers to enable them to support new DTV antenna arrays and these FM stations will have to build new towers to enable them to continue to serve the public. Accordingly, they ask the Commission to adopt a rule preempting state and local laws, ordinances and procedures that could work to delay the inauguration of DTV service. The Commission believes the prompt deployment of DTV is essential to several goals, and that compliance with such local requirements may, at least in some cases, both make compliance with both these procedures *and* the roll-out schedule impossible. Additionally, it believes that some of these state and local regulations may stand as obstacles to the accomplishment of the rapid transition to DTV service and the spectrum recovery that it will permit. This recovery is also an important congressional purpose as evidenced by its 1996 adoption of 47 U.S.C. 336.

Need for and Objectives of the Proposed Rule Changes

Petitioners have demonstrated that at least some state and local zoning and land use laws, ordinances and procedures may, unless preempted by the Commission, prevent television broadcasters from meeting the construction schedule for DTV stations established by the Commission, retarding the recovery of frequency spectrum by the government for reallotment and delaying digital service to the public. Additionally, in some cases they may result in discontinuation of FM radio service to the public should displaced FM antennas be unable to relocate to new antenna towers.

Legal Basis

Authority for the actions proposed in this NPRM may be found in sections 4(i), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 336. Recording, Recordkeeping, and Other Compliance Requirements The Commission is not proposing any new or modified recordkeeping or information collection requirements in this proceeding. Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules: The initiatives and proposed rules raised in this proceeding do not overlap, duplicate or conflict with any other rules. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply: Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. The RFA generally defines the term small business as having the same meaning as the term small business concern under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." The proposed rules and policies will apply to television broadcasting licensees, radio broadcasting licensees and potential licensees of either service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,558 operating television broadcasting stations in the nation as of May 31, 1997. For 1992 the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.

Additionally, the Small Business Administration defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs

by radio to the public. Included in this industry are commercial religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of May 31, 1997, official Commission records indicate that 12,156 radio stations were operating, of which 7,342 were FM stations.

Thus, the proposed rules will affect many of the approximately 1,558 television stations; approximately 1,200 of those stations are considered small businesses. Additionally, the proposed rules will affect some of the 12,156 radio stations, approximately 11,670 of which are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies.

In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license may be affected by the proposals contained in this item.

The number of entities that may seek to obtain a television or radio broadcast license is unknown. We invite comment on this number.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives

This NPRM solicits comment on a variety of alternatives discussed herein. Any significant alternatives presented in the comments will be considered. The Commission believes that the proposed rules and policies may be necessary to promote the speedy deployment of digital television service and the prompt recovery of broadcast frequency spectrum for reallotment. We seek comment on this belief.

Report to Small Business Administration

The Commission shall send a copy of this Initial Regulatory Flexibility Analysis along with this Notice to the Small Business Administration pursuant to the RFA.

List of Subjects in 47 CFR Part 1

Television, Radio broadcasting.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 98–6861 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–33; RM–9232]

Radio Broadcasting Services; Richwood, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by J&B Broadcasting, Inc., proposing the allotment of Channel 288A at Richwood, West Virginia, as the community's first local FM transmission service. Channel 288A can be allotted to Richwood in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 288A at Richwood are North Latitude 38–13–42 and West Longitude 80–31–48.

DATES: Comments must be filed on or before May 4, 1998, and reply comments on or before May 19, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Timothy E. Welch, Esq., Hill & Welch, 1330 New Hampshire, Ave., NW., Suite 113, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–33, adopted March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7320 Filed 3–19–98:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–95, RM–8787; RM–8838]

Radio Broadcasting Services; Plattsmouth and Papillion, NE, and Osceola, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Order to show cause.

SUMMARY: The Commission, in response to a counterproposal filed by LifeStyle Communications Corporation, proposes the allotment of Channel 295A to Papillion, Nebraska, as the community's first local aural transmission service, and the substitution of Channel 299A for Channel 295A at Plattsmouth, Nebraska. An Order to Show Cause is directed to Platte Broadcasting Company, Inc., licensee of Station KOTD–FM, as to why its license should not be modified to specify the alternate Class A channel. Channel 299A can be allotted at Plattsmouth at Station KOTD–FM's licensed transmitter site, at coordinates 41–05–28 North Latitude and 95–48–15 West Longitude. Channel 295A can be allotted to Papillion with a site restriction of 11.5 kilometers (7.1 miles) northeast, at coordinates 41–12–08; 95–55–35, to avoid a short-spacing to Stations KEZG, Channel 297C1, Lincoln, Nebraska, KEXL, Channel

294C, Norfolk, Nebraska, and KEFM, Channel 241C, Omaha, Nebraska.

DATES: Comments must be filed on or before May 4, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order to Show Cause, MM Docket No. 96–95, March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7319 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 63, No. 54
Friday, March 20, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–020–1]

Fruit Fly Cooperative Eradication Program Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement for the Fruit Fly Cooperative Eradication Program. The environmental impact statement will analyze the potential environmental impacts of programs to eradicate various fruit fly species from the United States mainland. We are seeking comments from the public, as well as government agencies and private industry, concerning issues that should be addressed in the environmental impact statement. Our request for comments is the first step in the development of an environmental impact statement.

DATES: Consideration will be given only to comments received on or before April 20, 1998.

ADDRESSES: Please send an original and three copies of your comments to Mr. Harold Smith, Environmental Protection Officer, Environmental Analysis and Documentation, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1237. Please state that your comments refer to Docket No. 98–020–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Smith, Environmental Protection Officer, Environmental Analysis and Documentation, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1237, (301) 734–8565.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) has authority and responsibility for the interdiction, detection, and eradication of various exotic agricultural pests, including fruit flies that are not native to the United States. Many of these species are found now in other parts of the world, including Africa, the Mediterranean, Europe, Oceania, South America, and Central America. Some have managed to establish footholds in Hawaii. If these pests became established on the United States mainland, agricultural losses and resulting costs to the consumer would be devastating.

One such pest, the Mediterranean fruit fly (Medfly), has been introduced to the United States mainland intermittently since its initial introduction in 1929; however, eradication programs have prevented it from becoming established. Medfly eradication programs have taken place in California, Florida, and Texas, and have been conducted as cooperative efforts between the United States Department of Agriculture and State departments of agriculture. Cooperative eradication programs have taken place also for the Mexican fruit fly, Oriental fruit fly, and others. Although some of the programs may use the same or similar control methods, the same control methods are not adaptable to all of the fruit fly species of concern.

The magnitude of these programs, their sometimes controversial natures, and the evolution of new exclusion, detection, and eradication strategies have prompted APHIS to develop, or cooperate in the development of, a programmatic environmental impact statement (EIS) that will review and analyze the potential environmental effects of these Cooperative Fruit Fly Eradication Programs. Also, because many of the programs must be implemented in an emergency manner, it is imperative that APHIS and cooperating government entities prepare in advance an EIS that accurately predicts and comprehensively analyzes the range of environmental effects that may be expected from program activities. Pursuant to section 1501.7 of the Council on Environmental Quality regulations (40 CFR 1501.7), we are issuing this notice of intent to prepare such an EIS.

Scoping Process

The initial step in the process of EIS development is scoping. Scoping includes solicitation of public comments and the evaluation of those comments. This process is used for determining the scope of issues to be addressed. We are, therefore, asking for written comments that identify significant environmental issues that should be analyzed in the EIS. We invite comments from the interested public, from Federal, State, and local agencies that have an interest in the Fruit Fly Cooperative Eradication Program, and from Federal and State agencies that have jurisdiction either by law or special expertise regarding any national program issue or environmental impact that should be discussed in the EIS. We will review any comments that are received, taking them into account in the development of the draft EIS.

Alternatives

We will consider all reasonable and realistic action alternatives recommended in the comments we receive. The following alternatives have been identified already for comprehensive analysis in the EIS:

(1) Exclusion,
(2) Detection,
(3) Control, and
(4) No action.

Major Issues

It is APHIS' intent to examine the Cooperative Fruit Fly Eradication Program for the primary purpose of reducing risk to public health and to the environment. Following are some of the major issues that will be discussed in the EIS:

(1) Improving risk reduction strategies,
(2) Emergency communication strategies,
(3) Selection of program control components,
(4) Exploitation of new or evolving technologies,

(5) Environmental justice considerations, and

(6) Environmental monitoring.

Preparation of the EIS

Following scoping, we will prepare a draft EIS for the Fruit Fly Cooperative Eradication Program. A notice published in the Federal Register will announce that the draft EIS is available for review and will announce the dates and locations of public meetings to review the draft EIS.

Done in Washington, DC, this 16th day of March 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–7331 Filed 3–19–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

Farmland Protection Program

AGENCY: Commodity Credit Corporation and Natural Resources Conservation Service, United States Department of Agriculture (USDA).

ACTION: Notice of request for proposals (RFP).

SUMMARY: Section 388 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) established the Farmland Protection Program (FPP). The FPP is administered under the supervision of the Chief of the Natural Resources Conservation Service (NRCS) who is a Vice President of the Commodity Credit Corporation (CCC). CCC is requesting proposals from States, Tribes, and units of local government to cooperate in the acquisition of conservation easements or other interests in prime, unique, or other productive soil that is subject to a pending offer from a State, Tribal, or local government for the purpose of limiting conversion to nonagricultural uses of that land.

DATES: Proposals must be received in the NRCS State Office by June 18, 1998.

ADDRESSES: Proposals are to be sent to the appropriate State Conservationist, Natural Resources Conservation Service, United States Department of Agriculture. The telephone numbers and addresses of the NRCS State Conservationists are attached in the appendix of this notice.

FOR FURTHER INFORMATION CONTACT: Humberto Hernandez, Director, Community Assistance and Rural Development Division, Natural Resources Conservation Service, phone: (202) 720–2847; fax: (202) 690–0639; e-mail: cardd.nrcs@usda.gov. Subject: 98FPP.

SUPPLEMENTARY INFORMATION:

Background

According to the 1987 Census of Agriculture, one-third of the Nation's agricultural products are produced in metropolitan counties adjacent to large cities. Another one-fourth of these agricultural products are produced in counties adjacent to significant urban populations. Historically, American settlements were located in areas where the land was the most productive. Consequently, some of the Nation's most valuable and productive farmland is located in urban and developing areas. Nearly 85 percent of domestic fruit and vegetable production and 80 percent of our dairy products come from urban-influenced areas.

These areas are continually threatened by rapid development and urban sprawl. Several social and economic changes over the past three decades have influenced the rate at which land is converted to urban and industrial uses. Population growth, shifts in age distribution, inexpensive energy cost, transportation, and economic development have contributed to increases in agricultural land conversion rates. Urban development has been a major cause of farmland conversion. Since 1960, farmland has been converted to other uses at a rate of approximately 1.5 million acres per year.

The gross acreage of farmland converted to urban development is not necessarily the most troubling concern. A greater cause for concern is the quality and the pattern of farmland being converted. In most States, prime farmland is being converted at 2 to 4 times the rate of other less-productive land. Most urbanization takes place as sprawl instead of orderly growth management. In addition, remaining farmland is placed under greater environmental, economic, and social strain as agrarian and urbanizing interests compete. For the agricultural producer, increased costs of production and liability risks are negative side effects of urban development. Agricultural producers are also induced by the development pressure to farm the remaining acreage more intensively, thus, generating adverse impacts on water quality and soil health. For urban dwellers, the loss of open space, and issues related to agricultural production such as pesticide overspray, animal nutrient odors, dust, and noise are conflicting concerns.

There is, therefore, an important national interest in the protection of farmland. Once developed, productive farmland with rich topsoil is lost forever, placing future food security for the Nation at risk. In addition, agricultural lands are important components of environmental quality, historic landscapes, and are equally important simply for their scenic beauty.

In fiscal years 1996 and 1997, the CCC signed cooperative agreements with 41 State and local government entities in 18 States and obligated $16.2 million in funds to partner in acquiring conservation easements or other interests in land to limit conversion to nonagricultural uses of the land. Once acquisitions of the pending easement offers are completed, approximately 80,000 acres of valuable farmland on about 230 farms with an estimated easement value of $134 million will be protected in part with Federal funds.

Availability of Funding in Fiscal Year (FY) 1998

Effective on the date of publication of this notice, the CCC is announcing the availability of up to $17.28 million for the FPP for FY 1998. Selection will be based on the FPP criteria established in this notice. Government entities responding to this RFP must have an existing farmland protection program, have pending offers, and be able to provide funds for at least 50 percent of the fair market value of the pending offers. CCC will evaluate the merits of the requests for participation utilizing the FPP criteria described in this notice and will enter into cooperative agreements with the States, Tribes, or units of local government that have proposals that CCC determines will effectively meet the objectives of the FPP. CCC must receive proposals for participation by June 18, 1998.

Overview of the Farmland Protection Program

CCC will accept proposals submitted to the NRCS State Offices from States, Tribes, and units of local government that have pending offers with landowners for the acquisition of conservation easements or other interests in lands that contain prime, unique, or other productive soils. The pending offers must be for the primary purpose of protecting topsoil by limiting conversion to nonagricultural uses of the land. Reference information regarding the FPP can be found in the Catalog of Federal Domestic Assistance #10.913.

A pending offer is a bid, contract, or option extended to a landowner by a State, Tribe, or local government entity to acquire a conservation easement or other interests in land to limit nonagricultural uses of the land before the legal title to these rights has been conveyed. The pending offer must be made as of the date when the cooperative agreement is signed.

Government entities must work with the appropriate NRCS State Conservationist to develop proposals and to develop operating agreements once selected. The State Conservationist may consult with the State Technical Committee (established pursuant to 16 U.S.C. 3861) to evaluate the technical merits of proposals submitted in that State. All requests must be submitted to the appropriate NRCS State Conservationist by June 18, 1998.

The NRCS State Conservationist will review and evaluate the requests for participation for consistency with USDA criteria based on the State, Tribal, or local program eligibility and the land eligibility. If received more than one proposal, the NRCS State Conservationist may consolidate proposals and determine the priority of the pending offers for selection using a ranking system described in this notice, such as: (1) The quality of the land considering the soils, economic viability, size, and product sales; (2) other factors including the scale of the contiguous track, historical, scenic, and environmental qualities; and (3) the likelihood of conversion considering developmental pressure, zoning, utility availability, and other related factors. If received only one proposal, the NRCS State Conservationist has the option of accepting the submitting entity's priority ranking provided that the lands are eligible for participation in the FPP.

The State Conservationist will submit a cover letter with a recommended list of the prioritized proposals that meet the criteria established in this notice to the appropriate NRCS Regional Conservationist by July 20, 1998. The NRCS Regional Conservationist will then forward proposals submitted from the region to the NRCS National Office in Washington, D.C. by August 3, 1998. Proposals will not be accepted by the NRCS National Office without having gone through the NRCS State and Regional Conservationists. Proposals sent to the NRCS National Office without having been sent through the NRCS State and regional offices will be returned to the submitting entity.

Once all proposals for participation are received in the NRCS National Office, the Chief of NRCS, who is a Vice President of the CCC, will authorize cooperative agreements to be developed and signed by September 30, 1998, with specific terms of the FPP for each proposal accepted. An equitable allocation of the funds to the successful cooperating entities will be made by considering such factors as: The capability of each entity to fund at least half of the fair market easement cost of each of the pending offers selected for funding; the economic and environmental value of such offers; the probability of integrating other Federal, State, Tribal, or local conservation efforts; and the total number of eligible acres included in the offers.

To be selected for participation in the FPP, a pending offer must provide for the acquisition by a State, Tribe, local government unit, or other entity approved by the NRCS, of an easement or other interests in land for a minimum duration of 30 years, with priority given to those offers providing permanent protection. If a pending offer is selected for participation in the FPP, the conveyance document used by the State, tribal, or local government entity will need to be reviewed and approved by the NRCS National office. A strong preference will be given to reserved interest easements. If title to the easement is held by an entity other than the United States, the conveyance document will contain a reversionary clause that all rights conveyed by the landowner under the document will become vested in the United States, should the State, tribal, or local government entity abandon, terminate, or abrogate the exercise of the rights so acquired. As a condition for participation, all lands enrolled shall be encompassed by a conservation plan developed and implemented according to the NRCS Field Office Technical Guide.

Eligible State, Tribal, or Local Farmland Protection Programs

To be eligible, a State, Tribe, or unit of local government must have a farmland protection program that provides for the purchase of agricultural conservation easements for the purpose of protecting topsoil by limiting conversion to nonagricultural uses of land. A program must also have pending offers when submitting the proposal. A State, Tribal, or local government entity may apply for participation as a cooperating entity by submitting responses to the RFP to the appropriate NRCS State Conservationist.

The NRCS State Conservationist will evaluate the State, Tribal, or local program based on the conservation benefits derived from such farmland protection efforts. An eligible State, Tribal, or local government entity must have a farmland protection program that: (1) Demonstrates a commitment to long-term conservation of agricultural lands through legal devices, such as right-to-farm laws, agricultural districts, zoning, or land use plans; (2) uses voluntary easements or other legal devices to protect farmland from conversion to nonagricultural uses; (3) demonstrates a capability to acquire, manage, and enforce easements and other interests in land; and (4) demonstrates that funds equal to at least 50 percent of the total fair market value of the easement are available.

Proposals

In addition to meeting program eligibility requirements, a prospective cooperating entity must submit a proposal that has: (1) An overview of the program, including components described in the section of "Eligible State, Tribal, or Local Farmland Protection Programs"; (2) a map showing the existing protected area; (3) the amount and source of funds currently available for easement acquisition; (4) the criteria used to set the acquisition priorities; and (5) a listing of the pending offers including the (a) priority of the offer; (b) name(s) of the landowner(s); (c) location identified on the map; (d) size of the parcel in acres for the FPP easement or other interests; (e) acres of the prime, unique, or other productive soil in the parcel for the FPP easement or other interests; (f) area participating in or its relative proximity to parcels participating in other conservation efforts identified on the map; (g) estimated costs of the easement or other interests; (h) type of the FPP easement or other interests to be used; (i) indication of the accessibility to markets; (j) indication of an existing agricultural infrastructure and other support system; (k) level of threat from urban development; (l) other factors from an evaluation and assessment system used for setting priorities for easement acquisition by the entity; and (m) other information that may be relevant.

To avoid double counting, local and county programs must coordinate their proposals with each other and the State program if particular parcels are subject to pending offers under multiple programs.

Eligible Land

Once program eligibility and the merits of each proposal have been evaluated, NRCS shall determine whether the farmland is eligible for enrollment and whether the lands may

be included in the FPP. The following land, if subject to a pending offer by a State, Tribe, or unit of local government, is eligible for enrollment in the FPP: (1) Land with prime, unique, or other productive soil; and (2) other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, NRCS determines that the inclusion of such land would significantly augment the protection of the associated farmland.

Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses. It includes cropland, pasture land, rangeland, and forest land. Unique farmland is land other than prime farmland that is used for the production of specific high value food and fiber crops, such as nuts, citrus, olives, cranberries, fruits, vegetables, and herbs. Other productive soil refers to farmland of statewide or local importance for the production of food, feed, fiber, forage, and oil seed crops. Additional information on the definition of prime, unique, or other productive soil can be found in section 1540(c)(1) of the Farmland Protection Policy Act (Pub. L. 97–98, 1981, 7 U.S.C. 4201).

NRCS will only consider enrolling eligible land in the program that is configured in a size and with boundaries that allow for the efficient management of the area or for establishing a buffer zone for the purposes of the FPP. The land must have access to markets for its products and an infrastructure appropriate for agricultural production. NRCS will not enroll land in the FPP that is owned in fee title by an agency of the United States, or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use. NRCS will not enroll otherwise eligible lands if NRCS determines that the protection provided by the FPP would not be effective because of on-site or off-site conditions.

Ranking Considerations

Pending offers by a State, Tribe, or unit of local government must be for the acquisition of an easement or other interest in land for a minimum duration of 30 years. NRCS shall place a priority on acquiring easements or other interests in lands that provide the longest period of protection from conversion to nonagricultural use. NRCS will place a higher priority on lands and locations that help create a large track of protected area for viable agricultural production or buffer zones. NRCS will place a higher priority on lands and locations that link to other Federal, State, Tribal, or local conservation efforts with complementary farmland protection objectives. NRCS may place a higher priority on lands that provide special social, economic, and environmental benefits to the region. A higher priority may be given to certain geographic regions where the enrollment of particular lands may help achieve national, State, and regional goals and objectives, or enhance existing government or private conservation projects.

Cooperative Agreements

The CCC will use a cooperative agreement with a selected State, Tribe, or unit of local government as the mechanism for participation in the FPP. The cooperative agreement will address the following: (1) The interests in land to be acquired, including the form of the easements to be used and terms and conditions; (2) the management and enforcement of the rights acquired; (3) the technical assistance that may be provided by the NRCS; (4) the holder of the easement or other interests in the land enrolled in the FPP; and (5) other requirements deemed necessary by the CCC to protect the interests of the United States. The cooperative agreement will also include an attachment that lists the pending offers accepted in the FPP, landowners' names, addresses, locations, and other relevant information.

Signed at Washington, DC, on March 16, 1998.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Vice President, Commodity Credit Corporation.

State Conservationists

AL—Ronnie D. Murphy, 3381 Skyway Drive, Auburn, AL 36830, Phone: 334/887–4500, Fax: 334/887–4551, (E) rmurphy@al.nrcs.usda.gov

AK—Charles W. Bell, 949 East 36th Ave., Suite 400, Anchorage, AK 99508–4302, Phone: 907/271–2424, Fax: 907/271–3951, (E) cbell@ak.nrcs.usda.gov

AZ—Michael Somerville, 3003 North Central Ave., Suite 800, Phoenix, AZ 85012–2945, Phone: 602/280–8808, Fax: 602/280–8809, (E) msomervi@az.nrcs.usda.gov

AR—Kalven L. Trice, Federal Building, Room 3416, 700 West Capitol Avenue, Little Rock, AR 72201–3228, Phone: 501/324–5445, Fax: 501/324–5648, (E) ktrice@ar.nrcs.usda.gov

CA—Henry C. Wyman (Actg.), 2121–C 2nd Street, Suite 102, Davis, CA 95616–5475, Phone: 530/757–8215, Fax: 530/757–8379, (E) hwyman@ca.nrcs.usda.gov

CO—Leroy Stokes, Jr. (Actg.), 655 Parfet Street, Room E200C, Lakewood, CO 80215–5517, Phone: 303/236–2886 x202, Fax: 303/236–2896, (E) lstokes@co.nrcs.usda.gov

CT—Margo L. Wallace, 16 Professional Park Road, Storrs, CT 06268–1299, Phone: 860/487–4011, Fax: 860/487–4054, (E) mwallace@ct.nrcs.usda.gov

DE—Elesa K. Cottrell, 1203 College Park Drive, Suite 101, Dover, DE 19904–8713, Phone: 302/678–4160, Fax: 302/678–0843, (E) ecottrell@de.nrcs.usda.gov

FL—T. Niles Glasgow, 2614 N.W. 43rd Street, Gainesville, FL 32606–6611 or P.O. Box 141510, Gainesville, FL 32614, Phone: 352/338–9500, Fax: 352/338–9574, (E) nglasgow@fl.nrcs.usda.gov

GA—Earl Cosby, Federal Building, Stop 200, 355 East Hancock Avenue, Athens, GA 30601–2769, Phone: 706/546–2272, Fax: 706/546–2120, (E) earl@ga.nrcs.usda.gov

GUAM—Joan Perry, Director, Pacific Basin Area, FHB Building, Suite 301, 400 Route 8, Maite, GU 96927, Phone: 671/472–7490, Fax: 671/472–7288, (E) pacbas@ite.net

HI—Kenneth M. Kaneshiro, 300 Ala Moana Blvd., Room 4–118, P.O. Box 50004, Honolulu, HI 96850–0002, Phone: 808/541–2600 x100, Fax: 808/541–1335, (E) kkaneshiro@hi.nrcs.usda.gov

ID—Luana E. Kiger, 9173 West Barnes Drive, Suite C, Boise, ID 83709, Phone: 208/378–5700, Fax: 208/378–5735, (E) lkiger@id.nrcs.usda.gov

IL—William J. Gradle, 1902 Fox Drive, Champaign, IL 61820–7335, Phone: 217/398–5267, Fax: 217/373–4550, (E) bgradle@titan.il.nrcs.usda.gov

IN—Robert L. Eddleman, 6013 Lakeside Blvd., Indianapolis, IN 46278–2933, Phone: 317/290–3200, Fax: 317/290–3225, (E) reddleman@in1000.in.nrcs.usda.gov

IA—Leroy Brown, 693 Federal Building, 210 Walnut Street, Suite 693, Des Moines, IA 50309–2180, Phone: 515/284–6655, Fax: 515/284–4394, (E) leroy.brown@ia.nrcs.usda.gov

KS—Tomas M. Dominguez, 760 South Broadway, Salina, KS 67401–4642, Phone: 785/823–4565, Fax: 785/823–4540, (E) tmd@ks.nrcs.usda.gov

KY—David G. Sawyer, 771 Corporate Drive, Suite 110, Lexington, KY 40503–5479, Phone: 606/224–7350, Fax: 606/224–7399, (E) dsawyer@kcc.fsa.usda.gov

LA—Donald W. Golmert, 3737 Government Street, Alexandria, LA 71302, Phone: 318/473–7751, Fax:

318/473–7626, (E) dgohmert@la.nrcs.usda.gov

ME—M. Darrel Dominick, 5 Godfrey Drive, Orono, ME 04473, Phone: 207/866–7241, Fax: 207/866–7262, (E) ddominick@me.nrcs.usda.gov

MD—David P. Doss, John Hanson Business Center, 339 Busch's Frontage Road, Suite 301, Annapolis, MD 21401–5534, Phone: 410/757–0861 x314, Fax: 410/757–0687, (E) ddoss@md.usda.nrcs.gov

MA—Cecil B. Currin, 451 West Street, Amherst, MA 01002–2995, Phone: 413/253–4372, Fax: 413/253–4375, (E) ccurrin@ma.nrcs.usda.gov

MI—Jane E. Hardisty, 1405 South Harrison Road, Room 101, East Lansing, MI 48823–5243, Phone: 517/337–6701 x1201, Fax: 517/337–6905, (E) jhardisty@mi.nrcs.usda.gov

MN—William Hunt, 600 F.C.S. Building, 375 Jackson Street, St. Paul, MN 55101–1854, Phone: 612/602–7856, Fax: 612/602–7913, (E) wh@mn.nrcs.usda.gov

MS—Homer L. Wilkes, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, MS 39269–1399, Phone: 601/965–5205, Fax: 601/965–4940, (E) wilkes@ms.nrcs.usda.gov

MO—Roger A. Hansen, Parkade Center, Suite 250, 601 Business Loop 70 West, Columbia, MO 65203–2546, Phone: 573/876–0901, Fax: 573/876–0913, (E) rogerh@mo.nrcs.usda.gov

MT—Shirley Gammon, Federal Building, Room 443, 10 East Babcock Street, Bozeman, MT 59715–4704, Phone: 406/587–6868, Fax: 406/587–6761, (E) sgammon@mt.nrcs.usda.gov

NE—Stephen K. Chick, Federal Building, Room 152, 100 Centennial Mall, North Lincoln, NE 68508–3866, Phone: 402/437–5300, Fax: 402/437–5327, (E) schick@ne.nrcs.usda.gov

NV—Nicholas Pearson (Actg.), 5301 Longley Lane, Building F, Suite 201, Reno, NV 89511–1805, Phone: 702/784–5863, Fax: 702/784–5939, (E) npearson@nv.nrcs.usda.gov

NH—Dawn W. Genes, Federal Building 2 Madbury Road, Durham, NH 03824–2043, Phone: 603/433–0505, Fax: 603/868–5301, (E) dgenes@nh.nrcs.usda.gov

NJ—Wayne M. Maresch, 1370 Hamilton Street, Somerset, NJ 08873–3157, Phone: 732/246–1205, Fax: 732/246–2358, (E) stcon@nj.nrcs.usda.gov

NM—Kenneth Leiting (Actg.), 6200 Jefferson Street, N.E., Suite 305, Albuquerque, NM 87109–3734, Phone: 505/761–4402, Fax: 505/761–4463, (E) kleiting@nm.nrcs.usda.gov

NY—Richard D. Swenson, 441 South Salina Street, Suite 354, Syracuse, NY 13202–2450, Phone: 315/477–6504, Fax: 315/477–6550, (E) rds@spock.ny.nrcs.usda.gov

NC—Mary T. Kollstedt, 4405 Bland Road, Suite 205, Raleigh, NC 27609–6293, Phone: 919/873–2102, Fax: 919/873–2156, (E) mary@nc.nrcs.usda.gov

ND—Scott Hoag, Jr., 220 E. Rosser Avenue, Room 278, P.O. Box 1458, Bismarck, ND 58502–1458, Phone: 701/250–4421, Fax: 701/250–4778, (E) shoag@nd.nrcs.usda.gov

OH—Patrick K. Wolf, 200 North High Street, Room 522, Columbus, OH 43215–2478, Phone: 614/469–6962, Fax: 614/469–2083, (E) pat.wolf@oh.nrcs.usda.gov

OK—Ronnie L. Clark, USDA Agri-Center Bldg., 100 USDA, Suite 203, Stillwater, OK 74074–2655, Phone: 405/742–1204, Fax: 405/742–1201, (E) rclark@ok.nrcs.usda.gov

OR—Robert Graham, 101 SW Main Street, Suite 1300, Portland, OR 97204–3221, Phone: 503/414–3201, Fax: 503/414–3103, (E) bgraham@or.nrcs.usda.gov

PA—Janet L. Oertly, 1 Credit Union Place, Suite 340, Harrisburg, PA 17110–2993, Phone: 717/237–2200, Fax: 717/237–2238, (E) joertly@pa.nrcs.usda.gov

PR—Juan A. Martinez, Director, Caribbean Area, IBM Building, Suite 604, 654 Munoz Rivera Avenue, Hato Rey, PR 00918–4123, Phone: 787/766–5206, Fax: 787/766–5987, (E) juanm@caribe.pr.nrcs.usda.gov

RI—Denis G. Nickel 60 Quaker Lane, Suite 46, Warwick, RI 02886–0111, Phone: 401/828–1300, Fax: 401/828–0433, (E) dnickel@ri.nrcs.usda.gov

SC—Mark W. Berkland, Strom Thurmond Federal Building, 1835 Assembly Street, Room 950, Columbia, SC 29201–2489, Phone: 803/253–3935, Fax: 803/253–3670, (E) mwb@sc.nrcs.usda.gov

SD—Dean F. Fisher, Federal Building, Room 203, 200 Fourth Street, S.W.,Huron, SD 57350–2475, Phone: 605/352–1200, Fax: 605/352–1270, (E) marilyn.mckay@sd.nrcs.usda.gov

TN—James W. Ford, 675 U.S. Courthouse 801 Broadway, Nashville, TN 37203–3878, Phone: 615/736–5471, Fax: 615/736–7135, (E) jford@tn.nrcs.usda.gov

TX—John P. Burt, W.R. Poage Building, 101 South Main Street, Temple, TX 76501–7682, Phone: 254/742–9802, Fax: 254/298–1388, (E) jburt@tx.nrcs.usda.gov

UT—Phillip J. Nelson, W.F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, UT 84138, P.O. Box 11350, SLC, UT 84147–0350, Phone: 801/524–5050, Fax: 801/524–4403, (E) llytton@ut.nrcs.usda.gov

VT—John C. Titchner, 69 Union Street, Winooski, VT 05404–1999, Phone: 802/951–6796, Fax: 802/951–6327, (E) jct@vt.nrcs.usda.gov ,

VA—M. Denise Doetzer, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, VA 23229–5014, Phone: 804/287–1676, Fax: 804/287–1737, (E) mdd@va.nrcs.usda.gov ,

WA—Frank R. Easter (Actg.), Rock Pointe Tower II, W. 316 Boone Avenue, Suite 450, Spokane, WA 99201–2348, Phone: 509/323–2961, Fax: 509/323–2909, (E) feaster@wal.wa.nrcs.usda.gov

WV—William J. Hartman, 75 High Street, Room 301, Morgantown, WV 26505, Phone: 304/291–4152 x 136, Fax: 304/291–4628, (E) whartman@wv.nrcs.usda.gov

WI—Patricia S. Leavenworth, 6515 Watts Road, Suite 200, Madison, WI 53719–2726, Phone: 608/264–5341 x129, Fax: 608/264–5483, (E) pleavenw@wi.nrcs.usda.gov

WY—Lincoln E. Burton, Federal Building, Room 3124, 100 East B Street, Casper, WY 82601–1911, Phone: 307/261–6453, Fax: 307/261–6490, (E) eburton@wy.nrcs.usda.gov

[FR Doc. 98–7281 Filed 3–19–98; 8:45 am]
BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–004N]

Ground Beef Processing Guidance Material

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Availability of material and public meeting notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) announces that it is making available for public comment a guidance document intended to assist processors of ground beef, especially small processors, in developing procedures to minimize the risk of *E. coli* 0157:H7 and other pathogens in ground beef products produced in their establishments. FSIS plans to hold a public meeting to discuss this document on April 22, 1998. FSIS is aware that other organizations also are developing guidance materials for the production of ground beef and encourages their presentation and discussion at the public meeting. These presentations will be scheduled, and appropriate time will be allotted. FSIS will make available any such materials submitted to the Agency prior to the meeting. FSIS

is open to the idea of a collaboratively produced guidance document should that prove useful and practicable. In addition to discussing the draft guidance documents, FSIS also would be interested in comments on how best to ensure that the guidance materials that result from this process receive the broadest possible distribution.

DATES: Written comments must be received on or before May 19, 1998. The meeting will be held on April 22, 1998, from 8:30 a.m. to 5 p.m.

ADDRESSES: An electronic version of the FSIS guidance document is available online at FSIS' homepage at http://www.usda.gov/fsis. Guidance materials made available to FSIS prior to the meeting also will be available at this address. Hard copies of the FSIS document are available from the FSIS Docket Clerk in the FSIS Docket Room, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700 from 8:30 a.m. to 4:30 p.m., Monday through Friday. The public meeting will be held at the Arlington Hilton and Towers, 950 North Stafford Street, Arlington, VA; telephone (703) 528–6000. The hotel is located next to the Ballston Metro station. To register for the meeting, contact Ms. Mary Gioglio at (202) 501–7244 or 501–7136 or FAX to 501–7642. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Gioglio by April 15, 1998.

COMMENTS: Send comments on the FSIS guidance document to FSIS Docket Clerk, Docket No. 98–004N, at the above address. Comments will be available for public inspection in the FSIS Docket Room during the above-stated hours.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Hudnall, Assistant Deputy Administrator, Office of Policy, Program Development, and Evaluation, at (202) 205–0495.

SUPPLEMENTARY INFORMATION: As a result of recent product recalls involving *E. coli* 0157:H7, FSIS has prepared guidance material to help beef grinding operations minimize the risk of, and potential effects associated with, *E. coli* 0157:H7 and other microbial pathogens in raw ground beef and other raw products. This material should prove particularly useful to small establishments developing Hazard Analysis and Critical Control Point (HACCP) plans during the next 2 years.

The guidance material includes recommendations for receiving raw product; storing raw product; the grinding process, including rework and risk-based product separation; packaging, cooling, and storage; shipping, handling, and distribution; recordkeeping; and food safety education. FSIS also solicits comments on how best to ensure that the guidance materials that result from this process receive as broad distribution as possible.

Done at Washington, DC, on March 12, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–7192 Filed 3–19–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Interior Columbia Basin Ecosystem Management Project, Northern, Intermountain, and Pacific Northwest Regions

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID918–1610–00–UCRB]

Interior Columbia Basin Ecosystem Management Project, States of Oregon, Washington, Idaho, Montana, Wyoming, Utah and Nevada

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of extension of comment period for draft environmental impact statements (EISs).

SUMMARY: On June 12, 1997, the Forest Service and the Bureau of Land Management published a notice of availability of two draft EISs in the **Federal Register** (62 FR 320786). That notice stated that a 120-day comment period was provided for the Eastside Draft EIS and for the Upper Columbia River Basin Draft EIS. On September 5, 1997, a second notice (62 FR 46941) extended the comment period to February 6, 1998. On January 23, 1998, a third notice (6 FR 3533) extended the comment period to April 6, 1998. This notice is to inform interested parties that the comment period has been extended again to provide additional time for public review of, and comment on, an economic and social report prepared in response to a requirement of the Department of the Interior and Related Agencies Appropriations Act of 1998.

DATES: Comments on the two draft EISs and on the economic and social report must now be submitted or postmarked no later than May 6, 1998.

ADDRESSES: Copies of the economic and social report were mailed the second week of March to everyone on the mailing list for the Eastside and Upper Columbia River Basin Draft EISs. Interested parties not on the mailing list can obtain a copy from ICBEMP, 112 E. Poplar Street, Walla Walla, WA 99362 or by calling (509) 522–4030 or from ICBEMP, 304 N. 8th Street, Room 250, Boise ID 83702 or by calling (208) 334–1770, ext. 120. The economic and social report will also be available via the internet (http://www.icbemp.gov).

Comments on the Eastside draft EIS, including the economic and social report, should be submitted in writing to ICBEMP, 112 East Poplar Street, P.O. Box 2076, Walla Walla, WA 99362. Comments on the Upper Columbia River Basin draft EIS, including the economic and social report, should be submitted in writing to ICBEMP, 304 N. 8th Street, Room 250, Boise, ID 83702. If your comments are in regard to both draft EISs, they may be sent to either office. Comments may also be made electronically by accessing the Project home page (http://www.icbemp.gov), where a comment form is available. If you have already submitted your comments, you may now submit more comments on the draft EIS, including your comments regarding the economic and social report.

FOR FURTHER INFORMATION CONTACT: EIS Team Leader Jeff Walter, 304 N. 8th Street, Room 250, Boise, ID 83702, telephone (208) 334–1770 or EIS Deputy Team Leader Cathy Humphrey, 112 East Poplar Street, P.O. Box 2076, Walla Walla, WA 99362, telephone (509) 522–4030.

SUPPLEMENTARY INFORMATION: In Section 323 of the Department of the Interior and Related Agencies Appropriations Act of 1998 Pub. L. 105–83), the United States Congress directed the following: "Using all research information available from the area encompassed by the Project, the Secretaries [of Agriculture and the Interior], to the extent practicable, shall analyze the economic and social conditions, and culture and customs, of the communities at the sub-basin level within the Project area and the impacts the alternatives in the draft EISs will have on those communities. This analysis shall be published on a schedule that will allow a reasonable period of time for public comment thereon prior to the close of the comment periods on the draft EIS. The analysis, together with the response * * * to the public comment, shall be incorporated in the final EISs and * * * subsequent decisions related thereto."

The required analysis has been prepared. It is a report on the existing economic and social conditions at the community level within the Interior

Columbia Basin Ecosystem Management Project area and, to the extent practicable, an analysis of the effects of the alternatives described in the draft EISs upon communities. This report has been distributed to the public, providing approximately eights weeks for review and comment before the comment period closes May 6, 1998.

Dated: March 12, 1998.

J. David Brunner,

Acting State Director Bureau of Land Management.

Dated: March 12, 1998.

Robert W. Williams,

Regional Forester, U.S. Forest Service.

[FR Doc. 98–7270 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pilgrim Environment Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, Tahoe National Forest has modified the scope of this Environmental Impact Statement. The EIS will now address vegetation management projects and directly connected actions such as: Fuels treatment and reduction projects, timber harvesting, and road construction and reconstruction. The design of the new proposal incorporates and addresses all issue previously identified. In addition, the Environmental Impact Statement will address entry into an area previously identified as the Middle Yuba Roadless (RARE I) area, which was not recommended for wilderness or roadless status. The Forest Service now anticipates issuing a Draft EIS in the second quarter of 1998, and filing the Final EIS in the third quarter of 1998.

FOR FURTHER INFORMATION CONTACT: Questions concerning this analysis should be directed by Gary Fildes, EIS Team Leader, Downieville Ranger District, 15924 Highway 49, Camptonville, CA 95959, (503) 288–3231.

SUPPLEMENTARY INFORMATION: On May 22, 1997 a Notice of Intent to prepare an EIS was published in the **Federal Register** (Vol 62, Number 99, Pages 28002–28003).

Dated: March 12, 1998.

Judie L. Tartaglia,

Acting Forest Supervisor.

[FR Doc. 98–7191 Filed 3–19–98; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 20, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 16 and 30, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 2659 and 4624) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Frame, Mattress, Wooden
- 7210–00–NSH–0012 (37½"×74")
- 7210–00–NSH–0013 (35½"×74")
- 7210–00–NSH–0014 (37½"×79")
- 7210–00–NSH–0015 (52½"×79")
- 7210–00–NSH–0016 (59½"×79")
- 7210–00–NSH–0017 (52½"×79")
- 7210–00–NSH–0018 (35½"×79")

(Requirements for the Federal Prison Industries, Washington, DC)

Services

Food Service
Naval Nuclear Power Training Command
Naval Weapons Station Charleston
Goose Creek, South Carolina

Grounds Maintenance, Aliamanu Military Reservation, Oahu, Hawaii

Janitorial/Custodial for the Following Locations:

Schroeder Hall U.S. Army Reserve Center, 3800 Willow Street, Long Beach, California

Patton Hall U.S. Army Reserve Center, 5340 Bandini Boulevard, Bell, California

Janitorial/Custodial for the Following Locations:

U.S. Army Reserve Center, 296 E. 3rd Street, San Bernadino, CA

U.S. Army Reserve Center, 1284 E. 7th Street, Upland, California

Janitorial/Custodial

U.S. Coast Guard, CGC Eagle (WIX–327), 15 Mohegan Avenue, New London, Connecticut

Janitorial/Grounds Maintenance

Pactola Harney Ranger District Recreation Areas, Black Hills National Forest, Custer, South Dakota.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exerçised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–7343 Filed 3–19–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 20, 1998.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agencies listed: Food Service, Postwide, Fort Hood, Texas, NPA: Physically Challenged Service Industries, Inc., San Antonio, Texas, The RC Foundation, Corpus Christi, Texas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–7344 Filed 3–19–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Notification of Commercial Invoices That Do Not Contain a Destination Control Statement.

Agency Form Number: None.

OMB Approval Number: 0694–0038.

Type of Request: Extension of a currently approved collection of information.

Burden: 21 hours.

Average Time Per Response: 31 minutes—30 minutes for reporting and 1 minute for recordkeeping.

Number of Respondents: 40 respondents.

Needs and Uses: Commercial invoices, bills of lading, and other shipping documentation contain destination control statements that indicate the appropriate disposition of the goods or technical data. These statements are used by the Customs bureau to ensure that U.S. exports are shipped to legally authorized destinations. When a forwarding agent finds the documentation lacks the appropriate destination control statement, then he is required to notify the exporter of the problem. The exporter must provide a written assurance that all copies have been corrected.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dennis Marvich (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent on or before April 20, 1998 to Dennis Marvich, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: March 13, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7334 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–805]

Certain Cut-to-Length Carbon Steel Plate From Belgium; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On January 20, 1998, the Department of Commerce (the Department) published the final results of its 1995–96 administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Belgium (63 FR 2959). This review covers one manufacturer/exporter of the subject merchandise, Fabrique de Fer de Charleroi, S.A. (FAFER), and its subsidiary, Charleroi (USA) for the period August 1, 1995 through July 31, 1996.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0193 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 353 (April 1, 1997).

Scope of the Order

The products covered by this administrative review constitute one class or kind of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coasted with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been worked after rolling) for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Ministerial Error in Final Results of Review

In the course of reviewing the content of the final results of review of the antidumping duty order on certain cut-to-length carbon steel plate from Belgium for the period August 1, 1995 through July 31, 1996, the Department realized that it had inadvertently published the incorrect "all others" rate. Therefore, we are correcting the "all others" cash deposit rate to be 6.84 percent, the rate established in the less-than-fair-value (LTFV) investigation (*see* Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Belgium, 58 FR 44164 (August 19, 1993)). This correction of the "all others" rate does not change Fabrique de Fer de Charleroi's margin of 13.75 percent, published in the final results of the 1995–96 administrative review on January 20, 1998.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of certain cut-to-length carbon steel plate from Belgium within the scope of the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate of 6.84 percent, the "all others" rate, established in the LTFV investigation, shall remain in effect.

We will calculate importer-specific duty assessment rates on an ad valorem basis against the entered value of each entry of subject merchandise during the period of review (POR).

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 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 subsequent assessment of double 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 353.34(d). Timely written 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. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

This administrative review and notice are in accordance with Section 751(a)(1) of the Tariff Act 19 U.S.C. 1675(a)(1)).

Dated: March 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–7353 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: 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 November 10, 1997, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on stainless steel bar from India. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made certain changes for the final results.

This review covers one producer/exporter of stainless steel bar to the United States during the period February 1, 1996, through January 31, 1997. The review indicates the existence of dumping margins during the review period.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Craig Matney or Zak Smith, Import Administration, AD/CVD Enforcement Group I, Office 1, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–1778 or 482–1279, respectively.

Applicable Statute and Regulations

The Department of Commerce is conducting this administrative review

in accordance with section 751 of the Tariff Act of 1930, as amended. Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 CFR part 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1997, the Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India (62 FR 10540) ("preliminary results"). The manufacturer/exporter in this review is Mukand Limited ("Mukand" or "respondent"). We received comments from the respondent and rebuttal comments from the petitioners (Al Tech Specialty Steel Corp., Carpenter Technology Corp., Crucible Specialty Metals Division, Crucible Materials Corp., Electralloy Corp., Republic Engineered Steels, Slater Steels Corp., Talley Metals Technology, Inc. and the United Steelworkers of America (AFL–CIO/CLC)).

In their December 18, 1997, rebuttal comments, petitioners argue that the respondent's case brief should be removed from the record because it failed to comply with the Department's requirements for obtaining extensions. Specifically, the petitioners claim that the respondent's letter requesting the extension did not present sufficient specificity regarding the rationale for the extension in order to meet the Department's "good cause" standard for extension.

We have determined that respondent sufficiently justified its extension request. Therefore, we did not reject the respondent's brief as untimely. We agree that the respondent's original letter requesting the extension lacked extensive explanation of the reasons for the request. However, the Department requested and received a more extensive explanation from the respondent before deciding to accept the respondent's brief (see December 12, 1997, Memorandum from Craig W. Matney to File). We also note that the petitioners did not file a case brief by the original deadline and were offered the opportunity to file a case brief by the extended deadline; thus their position was not prejudiced by the respondent's delayed filing.

Scope of the Review

For purposes of this administrative review, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness or if 4.75 mm or more in thickness have a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this administrative review is currently classifiable under subheadings 7222.11.0005, 7222.11.0050, 7222.19.0005, 7222.19.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Interested Party Comments

In accordance with 19 CFR 353.38, we invited interested parties to comment on our preliminary results. We received written comments from the petitioners and the respondent. Based on our analysis of the comments received, we have made certain corrections that changed our results (see Comments 2 and 5).

Comment 1: Department's Correction of Home Market Sales Data

The respondent contends that the Department incorrectly increased the gross unit price on several home market sales used in the margin calculation. According to the respondent, the warehousing customer surcharge, which was purportedly the Department's reason for the increase, was already included in the gross price for the sales in question because they occurred after November 1, 1996. The respondent states that, for consignment sales after this date, warehousing charges were included in the gross price, rather than invoiced as a separate charge as was the previous practice. Mukand argues that the Department verified that there were no separate warehouse charges for these sales because they did not appear on the invoices which the Department examined (see November 20, 1997, Verification Report, Exhibit 7) and Mukand did not add these charges to gross unit price in Mukand's changes to its sales listing which it provided at the beginning of verification (see Verification Exhibit 1).

The petitioners state that the Department found at verification that Mukand failed to include the warehouse charge on the sales and, thus, properly adjusted its calculations in the preliminary results. The petitioners state that a comparison of Mukand's June 4, 1997, home market sales submission with its September 22, 1997, home market sales submission shows that Mukand failed to increase gross unit price for the amount shown in the earlier submission's warehouse expense field for these sales.

Department's Position. In these final results, we have continued to increase the gross unit price for several specific sales by the warehouse charge that had been listed in the warehousing expense field (DISWARH) in Mukand's earlier submission because we find Mukand's argument to be inconsistent with the explanation the company provided at verification.

Mukand listed an amount in the DISWARH field in its questionnaire response for the sales in question. At verification, Mukand explained that it had listed income received from the warehousing surcharge erroneously as an expense in the DISWARH field and it would correct this by removing the amount from the DISWARH field and adding it to the gross unit price in its post-verification data submission. However, in its post-verification submission it did not list the amounts in question either in the DISWARH field or as an addition to gross unit price for the sales in question even though, at verification, Mukand had explained that it had added an amount to the gross unit price. As a result, for our preliminary results, we added the amount to gross unit price.

In its case brief Mukand stated, for the first time, that it had changed its

invoicing policy which affected sales after November 1, 1996. Identifying this change at such a late stage of the review does not give the Department the opportunity to analyze and verify the position Mukand is now advocating with respect to the above-referenced sales. Therefore, we have not changed our calculation of normal value from that in our preliminary results.

Comment 2: Addition of Interest Revenue to Home Market Price in Calculating CV Profit

The respondent claims that the addition of interest revenue earned from late payments to its home market prices when calculating constructed value ("CV") profit is erroneous because the sale revenue and the interest revenue are two separate transactions. Furthermore, Mukand maintains, if the Department includes such interest revenue in the profit calculation, the rate Mukand charges for late payment should be offset by its short-term cost of borrowing. The respondent also argues that the revenue from late payment charges is included in its net interest costs and, thus, by including this charge in total revenue, the Department double-counted interest earned from late payments. Finally, respondent states that comparing U.S. sales, where its customers pay within the stated payment terms, to a CV that includes interest for late payments is not an "apples-to-apples" comparison.

The petitioners counter that the interest revenue Mukand earned from late payments originate from the same transaction as the revenue from the sale and thus should be included in the total sales revenue used to calculated CV profit. The petitioners assert that revenues from late-payment charges are actually reflected in the respondent's accounting records, while imputed credit expenses are not. The petitioners contest the respondent's claim that the interest it earned from late payments was double-counted. They state that interest revenue was included in the calculation only as an offset to interest expenses. Lastly, the petitioners state that CV is the model-specific cost of the U.S. product as if it were sold in the home market, and thus the payment patterns of Mukand's U.S. customers are irrelevant.

Department's Position. Mukand's financial statements support its assertion that it subtracted interest which it earned from the late payments from its reported interest expense. Thus we have accounted for such interest in Mukand's costs when calculating CV profit. Therefore, we agree with the respondent that we double-counted this interest in our preliminary results by including it in revenue when calculating CV profit. We have adjusted our calculations accordingly.

Comment 3: Sales Used in Calculating CV Profit

The respondent claims that the Department improperly excluded below-cost sales in the home market profit margin calculation it used to determine CV profit. In support of this assertion the respondent cites *Torrington* v. *U.S.*, 19 ITRD 1673, 1676 (Fed. Cir. October 15, 1997), which states that below-cost sales can only be excluded from foreign market value if they are deemed outside the ordinary course of trade, and, according to the respondent, sales below-cost are not, on their face, outside the ordinary course of trade.

The petitioners respond that the Department correctly excluded below-cost sales from the calculation of CV profit in accordance with Section 771(15)(A) of the Act, which states that below-cost sales are to be considered outside the ordinary course of trade. Furthermore, the petitioners cite the preamble to the Department's new regulations which clarifies that, unlike old-law practice, all below-cost sales are to be excluded from the calculation of CV profit (*see* 52 FR 27296, 27359 (May 19, 1997)). The petitioners also state that exclusion of below-cost sales in the calculation of CV profit is consistent with recent Department practice.

Department's Position. We agree with the petitioners that Section 771(15)(A) of the Act defines below-cost sales as out of the ordinary course of trade. Therefore, it is appropriate to exclude them from the CV profit calculation in accordance with section 773(e)(2) of the Act. See, also, Section 773(b)(1) of the Act. The case cited by the respondent is an old-law case and thus is not applicable to the instant case. Therefore, we have continued to exclude below-cost sales in our calculation of profit for CV.

Comment 4: CV Profit at Different Levels of Trade

Citing Antifriction Bearings from France, 62 FR 54043, 54063, the respondent states that CV profit should be calculated on a level-of-trade-specific basis. Citing the Department's preliminary results (*see* 62 FR 60482, 60483), the petitioners assert that the the respondent has admitted and the Department verified that there is no difference in the level of trade between the U.S. and home market and, thus, a single CV profit ratio should be calculated.

Department's Position. The respondent did not claim and we did not find a difference in the level of trade between the two markets (*see* preliminary results at 60483). Thus, we have continued to use a single CV profit rate calculated based on all foreign like products at the single level of trade we found in the home market.

Comment 5: Reduction of CV Interest Expense

The respondent alleges that the Department double-counted its interest expense by failing to remove the actual interest expenses associated with its accounts receivable assets from the CV interest factor while accounting for these expenses as a reduction from U.S. price through an imputed credit deduction. The respondent states that the Department should reduce the CV interest factor to account for the percentage of total assets accounted for by accounts receivable. The respondent claims that this is the Department's standard practice and that the questionnaire erroneously neglected to inform the respondent to make this adjustment.

The petitioners respond that the adjustment requested by the respondent is inconsistent with the Department's policy as expressed in the questionnaire.

Department's Position. We no longer allow a reduction to interest expense to account for the percentage of total assets accounted for by accounts receivable because we no longer include an amount for imputed credit in the CV. However, we note that we did make an error in making our circumstance-of-sale adjustments by not deducting home market imputed expenses before adding U.S. imputed expenses and have adjusted the calculations accordingly. See, e.g., Certain Stainless Steel Wire Rods from France, 62 FR 7206, 7209 (February 18, 1997).

Comment 6: Duty Drawback

The respondent asserts that the Department, in Certain Welded Carbon Standard Steel Pipes and Tubes from India (62 FR 47632 (September 10, 1997)) ("Pipes and Tubes"), found that the Indian Passbook Scheme is a proper drawback program. Therefore, according to the respondent, the only remaining question is whether the Passbook Scheme credits it received were rebates for import duties on the raw material used to produce bar for export. The respondent claims that they were and, thus, the Department should have made an upward adjustment to the U.S. price. Citing to the Department's verification report, Mukand states that the

Department verified that its input costs were inclusive of import duties. As an alternate drawback claim, Mukand provides a calculation for the annual average per metric ton amount of duty paid on nickel, chrome, and scrap and implies that the Department could use this as its adjustment.

The petitioners maintain that Mukand has failed the Department's two-part test for drawback claims because the respondent failed to demonstrate that there is a direct link between the duties imposed and those rebated or that it imported a sufficient amount of raw materials to account for the drawback received. With regard to Mukand's alternate claim, the petitioners state that Mukand has calculated this claim based on trial balance amounts that include customs duties and "other" amounts; thus, according to petitioners, there is no way for the Department to know the exact duties paid. Furthermore, the petitioners contend, there is no way to determine whether these imports were used for domestic or export production. Petitioners state that the Department's denial of Mukand's drawback claim in the preliminary results is consistent with the previous administrative review of this order, citing Stainless Steel Bar from India: Preliminary Results of Antidumping Administrative Review, 62 FR 10540, 10541 (March 7, 1997) ("Stainless Steel Bar"), which explains the Department's policy for granting such claims. Finally, the petitioners assert that the Department found at verification that the drawback claim was based not on Mukand's actual imports but rather on a theoretical amount of imported billets. For all of these reasons petitioners contend that the Department should not accept respondent's duty-drawback claim.

Department's Position. We disagree with Mukand that the Passbook Scheme credits it received necessarily represent the duties imposed on the imported raw material it used to produce bar for export. In fact, Mukand did not calculate the credits it received based on the raw materials it actually imported (i.e., nickel, chrome, and scrap) but, rather, on a theoretical amount of a different product (i.e., stainless steel billets) contained in the subject merchandise. See Verification Report at 9 on the public record in room B–099 of the main Commerce Department building. Because the credit was not calculated based on the product actually imported, the import duty actally paid and the rebate received are not directly linked. Therefore, Mukand has not met the first part of the Department's test for making an upward adjustment to U.S. price for duty-drawback.

When evaluating a duty-drawback program, the Department considers whether the import duty and rebate are directly linked to, and dependent upon, one another and whether the company claiming the adjustment can show that there were sufficient imports of the imported raw materials to account for the drawback received on the exported product. Pipes and Tubes, 47634. The Court of International Trade has upheld this test. *See, e.g., Federal-Mogul Corp.* v. *United States*, 862 F. Supp. 384, 409 (CIT 1994). While in Pipes and Tubes we did find that the link between the import duties paid and the rebate was sufficient, as noted above, such a link does not exist in the instant case. Because we have not found a direct link in the instant case, we have not considered whether Mukand met the second part of our standard.

Comment 7: Differing Selling Costs

The respondent suggests that, if the Department does not make a duty-drawback adjustment for the Passbook Scheme, it should make an adjustment for the different costs of selling due to the scheme. The respondent claims that the Passbook Scheme lowers its input costs on exports, thereby allowing it to charge a lower price on export sales. The petitioners counter that the adjustment claimed by the respondent has no basis in law and that there is no evidence on the record to demonstrate that Mukand's inputs cost less for exports due to the Passbook Scheme. The petitioners further assert that the Department made a circumstance-of-sale adjustment for differences in selling costs in the preliminary results and that no further adjustments are necessary.

Department's Position. We agree with the petitioners. The statute requires circumstance-of-sale adjustments for differences in selling expenses. The adjustment requested by the respondent is for differences in input costs, not selling expenses. We note that we include the revenue Mukand received from the Passbook Scheme in the calculation of CV as an offset to input costs.

Comment 8: Indirect Selling Expenses Deduction

The respondent claims that the Department incorrectly reduced U.S. price by indirect selling expenses incurred outside of the United States. The respondent states that this U.S. price reduction was not in accordance with either Section 772(d)(1) of the Act or Department practice as stated in Cold-Rolled Carbon Steel Flat Products from the Netherlands, 62 FR 47418, 47419 (1997).

The respondent also asserts that the Department stated in its preliminary results that the U.S. price should be reduced for indirect selling expenses up to the amount of home market commissions less the warehouse expenses incurred by Mukand's commissionaires. However, the respondent claims, the Department stated that it did not have adequate information to subtract the warehouse expenses from home market commissions. The respondent asserts that the Department does have adequate information to make this adjustment.

The petitioners state that the Department did not deduct indirect selling expenses from U.S. price but, rather, calculated a commission offset in accordance with section 353.56(c) of the Department's regulations. The petitioners state that such an offset is consistent with Department practice when commissions are paid on home market sales but not on U.S. sales. In addition, the petitioners state that the Department, in fact, has not stated on the record of this case that the warehouse expenses incurred by Mukand's commissionaires should be subtracted from home market commissions.

Department's Position. We calculated a commission offset in accordance with section 353.56(b)(1) of the our regulations and our practice. The section of the Act cited by the respondent, 772(d)(1), applies to constructed export price calculations. In the instant case, all of the transactions are export price sales; therefore this section is not applicable.

With respect to the respondent's second point, that the home market commissions should be reduced by an amount for the commissionaire's warehousing expenses, the Department did not state in the preliminary results that it lacked information to calculate such an offset. Furthermore, no persuasive argument has been made that such an adjustment is warranted. Thus, in these final results, we have not made any adjustment to the commission offset for such charges.

Final Results of Review

As a result of this review, we determine that Mukand's weighted-average dumping margin is 5.53 percent for the period February 1, 1996, through January 31, 1997.

The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the review and for future deposits of estimated duties for the manufacturer/exporter subject to this review. We have calculated an importer-

specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the period of review ("POR") to the total value of subject merchandise entered during the POR. Mukand did not provide entered value for these export price sales. In order to estimate the entered value, we subtracted international movement expenses (e.g., international freight) from the gross sales value. This importer-specific rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Mukand will be 5.53 percent; (2) for companies not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be the "all others" rate of 12.45 percent established in the final determination of sales at less than fair value (59 FR 66915, December 28, 1994).

These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the 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.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–7351 Filed 3–19–98; 8:45 am]

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DEPARTMENT OF COMMERCE

[C–508–605]

Industrial Phosphoric Acid From Israel: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 10, 1997, the Department of Commerce published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on industrial phosphoric acid from Israel for the period January 1, 1995 through December 31, 1995 (62 FR 47645). The Department of Commerce has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Lorenza Olivas, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 355.22(a), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Rotem-Amfert Negev Ltd. (Rotem). This review also covers the period January 1, 1995 through December 31, 1995.

Since the publication of the preliminary results on September 10, 1997, (*Preliminary Results*), the following events have occurred. Pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended, we extended the final results to no later than March 9, 1998. *See Industrial Phosphoric Acid From Israel; Extension of Time Limit for Countervailing Duty Administrative Review*, 63 FR 1441 (January 9, 1998). On October 10, 1997, a case brief was submitted by the Government of Israel (GOI) and Rotem, producer/exporter of industrial phosphoric acid (IPA) to the United States during the review period (respondents). On October 17, 1997, a rebuttal brief was submitted by counsel for the FMC Corporation and Albright & Wilson Americas Inc. (petitioners). On January 26, 1998, we provided petitioners and respondents the opportunity to address the grant calculation methodology followed in the *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 22, 1997) (*Wire Rod from Venezuela*). That methodology has direct relevance in this proceeding and the final determination in that case was published after the preliminary results in this proceeding were completed. Accordingly, on February 3, 1998, comments were submitted by respondents and petitioners. On February 6, 1996, rebuttal comments were submitted by respondents and petitioners.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department of Commerce (the Department) is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the *Harmonized Tariff*

Schedule (HTS). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description of the scope remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the GOI and Rotem. We followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Subsidies Valuation Information

Period of Review

The period for which we are measuring subsidies (the POR) is calendar year 1995.

Allocation Period

In *British Steel plc.* v. *United States*, 879 F.Supp. 1254, 1289 (February 9, 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against the allocation methodology for non-recurring subsidies that the Department had employed for the past decade, which was articulated in the *General Issues Appendix*, appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225 (July 9, 1993) (*GIA*). In accordance with the Court's remand order, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F.Supp 426, 439 (CIT 1996) (*British Steel II*). Accordingly, the Department has applied this method to those non-recurring subsidies that have not yet been countervailed.

For non-recurring subsidies received prior to the POR and which have already been countervailed based on an allocation period established in an earlier segment of the proceeding, it is not reasonable or practicable to reallocate those subsidies over a different period of time. Therefore, for purposes of these final results, the Department is using the original allocation period assigned to each nonrecurring subsidy received prior to the POR. This conforms with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997). For additional discussion of this issue, see *Department's Position* on "*Comment 6:* Grants Previously Allocated According to the U.S. IRS Depreciation Schedules, Should be Allocated Over Rotem's Actual AUL", below.

For non-recurring subsidies received during the POR, Rotem submitted an AUL calculation based on depreciation and asset values of productive assets reported in its financial statements. Rotem's AUL was derived by adding depreciation charges for ten years, and dividing these charges by the sum of average gross book value of depreciable fixed assets for the related periods. We found this calculation to be reasonable and consistent with our company-specific AUL objective. Rotem's calculation resulted in an AUL of 24 years, and we have used this calculated figure for the allocation period for non-recurring subsidies which have not been previously allocated.

Privatization

(I) Background

Israeli Chemicals Limited (ICL), the parent company which owns 100 percent of Rotem's shares, was partially privatized in 1992, 1993 and 1994. In this administrative review, the GOI and Rotem reported that additional shares of ICL were sold in 1995. We have previously determined that the partial privatization of ICL represents a partial privatization of each of the companies in which ICL holds an ownership interest. *See Final Results of Countervailing Duty Administrative Reviews; Industrial Phosphoric Acid from Israel*, 61 FR 53351, 53352 (October 11, 1996) (*1994 Final Results*).

In this review and prior reviews of this order, the Department has found that Rotem and/or its predecessor, Negev Phosphates Ltd., received non-recurring countervailable subsidies prior to these partial privatizations. Further, the Department has found that a portion of the price paid by a private party for all or part of a government-owned company represents partial repayment of prior subsidies. *See GIA*, 58 FR at 37262. Therefore, in the 1992 and 1993 reviews, we calculated the portion of the purchase price paid for ICL's shares that is attributable to repayment of prior subsidies. In the 1994 review, respondents reported that the GOI sold less than 0.5 percent of its shares in ICL. Because this percentage of shares privatized was so small, the percentage of subsidies potentially repaid through this privatization could have no measurable impact on Rotem's overall net subsidy rate. Therefore, we did not apply our repayment methodology to the 1994 partial privatization. *See 1994 Final Results*, 61 FR at 53352. However, we are applying this methodology to the 1995 partial privatization of ICL during the POR because 24.9 percent of ICL's shares were sold. This approach is consistent with our findings in the *GIA* and Department precedent under the URAA. *See e.g., GIA*, 58 FR at 37259; *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 61 FR 58377 (November 14, 1996); and *Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 30288 (June 14, 1996).

(II) Modification of the Privatization Calculation Methodology

As noted above, in the 1992 and 1993 administrative reviews of this order, we determined that the partial privatization of ICL, Rotem's parent company, represented partial privatization of Rotem. Therefore, in each of those reviews, we calculated the portion of the purchase price paid for ICL's shares that was attributable to the repayment of prior subsidies. Under this methodology, to determine the amount of subsidies that are extinguished due to privatization, we calculate the net present value (NPV) of the remaining allocable subsidies at the time of privatization. For example, if the privatization took place in 1993, the NPV calculation for that transaction would be the remaining benefit from all unamortized subsidies in 1993. However, in past cases involving privatization or changes in ownership we recalculated the NPV in subsequent review periods by including only the remaining benefit from unamortized subsidies affecting that subsequent review period. For example, if we calculated the NPV for a privatization that took place in 1993, in the next administrative review, 1994, we would recalculate the NPV using only those subsidies still allocable to 1994, *i.e.*, the remaining unamortized subsidies still benefitting the company in 1994.

We revisited that methodology in the 1995 countervailing duty administrative review of lead and bismuth carbon steel products from the United Kingdom. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 62 FR 53306 (October 14, 1997). In that review, we determined that it is

not appropriate to modify the calculation of the NPV of the subsidies existing at the time of sale. The change in ownership of a company is a fixed event at a particular point in time. Thus, the percentage of subsidies that may be extinguished due to privatization or reallocated due to a change in ownership in a given year is also fixed at that same point in time and does not change. Therefore, the pass-through percentage will no longer be altered once it has initially been determined in an investigation or administrative review. We have modified the ICL privatization calculations in this administrative review to reflect the change outlined above.

Analysis of Programs

Based upon the responses to our questionnaire, the results of verification, and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined To Confer Subsidies

1. *Encouragement of Capital Investments Law (ECIL) Grants.* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for this program. In particular, we followed the methodology set forth in *Wire Rod from Venezuela* to calculate the benefit from these non-recurring grants. Under this methodology, we converted the grant amount into U.S. dollars on the date of receipt of the grant. The benefit in the POR was then calculated using our standard grant allocation methodology. For a detailed discussion of the changes to the calculation methodology for this program, *see* the *Department's Position* on *"Comment 9: Inflation Adjustment for Non-Recurring Grants,"* below; *see also* the Calculation Memorandum to the File, dated March 9, 1998 (public version on file in the Central Records Unit of the Department of Commerce) ("Calculation Memo"). Accordingly, the net subsidies for this program have changed and are as follows:

Manufacturer/exporter	Rate (percent)
Rotem Amfert Negev	8.85

2. *Long-term Industrial Development Loans.* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Rotem Amfert Negev	<0.005

3. *Encouragement of Industrial Research and Development Grants (EIRD).* In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Rotem Amfert Negev	0.08

II. Programs Found To Be Not Used

In the preliminary results, we found that the producer/exporter of the subject merchandise did not apply for or receive benefits under the following programs:

A. Reduced Tax Rates under ECIL;
B. ECIL Section 24 loans;
C. Dividends and Interest Tax Benefits under Section 46 of the ECIL; and
D. ECIL Preferential Accelerated Depreciation.
E. Exchange Rate Risk Insurance Scheme.

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Denominator for ECIL Grants Allocable to IPA, MKP and Fertilizers

Respondents argue that the denominator used to calculate the *ad valorem* rate from ECIL grants allocable to IPA, monopotassium phosphate (MKP) and fertilizers is understated, because it does not include Rotem's direct sales of green acid, which is also a fertilizer. The correct denominator for these ECIL benefits should be taken from page two of Rotem's May 27, 1997, questionnaire response, and should include Rotem's sales of fertilizers, IPA, and MKP. The fertilizer sales amount includes direct sales of green acid.

Petitioners contend that the Department used the correct denominator in the benefit calculations. According to petitioners, the Department's preliminary calculation reflects commercial realities because green acid is sold and accounted for as green acid and not as fertilizer.

Department's Position. We agree with respondents. In the preliminary results, we incorrectly excluded direct sales of green acid from the *ad valorem* rate calculation for ECIL grants allocable to IPA, MKP and fertilizers. The funding for the grant projects in question, projects 9, 11, and 15, was for the expansion and debottlenecking of Rotem's green acid facilities. In the preliminary results, we determined that it was appropriate to attribute ECIL grants tied to a particular unit over the sales of the product produced by that unit plus the sales of all products into which that product may be incorporated. We also noted that green acid produced at plant 30 and 31 can be incorporated into the production of all of the company's downstream products. Therefore, in these final results, we have included sales of fertilizers, including direct sales of green acid, as well as sales of IPA and MKP, in calculating the *ad valorem* rate from ECIL grants 9, 11, and 15 .

Comment 2: Attribution of ECIL Grants to Inputs Used in the Production of IPA

Respondents contend that the Department should return to the attribution approach followed in the investigation of this case and in the five subsequent administrative reviews. According to respondents, departing from a long-standing methodology is unwarranted, in particular, as respondents claim here, when the earlier approach was more accurate. Under that earlier approach, ECIL grants to inputs, such as phosphate rock and green acid, were apportioned to IPA according to the consumption of each input product in IPA production. Respondents state that in the preliminary results, the Department incorrectly attributed these ECIL grants to the direct sales of the inputs and the sales of all downstream products that potentially incorporate the input.

Respondents assert that it is the Department's practice not to disturb established methodologies in the absence of any new evidence or without new and compelling arguments. For example, respondents note that in the certain steel investigations, the Department rejected an argument made

by parties in that case to change the long-standing grant amortization methodology, stating that "before a change is made in established policy there should be evidence to show that the change is warranted." *GIA*, 58 FR at 37229. Further, in a 1996 antidumping proceeding, the Department refused to alter the existing model match methodology "unless compelling reasons exist" to do so. *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 37177, 35181 (July 5, 1996) *(Strip from ROK)*. Respondents also state that the U.S. Court of International Trade (CIT) has found that changes to long-standing methodologies, even if those changes result in greater accuracy, are not warranted because these methodologies become "the law of these proceedings," and "[p]rinciples of fairness prevent Commerce from changing its methodology." *Shikoko Chemicals Corp.* v. *United States*, 795 F. Supp. 417, 421–22 (CIT 1992) *(Shikoko)*.

Respondents acknowledge that the CIT has permitted the Department to depart from a verified methodology developed in an investigation if a "different methodology permits a more accurate assessment of current margins." *Hussey Copper, Ltd.* v. *United States*, 834 F. Supp. 413, 425 (CIT 1993) (*Hussey*). In this case, however, respondents contend that the Department acted contrary to law by opting for a methodology that provides a less accurate assessment than the one followed in all but the last two proceedings. For example, in *British Steel II*, 929 F. Supp. at 426, the CIT stated that "Commerce is required to allocate subsidies over products that have benefitted from the subsidies * * * in a manner that reasonably reflects the extent to which the products have benefitted from the subsidies." Moreover, respondents note that the *Hussey* Court required the Department to implement "the basic purpose of the statute—determining current margins as accurately as possible." *Hussey*, 834 F. Supp. at 425, *citing Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

In light of this precedent, respondents argue that the Department should return to the original methodology, which allocates the grants as accurately as possible to the subject merchandise. Any other result is less accurate, contrary to law and punitive.

Petitioners argue that the Department has reasonably determined that this new methodology more precisely allocates the subsidy benefits. The change in the methodology, petitioners state, was clearly within the Department's legal authority. According to petitioners, having made this determination, the Department should not return to the discarded methodology advocated by respondents.

Department's Position. Contrary to respondents' assertions, the attribution approach for ECIL subsidies adopted in this administrative review, which departs from the approach followed until the final results in the 1993 administrative review of this case (61 FR 2884), accurately measures the benefit conferred from the countervailable ECIL grants and is consistent with the countervailing duty statute. Moreover, this approach is consistent with the Department's attribution principles concerning subsidies to inputs where the same corporate entity produces the inputs and the subject merchandise, as well as other downstream products.

As a preliminary matter, we disagree with respondents' contention that the Department is irrevocably tied to long-standing methodologies merely because those methodologies have become accepted practice in a proceeding. Under respondents' logic, the Department could never change a methodology it had applied in the past. This conclusion is not supported by the countervailing duty statute, or administrative and legal precedent. Rather, administrative precedent is rarely binding because agencies must be given the opportunity to develop agency law on a case-by-case basis over time; otherwise they would be hindered in clarifying unsettled law and from adapting their practice to new interpretations and factual situations. Not being able to do so would force them to maintain positions that were no longer relevant. *See NLRB* v. *J. Weingarten, Inc.*, 420 U.S. 251, 265–66 (1975) ("The use by an administrative agency of the evolutionary approach is particularly fitting."). In fact, administrative agencies are given broad leeway to depart from prior administrative precedent, provided that such departure is adequately explained. *See Ipsco, Inc.* v. *United States*, 678 F. Supp. 633, 639 (CIT 1988) (agency needn't explain its rationale at length, as long as the "path of ITA's reasoning is discernible from the record").

Respondents' reliance on *Shikoku* for the proposition that changes in long-standing methodologies are not warranted is also not persuasive. Aside from having little precedential value, the facts in *Shikoku* are clearly distinguishable from those in this case. In *Shikoku*, the court found that the plaintiff, respondent Shikoku, had reasonably relied upon the Department's continued application of a case-specific antidumping calculation method applied in four previous reviews, and that by so doing, Shikoku was attempting to comply with U.S. antidumping law. However, the Department's departure from its past methodology resulted in a continuation of the antidumping order, which otherwise would have been revoked. This resulted in substantial harm to Shikoku. By contrast, in this case, Rotem has not demonstrated reliance upon the Department's prior methodology because such reliance could only be evidenced by refusing to accept subsidies.

Respondents also incorrectly imply that the Department changed its methodology without considering whether that change was warranted on the basis of new information or changes in Department policy. In fact, in the 1994 administrative review of this case we conformed our attribution approach to the methodology articulated in the countervailing duty investigation of pasta from Italy. *See Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 30288, 30304–305 (June 14, 1996) (*Pasta From Italy*). In *Pasta From Italy*, the Department reasoned that where subsidies for semolina production, a primary input into pasta, were provided to the same corporate entity that milled semolina and produced pasta, the production was sufficiently integrated that subsidies bestowed upon the production of semolina, which is an input into pasta, would necessarily flow down to the production of subject merchandise. In that circumstance, it was deemed unnecessary to conduct an upstream subsidy investigation to examine whether a competitive benefit had been bestowed on subject merchandise by the semolina subsidization. Therefore, the Department attributed subsidies provided to semolina to the company's total sales of pasta and semolina, including sales of the subject merchandise. The Department stated that "for those companies where the mill is not incorporated separately from the producer of the subject merchandise, we have included subsidies for the milling operations in our calculation." *Pasta From Italy*, 62 FR at 30289.

Respondents' complaint that the Department acted contrary to law by adopting a methodology that is not precise and accurate is also without merit. As a preliminary matter, the Department has broad discretion in

adopting specific methods to identify and value subsidies, the only requirement being that the method be reasonable and in accord with the law. *See Inland Steel Industries, Inc.* v. *United States*, Slip-Op. 97–71 (CIT 1997) ("so long as Commerce's methodology is a reasonable means to carry out the statute, it needn't be the most precise method"); *Chevron U.S.A.* v. *United States*, 467 U.S. 837, 844 (1984).

The attribution approach adopted in this review recognizes that the ECIL subsidies provided to the Arad, Zin and Oron mines, as well as to Rotem's green acid facilities, benefitted not only the inputs for which the subsidies were received, but also production of other downstream products, including IPA. Rotem officials confirmed this at verification, stating that "every [phosphate] rock can be used in every product," and green acid from both green acid facilities could be used in all downstream products. *See* the August 22, 1997, Memorandum to Barbara E. Tillman, Verification of Rotem's Questionnaire Responses (public version on file in the Central Records Unit, Room B–099) (*Rotem VR*). Thus, by allocating the ECIL grants to inputs over sales of that input and sales of downstream products incorporating that input, the Department more accurately assessed the benefit attributable to IPA from the government's subsidization of inputs. The subsidized inputs (phosphate rock and green acid) benefit all of Rotem's downstream products. Moreover, as we established in prior reviews, phosphate rock inputs have in fact been incorporated into Rotem's downstream products, including IPA. Therefore, the Department appropriately attributed ECIL subsidies to inputs over Rotem's direct sales of these inputs and the sales of all downstream products, because those end products incorporate the inputs. Again, in order to make an apples-to-apples comparison, it is imperative that both the numerator (the countervailable benefit) and denominator (the universe of sales to which the benefit applies) used in the Department's calculation of a subsidy reflect the same universe of goods. Otherwise, the rate calculated will either over or understate the subsidy attributable to subject merchandise. The attribution method adopted in the preliminary results more accurately captures the apples-to-apples comparison outlined above. Accordingly, we have not altered that approach in these final results.

Comment 3: ECIL Grants to Projects that Did Not Provide Inputs to IPA During the POR

According to respondents, the Department exceeded its statutory authority when it attributed to IPA subsidies under ECIL projects 1, 3, 4, 7, and 15, because Department officials verified that inputs from the facilities that benefitted from these grants were not used in the production of IPA during the POR. Under such circumstances, respondents state, the Department's longstanding practice mandates that if a subsidy is not "tied" to the subject merchandise and the equipment or plant procured with the subsidy are not used to produce the subject merchandise, then the subsidy is not countervailable and cannot be attributable to the subject merchandise. Respondents state that the 1997 proposed rules reaffirm this approach, stating that "subsidies should be attributed, to the extent possible, to those products for which costs are reduced (or revenues increased)," and that "if a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." *1997 Proposed Rules*, 62 FR at 8845, 8855.

According to respondents, the fact that the input products could "potentially" be incorporated in all products produced by Rotem or that they "may" be incorporated into IPA, the Department's rationale for countervailing these grants, is not relevant. Respondents contend that the *1997 Proposed Rules* do not speak of "potential" input products, only "actual" inputs and that an input that merely "could" be an input does not fall within this provision. Similarly, respondents note that in *British Steel II*, the CIT observed that the Department must, after determining which products benefitted from countervailable subsidies, "allocate countervailing duties over such products in a manner that reasonably reflects the extent to which the products have benefitted from the subsidies." 929 F. Supp. at 453. Thus, respondents state that the Department should find no benefit from these subsidies in 1995.

According to petitioners, the Department acted correctly in calculating the benefit from ECIL projects to facilities that provided no inputs into the production of IPA during the POR (projects 1, 3, 4, 7, and 15). Petitioners state that the issue with respect to these indirect benefits is not whether the particular inputs were used to produce IPA during a limited time period, such as the POR, but whether they could have been used, or in fact have been used in the past for that purpose. Petitioners further argue that by enhancing the facilities that produce inputs necessary for IPA production, these ECIL grants indirectly benefitted IPA, because to the extent that inputs are fungible, it is logical to consider enhanced production capability as an indirect benefit to IPA. Such a determination is, petitioners state, consistent with the Department's approach to subsidies to input products provided to a single corporate entity.

Department's Position. Respondents' argument that ECIL subsidies under projects 1, 3, 4, 7, and 15 are "tied" to products other than the subject merchandise, and that these subsidies should therefore not be attributed to Rotem's sales of subject merchandise, is incorrect. In this review, we have correctly determined that, regardless of whether any of the inputs (phosphate rock and green acid) receiving subsidies were actually fed into IPA production during the POR, all of these products are inputs into IPA. We have thus departed from our past practice of attempting to determine the precise amount of inputs that were actually used in IPA production from each ECIL project during the relevant period and then apportioning the subsidies provided to those inputs accordingly. Consequently, we have fully brought our method of attributing ECIL grants into harmony with *Pasta From Italy*.

The record in this case establishes that ECIL grants received by Rotem for Projects 1, 3, 4, and 7 were for Rotem's Arad, Zin and Oron mines, and grants received for Project 15 were for Rotem's new green acid facility. The mines and green acid facility are not separately incorporated entities. The Arad, Zin and Oron mines each produce phosphate rock, the main input of IPA and Rotem's other downstream products. Green acid is also an input into the production of IPA and other end products produced by Rotem. However, respondents attempt to argue that because inputs benefiting from Projects 1, 3, 4, 7, and 15 have not been used in the production of IPA during the POR, these subsidies are 'tied' to products other than the subject merchandise.

Our position on the tying of benefits is that "a subsidy is "tied" when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy." *See Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Belgium*, 47

FR 39304 (September 7, 1982).[1] When we determine that a benefit is "tied" to a product, there is an implicit assumption that the benefit is intended to affect only that product. *See Industrial Nitrocellulose from France; Final Results of Countervailing Duty Administrative Review*, 52 FR 833 (January 9, 1987). In this case, however, respondents have failed to provide any evidence on the record demonstrating that ECIL grants 1, 3, 4, 7, and 15 were intended to affect only the inputs that received the subsidy, and only the end products that incorporated these inputs only during the POR. Rather, ECIL subsidies are provided to inputs that are also incorporated into other downstream products produced by the same integrated company. Therefore, to the extent that ECIL grants are tied to phosphate rock and green acid, they are also tied to the sales of all other merchandise incorporating those inputs.

It is also important to note that attribution is established at the point the subsidy is bestowed, not the point at which it is used. Otherwise, the subsidy is apportioned on a pro-rata basis in each administrative review. Such a pro-rata apportionment contravenes our policy of not examining the use of the subsidy to determine whether it is countervailable. As stated in the *GIA*, "nothing in the statute directs the Department to consider the use to which subsidies are put or their effect on the recipient's subsequent performance * * * nothing in the statute conditions countervailability on the use or effect of a subsidy. Rather, the statute requires the Department to countervail an allocated share of the subsidies received by producers, regardless of their effect." 58 FR at 37260; *see also British Steel* v. *United States*, 879 F. Supp. 1254, 1298 (CIT 1995) (*British Steel*), *appeals docketed*, Nos. 96–1401 to –06 (Fed. Cir. June 21, 1996); *British Steel Corp* v. *United States*, 605 F. Supp. 286, 294–95 (1985) ("[I]t is unnecessary to trace the use" of funds), citing *Michelin Tire Corp.* v. *United States*, 4 CIT 252, 255 (1982), vacated on agreed statement of facts, 9 CIT 38 (1985). Such an interpretation is also supported by the statute, as amended by the URAA. Specifically, § 771(5)(C) of the Act states that the Department "is not required to consider the effect of the subsidy in determining whether a subsidy exists." The SAA further elaborates, noting that the "definition of subsidy does not require that Commerce consider or analyze the effect (including whether there is any effect at all) of a government action on the price or output of the class or kind of merchandise under investigation or review." SAA at 256; H.R. Rep. No. 826, 103d Cong., 2d Sess., vol. 1 at 926 (1994) (SAA). As such, adoption of the attribution approach set out in *Pasta From Italy* was reasonable because Rotem is also an integrated producer, as are the pasta producers who own semolina production facilities. In such cases, subsidies to inputs will be attributed to the inputs and the downstream products that incorporate the inputs.

Finally, we note that for subsidies "tied" to non-subject merchandise, *i.e.*, products that could not be inputs into IPA, such as grants tied to fertilizers under Project 13, we did not include that ECIL grant in calculating the subsidy rate. For the reasons set forth above, for the purposes of these final results, the Department will continue to allocate ECIL grants from Projects 1, 3, 4 and 7, and 15 over the sales of the inputs (phosphate rock and green acid) and the downstream products made by Rotem during the POR (IPA, MKP, and fertilizers).

Comment 4: ECIL Grants to Project 15

According to respondents, the input product produced by the Rotem II facility, the plant that benefited from ECIL grant project 15, was never intended as an input into IPA. Respondents claim that the Department countervailed grants from project 15 on the basis of statements by Rotem officials at verification that green acid from the plant could chemically be used for IPA. According to respondents, however, the relevant fact is that it is not economical to use this green acid in the production of IPA. Therefore, respondents state, the Department should find that grants to project 15 did not benefit IPA during the POR.

Respondents further note that because the plant that benefited from project 15 did not start operations until 1996, no benefit could possibly have accrued to IPA in 1995 from these grants. This is especially the case, since the grants to this facility were not intended to be used in IPA production. Rather, the inputs were to be directed to another product, not yet produced in 1995.

According to petitioners, respondents' argument that project 15 grants should not be countervailed because the facilities that benefited from the grants were not in operation in 1995 is irrelevant. Petitioners state that it is the potential use of the input that is important, and not its actual use.

Department's Position. We disagree with respondents. Rotem II produces green acid, which is an input into IPA as well as other downstream products produced by Rotem. Respondents do not dispute that green acid from Rotem II can be used in the production of all downstream products, including the subject merchandise. In fact, respondents confirmed that green acid from Rotem II could be incorporated into IPA and Rotem's other end products. *See Rotem VR.* Therefore, as explained in detail under in the *Department's Position* on "*Comment 3*, ECIL Grants to Projects that Did Not Provide Inputs to IPA During the POR," above, consistent with our policy concerning corporate entities that produce both the inputs and the subject merchandise, we appropriately attributed the grants provided to Rotem II to the direct sales of green acid and all downstream products that can be produced from green acid. Such an attribution approach is consistent with the countervailing duty statute, and is in accordance with the attribution approach followed in *Pasta From Italy.*

Respondents' argument that the Rotem II facility was not operational in 1995 is also without merit. In light of our policy concerning integrated producers, this fact is irrelevant. Under the countervailing duty statute, the Department will find a countervailable subsidy when a financial contribution has been provided and that financial contribution has conferred a benefit upon the recipient. While respondents may assert that green acid from Rotem II was directed to another product not yet produced, there is no information on the record of this proceeding indicating that green acid from Rotem II cannot be an input into the production of IPA, or that the ECIL grants to that facility are "tied" to the production of specific downstream products. Therefore, we have appropriately attributed these grants to Rotem's sales of green acid and to the sales of the company's downstream products that incorporate green acid.

Comment 5: Rate of Inflation and Interest Rate To Be Used for ECIL Grant Calculations for 1994 and 1995

Respondents contend that the interest rate used by the Department to calculate the benefit during the POR from grants received in 1994 and 1995 under ECIL project 15 was incorrect. The interest rate in 1995 was calculated by adding the rate of inflation in 1994 to the real interest on CPI-indexed bonds in 1995. According to respondents, the rate of

[1] This position is also reflected in the Department's 1989 *Proposed Rules*, which define tied benefits as "a benefit bestowed specifically to promote the production of a particular product." *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366, 23374 (May 31, 1989) (*1989 Proposed Rules*).

inflation in 1995, not 1994 should have been added to that bond rate.

Respondents further argue that the Department selected an incorrect inflation rate for 1995 from the Bank of Israel (BOI) Annual Report. The Department has consistently used the average change in the rate of inflation in its non-recurring grant benefit calculations. In 1995, this figure was 10.0 percent. According to respondents, this is not the actual rate of inflation during the year but the average change from the prior year. The actual change during the period, respondents state, was 8.1 percent, as noted in the BOI annual report.

Petitioners contend that the Department has consistently used the average CPI change for the year in calculating the interest rate to be used in the ECIL benefit calculations. Therefore, the Department should not use a different CPI statistic in this administrative review, merely because the new rate would be helpful to Rotem. Petitioners point out that in 1994, the CPI change during the period was 14.5 percent, while the average change was 12.3 percent. In that review, respondents did not argue that the Department modify the CPI.

Department's Position. As explained in the *Department's Position* on "*Comment 9: Inflation Adjustment for Non-Recurring Grants,*" below, we have modified the calculation methodology for ECIL grants. The new approach does not require the use of NIS linked interest rates or the Israeli CPI index. Therefore, this issue is now moot.

Comment 6: Grants Previously Allocated According to the U.S. IRS Depreciation Schedules, Should Be Allocated Over Rotem's Actual AUL

Respondents argue that the Department correctly allocated non-recurring grants received by Rotem over the company's average useful life of assets (AUL) of 24 years. However, respondents note that the Department erred in not applying that allocation period to all of Rotem's non-recurring grants, including those received prior to the POR and which had been previously allocated according to the U.S. Internal Revenue Service depreciation schedules. According to respondents, the benefit from these earlier grants is, therefore, overstated, and will continue to be overstated if the allocation is not changed to reflect Rotem's AUL. Respondents state this correction can be achieved by taking the remaining balance in 1995 of previously allocated grants and reallocating that amount over the number of years left in a 24-year benefit stream that begins in the year the grant was received. This approach avoids the possibility of over-countervailing or under-countervailing the subsidy, because the entire benefit will be countervailed over the 24 year period. Respondents further note that if the Department found it reasonable to revise the ECIL grant calculations prior to the POR with respect to the inflation adjustment, it should also be reasonable and practicable to do so for the AUL correction.

Petitioners contend that the CIT's decision in *British Steel* does not require the Department to use a company-specific allocation period for all subsidies. Rather, petitioners state that the Department decided not to recalculate the AUL for subsidies received prior to the POR because such a change could distort the allocation of the actual benefits is fair and within the mandate of *British Steel*. Petitioners further argue that nothing in *British Steel* or in any other decision requires the Department to accept respondents' proposed method for recalculating the allocation period for earlier grants. In fact, petitioners note that the Department did not disturb previously established allocation periods in administrative reviews of other countervailing duty orders. *See, e.g., Certain Carbon Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16551, 16552 (April 7, 1997), and *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549, 16550 (April 7, 1997). Accordingly, petitioners argue that the Department's allocation of prior subsidies should remain unchanged.

Department's Position. Petitioners correctly note that in prior cases we have not disturbed allocation periods established in prior proceedings. This approach is reasonable and, as noted by petitioners, is not in conflict with the CIT's decision in *British Steel*, which does not require the Department to allocate non-recurring subsidies over a company's AUL. Furthermore, maintaining established allocation periods is both fair and practical, and modifying the allocation stream for previously allocated subsidies can produce unfair results. For example, it is conceivable that a company-specific AUL would yield a shorter allocation period. In that case, it is possible that the subsidy may be under-countervailed, in particular for subsidies that have reached the point in the allocation stream beyond the total number of years in the company-specific AUL. For these reasons, Rotem's 24-year company-specific AUL will only be adopted for ECIL grants that have not been previously allocated.

Comment 7: Grants Not Previously Considered in Subsidy Calculations Should Be Allocated Over Rotem's Actual AUL

According to respondents, the Department has determined to countervail certain grants in this administrative review that have not been countervailed in prior reviews. Among these are grants received prior to the POR. For these grants, respondents argue that the Department should allocate these grants over Rotem's company-specific AUL of 24 years, because these grants have not already been allocated in past administrative reviews.

Department's Position. Grants from ECIL project 15, received in 1994, were not countervailed in the 1994 administrative review and therefore have not previously been allocated. Therefore, we concur with respondents that it is appropriate to allocate these grants over Rotem's company-specific 24-year allocation period. However, we disagree with respondents that there are "numerous grants countervailed this time that have not been countervailed in the past." In the 1994 administrative review, the Department countervailed grants from projects that benefitted inputs that were not used in the production of IPA during 1994. Moreover, in past administrative reviews, ECIL grant projects to each of Rotem's phosphate rock and green acid facilities had been countervailed. This includes grants to the Arad and Zin mines, which Rotem claims in this review did not benefit production of IPA. Accordingly, the allocation period for these grants will not change in these final results.

Comment 8: The Denominator for Grants to Projects Not Tied Directly to IPA

Respondents contend that the Department should not deviate from the practice followed in the 1994 review of attributing grants not tied to IPA over Rotem's total sales. This approach was modified in the preliminary results of this review so that grants to Rotem's green acid facilities were attributed to Rotem's total sales minus direct sales of phosphate rock. (Grants tied to Rotem's phosphate rock facilities were attributed to the company's total sales.) According to respondents, this change is not justified by the Department's regulations.

Respondents state that the rationale for this change is found in the tying provision of the *1997 Proposed Rules.*

However, respondents note that these rules, while they provide guidance, are not controlling in this review and are therefore not applicable. Respondents further argue that this provision should only be invoked for grants to an input that is essential to the production of the downstream product. This is not the case with green acid, which, while it has been an input into IPA, is not required for IPA production.

Respondents further claim that under section 355.47 of the *1989 Proposed Rules*, the Department is directed to attribute subsidies either to total sales or to products to which the benefit is tied. Therefore, if a grant is tied to several products, the Department will allocate that grant over the sales of only those products. However, respondents contend that where the subsidy is given to an input into the subject merchandise, rather than directly to the subject merchandise or several products including the merchandise under investigation, the denominator should be the company's total sales. Therefore, respondents argue that in the final results, the Department should allocate all grants not tied directly to the subject merchandise over Rotem's total sales.

Petitioners state that the Department is permitted to change its methodologies and that the approach followed in this review is a refinement of the methodology adopted in the 1994 proceeding. The Department has determined that the approach with respect to ECIL subsidies to Rotem's green acid facilities is a more precise measurement of the benefit bestowed. According to petitioners, the Department reasonably determined that because green acid is not an input into phosphate rock, sales of phosphate rock cannot benefit from a subsidy provided to Rotem's green acid facilities. Therefore, petitioners argue, the Department's modification is a logical and reasonable refinement of the new "single-corporate-entity-input" methodology.

Department's Position. Our determination that ECIL subsidies provided to Rotem's green acid facilities are not attributable to direct sales of phosphate rock is, as petitioners note, a logical refinement of the attribution approach followed in the 1994 administrative review. During the course of this proceeding, we learned that Rotem's total sales statistics include direct sales of phosphate rock and direct sales of green acid. These are the principal inputs for Rotem's end products. Under the approach first adopted in the 1994 final results of this order, we determined that subsidies to inputs are appropriately attributable to the sales of the input and the sales of downstream products that can incorporate that input. Therefore, we excluded Rotem's direct sales of phosphate rock in calculating the subsidy rate from ECIL grants for the green acid facilities. This is logical given that phosphate rock is an input into green acid, but green acid is only a downstream product of phosphate rock, and, therefore, this approach accurately captures the universe of sales to which the benefit applies. Subsidies to green acid production cannot benefit the production of phosphate rock, and attributing such subsidies to phosphate rock will understate the subsidy to green acid and the end products that incorporate green acid.

Respondents' contention that the provision with respect to inputs in the *1997 Proposed Rules* should only be invoked for grants to an input that is "essential to the production of the downstream product" is incorrect. The plain language of the proposed rules states that "a subsidy which is tied to the input product will be attributed to the input and downstream products produced by that corporation." *See 1997 Proposed Rules*, § 351.524(b)(5)(ii), 62-FR at 8855. Nothing in the 1997 proposed rules speaks of inputs that are "essential to the production of the downstream product." Nor do respondents provide any justification for the rationale that subsidies tied to inputs that are not "essential to the production of the downstream product," be attributed to a company's total production, including upstream products. Rather, as the plain language of the proposed rules suggests, such subsidies can *only* be attributed to production of the input and the downstream products. Attributing such subsidies to upstream products would, as noted above, understate the subsidy and attribute the subsidy to products that did not benefit from the subsidy.

Respondents' reliance on the *1989 Proposed Rules* for the proposition that the Department is directed to attribute subsidies either by total sales or by products to which the benefit is tied is misguided. As a preliminary matter, we fail to see how this argument reconciles with respondents' earlier claim that subsidies to Rotem's green acid facilities provide competitive benefits only to green acid and to downstream products, but only according to the exact proportion that they were used to produce the downstream products. If this were the case, respondents have failed to explain how these same subsidies to green acid may also benefit a firm's total production, including upstream production. Thus, respondents are incorrect on both accounts. As outlined above, in order to make an apples-to-apples comparison, it is imperative that both the numerator (the countervailable benefit) and denominator (the universe of sales to which the benefit applies) used in the Department's calculation of a subsidy reflect the same universe of goods. Accordingly, this approach will remain unchanged in these final results.

Comment 9: Inflation Adjustment for Non-Recurring Grants

Respondents argue that the inflation adjustment used by the Department in the preliminary results to calculate the benefit from non-recurring ECIL grants significantly overstates the benefit from these grants. According to respondents, the Department should "dollarize" the grants, which would have the same effect as indexing the grants for inflation. This approach would comport with Rotem's actual business practices because most of the company's financing is in U.S. dollars, and the company's financial statements are expressed in U.S. dollars. Respondents further claim that converting the grant amount into dollars would be consistent with the approach followed in *Wire Rod from Venezuela*. Respondents suggest that the Department use Rotem's long-term cost of U.S. dollar-denominated borrowing in 1995 to calculate the benefit from the ECIL grants converted into dollars.

Respondents state that if the Department chooses not to dollarize, then it should index the principal grant amounts and use a real interest rate in the benefit calculation. In the preliminary results, respondents argue, the Department incorrectly used a nominal interest rate. This approach double counts inflation, once by adjusting the principal by the inflation index, and again by accounting for inflation in the calculation of the interest component of the benefit. Short of making either of these adjustments, respondents contend the Department should return to the original methodology followed in the 1994 administrative review.

According to petitioners, the Department correctly followed the methodology adopted for the preliminary determination in *Wire Rod from Venezuela*. Petitioners also reject respondents' argument that because inflation was not as high as in Venezuela, the Department should return to its original methodology to account for inflation if it does not accept respondents' proposed methodology. Petitioners note that respondents' own analysis identifies Israel as a high

inflation country. Moreover, petitioners point out that Israeli companies have adjusted their financial statements throughout the allocation period.

With respect to the methodology adopted in *Wire Rod from Venezuela*, petitioners state that dollarization can be used in this case if the Department applies exchange rates and interest rates that correctly account for inflation. Accordingly, petitioners argue that the Department should use a long-term, dollar-denominated interest rate as a discount rate in the grant calculations. In particular, if the Department is unable to locate a long-term fixed rate dollar-denominated rate in Israel, petitioners contend that it is appropriate to use the average long-term variable rate in dollars available to ICL, Rotem's parent company, from private lenders during the POR. A long-term rate, petitioners claim, reflects the economic benefit that Rotem received from the subsidies. Petitioners reject respondents' argument that the Department should use Rotem's long-term cost of borrowing during the POR, because at least some of those loans are financed by ICL and may, therefore, reflect below market interest rates.

Department's Position. We have modified the calculation methodology for ECIL grants to conform with the approach followed in the final determination of *Wire Rod from Venezuela*. This approach aligns with respondents' proposed methodology to dollarize the grants at the time they were received.

With respect to the discount rate to be applied to the grants, we agree with petitioners that an interest rate reflecting the long-term, U.S. dollar-denominated cost of borrowing to Israeli firms is most appropriate. However, we have been unable to find such rates. While Rotem's 1995 financial statements show the company's long-term cost of borrowing in U.S. dollars, we are unable to segregate long-term interest charged by Rotem's parent company, ICL, from the long-term interest rate charged by financial institutions. As such, we have turned to ICL's long-term cost of borrowing denominated in U.S. dollars in each year from 1985 through 1995 as the most appropriate discount rate. ICL's rates are shown in the notes to the company's financial statements, which are public documents that have been placed on the record of this proceeding. *See* "Calculation Memorandum." For 1983 and 1984, we used the interest rate on short-term euro-dollar financing because we were unable to locate an appropriate long-term dollar-denominated interest rate for those years. *See* "Calculation Memorandum." In converting the ECIL grants into dollars, we used the shekel/U.S. dollar exchange rates prevailing on the day the grants were received by Rotem. This information is available from the Bank of Israel. *See* the "Calculation Memorandum" for additional discussion of this issue.

Comment 10: Timing of Inflation Adjustments for Non-Recurring Subsidies

According to respondents, in the preliminary results, the Department incorrectly adjusted the ECIL subsidies to take into account inflation for all grants dating back to 1986, the beginning of the relevant period. Respondents argue that it is "not appropriate to adjust those grants that have already been adjusted by virtue of the inflated interest, since adjusting both interest and principal for inflation leads to a total subsidy greater than actually received." Therefore, respondents claim that the inflation adjustment should begin in 1995, as "inflation has already been captured in the interest rate formula used for the grants prior to that year," and adjusting those grants now double counts the effects of inflation.

Petitioners contend that dollarization should apply only to the period marked by high inflation in Israel, *i.e.*, between 1983 and 1986, when inflation exceeded 30 percent. Petitioners state that this conforms with the approach taken in *Wire Rod from Venezuela*. Starting in 1987, petitioners argue, the remaining principal of the grants should be reconverted into shekels and interest on the remaining amount should be calculated using the rate of return on CPI-indexed commercial bonds. Petitioners reject respondents' argument that adjusting the principal of the grants received prior to 1995 would double count the effect of inflation. According to petitioners, in previous years the Department countervailed only the portion of the grants allocated to a particular POR, while no allocation has been made for the portion that will be countervailed in this review.

Department's Position. Respondents' argument that inflation has already been captured for the grants in years prior to 1995 is incorrect. The purpose of adjusting non-recurring grants for inflation is to capture the impact of inflation on the nominal grant amounts. This merely accounts for the fact that, when inflation is consistently high, the value of non-monetary assets increases, and the value of the subsidy that benefits the non-monetary assets also increases. By converting the subsidy into dollars at the beginning of a high inflation period, we are taking into account the real value of the subsidy. To accurately capture that real value, we must adjust the nominal value from the time that inflation has a measurable impact. In this case, inflation was significant from the beginning of the allocation stream, with annual inflation at over 100 percent. If the adjustment is not made at the beginning of the allocation stream, in particular during the high inflation period of 1983 through 1986, the real value of the grant principal is eroded significantly. Therefore, it is essential that the ECIL grants are dollarized from the beginning of the allocation stream to preserve the real value of the grant and the real benefit from those grants to Rotem. Further, Rotem converts and maintains all of its financial records in U.S. dollars. Thus, dollarization conforms with Rotem's own business practices. It is also consistent with the approach followed in *Wire Rod from Venezuela* (62 FR at 55014).

Respondents' claim that adjusting for inflation for years prior to 1995 overstates the countervailable benefit because the adjustment has already been captured in prior reviews, is also without merit. As explained above, the real benefit in 1995 will be significantly understated if the adjustment is not made from the beginning of the allocation stream. Further, the inflation adjustment used in prior administrative reviews of this order added the rate of inflation to the discount rate. This approach treats inflation as a benefit in each year. However, as explained above, inflation increases the real value of non-monetary assets, such as machinery, over time, and is not a benefit in each year. Therefore, if anything, the impact of inflation was underestimated in prior reviews because inflation was only accounted for in the interest component of the benefit, while the principal amount remained in constant terms during the entire allocation period. Furthermore, petitioners correctly note that no allocation has yet been made for the portion that will be countervailed in this review, and therefore, the 1995 benefit has not yet been adjusted and is not overstated. For these reasons, we determine that dollarization is the most appropriate approach to capture the impact of inflation on ECIL grants received by Rotem. As noted above, we also determine that the grants should be dollarized throughout the entire allocation period.

Comment 11: Privatization of ICL

Respondents allege that the Department's privatization methodology

is flawed. First, respondents state that each partial privatization of ICL between 1992 and 1995 was at fair value, and that the privatization process was highly competitive. Therefore, the stock price of ICL at the time of privatization reflected all publically available information about the company, including the fair value of the subsidies bestowed upon Rotem up to privatization. This means that investors who form expectations about ICL's projected cash flows would include the full benefits of the subsidies Rotem received. Accordingly, respondents argue that because the privatization price reflected the fair value of ICL, including the fair value of Rotem's subsidies, those subsidies are fully repaid to GOI with the sale of the company. Respondents further claim that while ICL was only partially privatized (51.48 percent of the company has been sold), the private party that purchased ICL has gained control over the company, including control over Rotem's business decisions. Thus, the effect on the pricing of Rotem's products is "as if none of the subsidies awarded to Rotem prior to the privatization remain countervailable after the privatization."

Petitioners dispute respondents' claim that market forces have adjusted the selling price of ICL to reflect the full value of Rotem's subsidies. Even if this were the case, petitioners state that in 1995, only 24.9 percent of ICL's stock was sold, and therefore, only a portion of the subsidies could have been reflected in the sale price. Petitioners also dispute respondents' contention that the issue of control is a relevant factor in the privatization analysis. Again, even if control were germane, petitioners note that the GOI still enjoys "special rights" to make business decisions, including (1) sales of company assets, (2) structural changes such as voluntary liquidation, reorganizations, or mergers that would impair the GOI's special rights, and (3) investments or holding in shares of subsidiaries. Moreover, the GOI retains over 48 percent ownership in the ICL.

Department's Position. The issue of whether a fair market value privatization eliminates previous subsidies has already been addressed by the Department. Respondents in the certain steel investigations made similar arguments, stating that, since the fair market price of a government-owned company must include any remaining economic benefit from the subsidies, privatization extinguishes all remaining unamortized subsidies. At the time, we disputed this assertion because it rests on the assumption that subsidies must confer a demonstrated benefit on production in order to be countervailable. As we stated,

> [T]his is contrary to the CVD law, in which is embedded the irrebuttable presumption that nonrecurring subsidies benefit merchandise produced by the recipient over time. In sum, the countervailable subsidy (and the amount of the subsidy to be allocated over time) is fixed at the time the government provides the subsidy. The privatization of a government-owned company, per se, does not and cannot eliminate this countervailability.

GIA, 58 FR at 37263. This conclusion is also permitted under the change in ownership provision of the Act, as amended by the URAA. The SAA specifically states that the Department retains "the discretion to determine whether, and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable susidies." SAA at 258. This is the conclusion we reached in a recent countervailing duty proceeding, where we noted that the Act "purposely leaves the Department with the discretion to determine the impact of a change in ownership on the countervailability of past subsidies." *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 61 FR 58377, 58379 (November 14, 1996).

We also disagree with respondents contention that, while ICL was only partially privatized, by virtue of the private party's control over the company, all of Rotem's prior subsidies are extinguished. As a preliminary matter, the Department has always applied it's privatization methodology to changes in ownership which resulted in the transfer of control from one party to another. *See e.g., Final Affirmative Countervailing Duty Determination; Certain Steel Products From the United Kingdom*, 58 FR 37393 (July 9, 1993) and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago*, 62 FR 55003 (October 22, 1997).

Furthermore, respondents claim that the transfer of control has an effect on the pricing of Rotem's products, so that none of the subsidies awarded to Rotem prior to the privatization remain countervailable after the privatization, is also without merit. As we noted in the GIA, the Department does not, and is not permitted to undertake an analysis of the effect of subsidies. In particular, we stated " the Department does not take account of subsequent developments that may reduce any initial cost savings or increase in output from a subsidy." *GIA*, 58 FR at 37261; see *also*, SAA at 256. Therefore, whether and to what extent the pricing of Rotem's products changes as a result of ICL's partial privatization is irrelevant for determining whether Rotem's previously bestowed subsidies remain countervailable. In any case, the Department's determination that previously bestowed subsidies may continue to benefit the privatized company during an arm's length transaction, has been upheld by the Court of Appeals of the Federal Circuit. *See Saarstahl AG* v. *United States*, 78 F.3d 1539, 1544 (Fed. Cir. 1996). For these reasons, our preliminary finding with respect to ICL's partial privatization will remain unchanged in these final results.

Comment 12: The Privatization Methodology

According to respondents, the Department's gamma methodology is flawed. In particular, respondents state that the gamma is incorrectly based on the average ratio of annual subsidies to Rotem's net worth. Therefore, the Department is considering the annual flow of subsidies to Rotem. However, the net worth in a given year reflects the accumulated value of Rotem's equity. According to respondents, this results in an undervalued gamma ratio. Therefore, respondents contend the gamma calculation should consider the stock of countervailable subsidies at the time of the privatization. This would be done by dividing the total bestowed subsidies accumulated up to the privatization by Rotem's equity capital just prior to ICL's privatization.

Respondents also contend that the Department's gamma percentage is understated because the denominators used in the gamma calculation are expressed in adjusted U.S. dollars while the numerators are nominal Shekel values. According to respondents, because the denominators (the net worth amounts) are expressed in adjusted U.S. dollars, they reflect inflation, while the grant amounts, the numerators, are expressed in nominal terms. Therefore, respondents suggest the Department use Rotem nominal net worth amounts submitted in the case brief. Alternatively, respondents assert that the Department should convert the ECIL grants into dollars at the exchange rate on the day of receipt of the grants.

Petitioners argue that the Department's gamma calculation used Rotem's audited financial statements, which are an accurate tool for this calculation. Petitioners further state that Rotem should not be permitted to submit new net worth figures, after the Department has conducted verification.

Department's Position. The gamma calculation attempts to derive a reasonable historic surrogate for the percent that subsidies constitute of the company's net worth in the year prior to privatization. Respondents' proposed modification of the gamma calculation is flawed because it incorrectly compares the value of Rotem's accumulated subsidies in the year before privatization to the company's net worth in that year. Such a comparison overstates the value of the subsidies in relationship to the company's net worth because it assumes that a company's net worth increases in direct proportion to the value of the subsidies received by that firm. However, this is not the case, as those values are depreciating from year to year. Simply stated, respondents comparison ignores the fact that the value of subsidies is eroding over time, i.e., a subsidy received in 1986 does not have the same relative value as a subsidy received in 1994. Therefore, respondents' approach overvalues the subsidies and thus grossly overstates the ratio of Rotem's subsidies to net worth in the year prior to privatization.

Although we also disagree with respondents' argument that the gamma percentage is understated because the denominator is expressed in adjusted U.S. dollars and the numerator in nominal shekels, this issue is now moot because we have dollarized the ECIL grants.

Final Results of Review

In accordance with 19 CFR 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1995 through December 31, 1995, we determine the net subsidy for Rotem to be 8.93 percent *ad valorem*.

We will instruct the U.S. Customs Service ("Customs") to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 355.22(a). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. *See* 61 FR 28841. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1995 through December 31, 1995, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice 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 355.34(d). Timely written 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.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration,

[FR Doc. 98–7352 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Participation in Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the following overseas trade missions: Telecommunications Trade Mission to Spain and Portugal, Madrid and Lisbon, May 3–8, 1998, Recruitment closes April 3, 1998.

FOR FURTHER INFORMATION CONTACT: Myles Denny-Brown, Tel: 202–482–0398, Fax: 202–482–5834

Environmental Technologies Trade Mission Spain and Portugal, Madrid and Lisbon, June 24–July 3, 1998, Recruitment closes May 22, 1998

FOR FURTHER INFORMATION CONTACT: Ann Novak, Tel: 202–482–8178, Fax: 202–482–5665

Professional Services Trade Mission to Brazil, San Paulo, Belo Horizonte, Rio de Janeiro, September 28–October 2, 1998, Recruitment closes August 1, 1998

FOR FURTHER INFORMATION CONTACT: Richard Boll, Tel: 202–482–1135, Fax: 202–482–2669.

FOR FURTHER INFORMATION CONTACT: Reginald Beckham, Department of Commerce, Tel: 202–482–5478, Fax: 202–482–1999.

Dated: March 16, 1998.

Tom Nisbet,

Director, Office of Trade Promotion Coordination.

[FR Doc. 98–7226 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Narrative Reporting Requirements

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites other Federal agencies and the general public to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 19, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Juanita E. Berry, Department of Commerce, Minority Business Development Agency (MBDA), Room 5084, 14th and Constitution Avenue, NW, Washington, DC 20230, or call (202) 482–0404.

SUPPLEMENTARY INFORMATION:

I. Abstract

In accordance with OMB Circular A–110, the Minority Business Development Agency requires its programs to periodically report their performance status. Narrative performance reports are needed to evaluate individual project and overall program performance by comparing accomplishments against planned performance, and to evaluate overall results of the Agency-funded programs. MBDA requires this information to monitor, evaluate, and plan Agency programs to enhance the development of minority business.

II. Method of Collection

Quarterly electronic submission of the report.

III. Data

OMB Number: 0640–0007.
Agency Form Number: N/A.
Type of Review: Revision of a currently approved collection.
Affected Public: State or local governments, individuals, and profit and non-profit institutions.
Estimated Number of Responses: 240 (approximately 60 respondents with numerous responses).
Estimated Time Per Response: 8 hours.
Estimated Total Annual Burden Hours: 1,920.
Estimated Total Annual Cost: $2,240 per respondent.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 13, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7335 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Performance Database (Formerly the Business Development Report (BDR) System)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites other Federal agencies and the general public to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 19, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Juanita E. Berry, Department of Commerce, Minority Business Development Agency (MBDA), Room 5084, 14th or Constitution Avenue, NW, Washington, DC 20230, or call (202) 482–0404.

SUPPLEMENTARY INFORMATION:

1. Abstract

The Performance Database (formerly Business Development Report (BDR)) identifies minority business clients receiving Agency-sponsored business development services in the form of management and technical assistance, the kind of assistance each receives, and the impact of that assistance on the growth and profitability of the client firms. MBDA requires this information to monitor, evaluate, and plan Agency programs which effectively enhance the development of the minority business sector.

II. Method of Collection

Electronic transfer of performance data.

III. Data

OMB Number: 0640–0005.
Agency Form Number: N/A.
Type of Review: Reinstatement with revision to a previously approved collection.
Affected Public: State or local governments, individuals, and profit and non-profit institutions.
Estimated Number of Responses: 240 (approximately 60 respondents with numerous responses).
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 60.
Estimated Total Annual Cost. $0 (software package is provided by MBDA).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Dated: March 13, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7336 Filed 3–19–98; 8:45 am]

BILLING CODE: 3510–21–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030498C]

Magnuson-Stevens Act Provisions; Atlantic Shark Fisheries; Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Applications for EFPs; request for comments.

SUMMARY: NMFS announces the receipt of four applications for EFPs. If granted, these EFPs would authorize, over a period of 1 year, collections for public display of a limited number of sharks from the large coastal and prohibited species groups from Federal waters in the Atlantic Ocean.

DATES: Written comments on the applications must be received on or before April 6, 1998. Applications for EFPs must be received on or before April 29, 1998.

ADDRESSES: Send comments to Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The applications and related documents and copies of the regulations under which exempted fishing permits are subject may also be requested from this address.

FOR FURTHER INFORMATION CONTACT: Margo Schulze, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: These EFPs are requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and regulations at 50 CFR 600.745 concerning scientific research activity, exempted fishing, and exempted educational activity.

South Carolina Aquarium, in Charleston, SC, intends to collect no more than 12 sharks from the large coastal and/or prohibited species management units for public display by using buoy gear, rod and reel, and longlines of approximately 35–40 hooks. Fishing will occur in the Atlantic Ocean from North Carolina south to the the middle Florida Keys. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time and because possession of sand tiger sharks is prohibited. The applicant also requested that the EFP authorize collection of sharks from the small coastal and pelagic management units; however, as the commercial seasons for small coastal sharks or pelagic sharks have not closed to date, these species may be possessed legally by obtaining a Federal commercial shark permit and an EFP is not required.

Ripley's Aquarium, in Myrtle Beach, SC, intends to collect 25 sand tiger sharks, 8 sandbar sharks, 8 blacktip sharks, 4 tiger sharks, 4 scalloped hammerhead sharks, and 4 great hammerhead sharks for public display by using hook and line and longlines consisting of no more than 30 hooks. Fishing will occur in the Atlantic Ocean off New Jersey, Delaware, Virginia, North Carolina, South Carolina, and Florida. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time and because possession of sand tiger sharks is prohibited. The applicant also requested that the EFP authorize collection of 25 bonnethead sharks; however, as the commercial season for small coastal sharks has not closed to date, this species may be possessed legally by obtaining a Federal commercial shark permit and an EFP is not required.

Florida Aquarium, in Tampa, FL, intends to collect three sand tiger sharks for public display by using authorized Florida recreational marine fishing gear. Fishing will occur in the Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea (Florida area). Issuance of an EFP is necessary, according to the applicant, because possession of sand tiger sharks is prohibited.

Aquarium of the Americas, in New Orleans, LA, intends to collect eight sand tiger sharks for public display and research by using hook and line, longlines consisting of approximately 90 hooks, and/or single hook Block set-lines. Fishing will occur in the Atlantic Ocean off Cocodrie, LA, from April through May and off Delaware Bay from June through August. Issuance of an EFP is necessary, according to the applicant, because possession of sand tiger sharks is prohibited.

The proposed collections for public display involve activities otherwise prohibited by regulations implementing the Fishery Management Plan for Sharks of the Atlantic Ocean. The applicants require authorization to fish for and to possess large coastal sharks outside the Federal commercial seasons and to fish for and to possess prohibited species.

Based on a preliminary review, NMFS finds that these applications warrant further consideration. A final decision on issuance of EFPs will depend on the submission of all required information and on NMFS' review of public comments received on the applications, conclusions of any environmental analyses conducted pursuant to the National Environmental Policy Act, and any consultations with any appropriate Regional Fishery Management Councils, states, or Federal agencies.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 16, 1998 .

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7347 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to the Price Limit and Trading Halt Provisions in Domestic Stock Index Futures Contracts

AGENCY: Commodity Futures Trading Commission

ACTION: Notice of availability of proposed amendments to the price limit and trading halt provisions in domestic stock index futures contracts listed on the Chicago Mercantile Exchange, Chicago Board of Trade, Kansas City Board of Trade, and New York Futures Exchange.

SUMMARY: The Chicago Mercantile Exchange (CME), Chicago Board of Trade (CBOT), Kansas City Board of Trade (KCBT), and New York Futures Exchange (NYFE) have submitted proposals to modify existing "circuit breaker" and related price limit provisions in those exchanges' domestic stock index futures contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before April 6, 1998.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the price limit and trading halt provisions of domestic stock index futures and futures option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Michael Penick of the Division of Economic Analysis, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581, telephone 202–418–5279. Facsimile number: (202) 418–5527. Electronic mail: mpenick@cftc.gov.

SUPPLEMENTARY INFORMATION: The CME, CBOT, KCBT and NYFE proposed changes to the price limit and trading halt provisions, including circuit breaker trigger levels, for their domestic stock index futures contracts. The submissions were made to coordinate with the proposal from the New York Stock Exchange (NYSE) to revise its circuit breaker rules. The NYSE proposal would establish three "circuit breaker" trading halt triggers that will be reset quarterly such that the levels are equivalent to 10%, 20%, and 30% of the average closing level of the Dow Jones Industrial Average (DJIA) for the calendar month preceding that quarter. These triggers would replace the current fixed 350-point and 550-point DJIA triggers. The NYSE also proposes to increase the duration of each circuit breaker trading halt.[1] The NYSE proposal is currently under review by the Securities and Exchange Commission (SEC). Notice of that proposal was given in the **Federal Register** on February 23, 1998 (63 FR 9034).

The CME proposes that, for each of its domestic stock index contracts, there be circuit breaker trading halts coordinated with the NYSE trading halts. Consistent with the quarterly adjustment method proposed by the NYSE, beginning on the first day of each quarter, the CME will reset its circuit breaker price limits to 10% and 20% of the average daily closing price in the current primary futures contract during the preceding calendar month. The 10% limit will be rounded down to the nearest multiple of 10 Index points, and the 20% limit will be twice the 10% limit.[2] Following each of the two circuit breaker trading halts, trading on the CME would resume after the NYSE reopens and 50% of the stocks in the S&P 500 (measured by capitalization) have begun to trade. The price limit at the 20% circuit breaker level will remain in effect when trading resumes following a 20% circuit breaker trading halt.

The CME further proposes that, on the day after futures trading either ended limit-offered or was halted at the 20% circuit breaker limit, the 10% price decline limit on that next day would be treated as a "speed bump" (discussed below) rather than a circuit breaker price limit. This is because the S&P 500 futures price could be up to 10 percentage points above the cash index which, as noted, could have declined as much as 30 percent under proposed NYSE rules. Under this proposal, on such next day, the futures contracts would be halted if the NYSE halted, and reopened as described above, with the 20% limit in place after such reopening.

The CME also proposes to increase its intermediate price decline limits (speed bumps), generally to 2.5% and 5% of the underlying index, from the current fixed point levels.[3] Those speed bump levels will be calculated quarterly. Intermediate price decline limits are in effect for ten minutes after the primary futures contract is limit offered. If the futures is limit offered at the end of that 10 minute period, there would be a two minute trading halt, after which the next price limit would be in effect. The 2.5% price decline limit also will be the price limit for the overnight Globex session, both above and below the regular trading hours settlement price.

Finally, the CME proposes to eliminate rule 831 which provides that daily variation payments are based on the implied market price when the cash index is lower than the futures price due to price limits on the futures contract.

The KCBT proposes circuit breaker and price limit rules to its stock index contracts that generally are coordinated with the proposed NYSE rules and generally are similar to those of the CME. However, under that proposal, the KCBT would calculate, on a daily basis, speed bump price limits of 2.5% and 5.0% of the previous day's settlement price, and circuit breaker price limits of 10% and 20% of the previous day's settlement price. Trading would halt whenever either of the two lead futures contract months is locked limit down and trading halts on the NYSE. The CBOT proposes price limits and trading halts for its DJIA futures contract at the same trigger levels as proposed by the NYSE. Consistent with current CBOT rules, the CBOT's proposal does not include speed bump price limits prior to the first circuit breaker price limit. The NYFE proposes circuit breaker and price limit rules for its domestic stock index contracts at the same trigger levels as proposed by the NYSE. In addition, the NYFE proposes to delete its speed bump price limits prior to the first circuit breaker price limit.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CME, CBOT, KCBT, and NYFE in support of the proposals may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CME, CBOT, KCBT, and NYFE should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

[1] Under current NYSE rules, the 350-point trading halt generally lasts one half hour and the 550-point trading halt generally lasts one hour or until the end of the trading day.

Under the NYSE proposal, the halt for a 10% decline generally will be one hour. However, if the 10% trigger value is reached at or after 2:00 p.m. but before 2:30 p.m., the halt would be one half hour, while if it occurs at or after 2:30 p.m. a 10% decline would not trigger a halt. The halt for a 20% decline generally will be two hours. However, if the 20% trigger value is reached at or after 1:00 p.m. but before 2:00 p.m., the halt would be one hour, while if it occurs at or after 2:00 p.m., trading would halt for the rest of the day. Finally, if the market declines by 30% at any time, trading will be halted for the remainder of the day.

[2] Using this calculation method, the CME's circuit breaker levels typically will be slightly more restrictive than the comparable circuit breaker trigger levels on the NYSE which are based on the DJIA.

[3] The current speed bumps for the actively traded S&P 500 futures contract are 15 and 30 points or about 1.5% and 3.0% of the S&P 500 index.

Issued in Washington, DC, on March 12, 1998.

John Mielke,

Acting Director.

[FR Doc. 98–7244 Filed 3–19–98; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Concept Release Concerning the Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period on Concept Release.

SUMMARY: The Commodity Futures Trading Commission has issued a Concept Release concerning the regulation of noncompetitive transactions executed on or subject to the rules of a contract market. The Commission has solicited comments on a broad range of questions concerning the oversight of transactions involving (i) the exchange of futures contracts for, or in connection with, cash commodities, (ii) other noncompetitive transactions, and (iii) the use of execution facilities for noncompetitive transactions. The Concept Release was initially published for comment on January 26, 1998 (63 FR 3708) with comments on the release due by March 27, 1998. In response to a request from the Coffee, Sugar and Cocoa Exchange, Inc., the Commission has determined to extend the comment period on this release for an additional 30 days. The extended deadline for comments on the Concept Release is April 27, 1998.

Any person interested in submitting written data, views, or arguments on the Concept Release should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov.

DATES: Comments must be received on or before April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Rebecca Creed, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1150 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5493.

Issued in Washington, D.C., on this 13th day of March, 1998, by the Commodity Futures Trading Commission.

Edward W. Colbert,

Deputy Secretary of the Commission.

[FR Doc. 98–7243 Filed 3–19–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 19, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Finance Deputate, ATTN: Mr. Faafiti Malufau, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. Faafiti Malufau, 703–607–5061.

Title, Associated Form, and OMB Number: Application for Former Spouse Payments From Retired Pay (DD Form 2293).

Needs and Uses: Under 10 U.S.C. 1408, state courts may divide military retired pay as property or order alimony and child support payments from the retired pay. The former spouse may apply to the Defense Finance and Accounting Service (DFAS) for direct payment of these monies by using the DD Form 2293. This information collection is needed to provide DFAS the basic data needed to process the request.

Affected Public: Individuals or households

Annual Burden Hours: 5130 hours

Number of Respondents: 20,520

Responses Per Respondent: 1

Average Burden Per Response: 15 minutes

Frequency: On occasion

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The respondents of this information collection are spouses or former spouses of military members. The applicant submits a DD Form 2293 to the Defense Finance and Accounting Service (DFAS). The information from the DD Form 2293 is used by DFAS in processing the applicant's request as authorized under 10 U.S.C. 1408. The DD Form 2293 was devised to standardize applications for payment under the Act. Information on the form is also used to determine the applicant's current status and contains statutory required certifications the applicant/former spouse must make when applying for payments.

Dated: March 16, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–7211 Filed 3–19–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0137]

Proposed Collection; Comment Request Entitled Simplified Acquisition Procedures/FACNET

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 34), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve

an extension of a currently approved information collection requirement concerning Simplified Acquisition Procedures/FACNET. The clearance currently expires on April 30, 1998.

DATES: Comments may be submitted on or before May 19, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Federal Acquisition Policy Division, GSA (202) 501–1900.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0137, Simplified Acquisition Procedures/ FACNET, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title IX of the Federal Acquisition Streamlining Act of 1994 (the Act) amended the Office of Federal Procurement Policy Act (41 U.S.C. 401, *et seq.*) by adding new sections regarding the establishment of a program for the development and implementation of a Federal Acquisition Computer Network (hereinafter referred to as FACNET) which allows electronic interchange of procurement information between the private sector and the Federal Government and among Federal agencies. Specific functions of FACNET are set forth under Section 30 of the Act.

Regulatory coverage of FACNET is included under FAR Subpart 4.5—Electronic Commerce in Contracting. FAR section 4.503 requires contractors to provide registration information to the Central Contractor Registration in order to conduct business through electronic commerce (EC) with the Federal Government. Contractor registration information is collected electronically as a prerequisite for conducting EC with the Federal Government. The process for collection of contractor information uses the Federal Implementation Conventions ANSI X12, Trading Partner Profile, in accordance with the Federal Information Processing Standards 161 (FIPS). These standards are published by the National Institute for Standards and Technology (NIST). The information required to be submitted as part of contractor registration is the same as that currently provided by the SF 129, Solicitation Mailing List Application; the SF 3881, ACH vendor/ Miscellaneous Payment Enrollment Form for paper transactions. In addition, information pertaining to a contractor assignment of commercial and Government entity (CAGE) code (where applicable); electronic data interchange (EDI) capabilities, including ANSI X12 transaction set and version number status for production, testing, sending and receiving; and the registrant's value added network (VAN) or value added service (VAS) electronic communications number also needs to be provided as part of the registration process. Requiring information consistent with the existing forms that Government contractors are familiar with simplifies the process of gathering current, factual data to input into the Registration System. The additional information is information contractors should have readily available when they have established EC/EDI capability.

The information submitted by contractors will permit the Central Contractor Registration to establish a central repository for all vendors doing business with the Federal Government, information that is accessible by all Government contracting activities.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *100,000;* responses per respondent, *1;* total annual responses, *100,00;* preparation hours per response, *.25;* and total response burden hours, *25,000.*

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *100,000;* hours per recordkeeper, .25; and total recordkeeping burden hours, *25,000.*

Obtaining Copies of Proposals: Requester may obtain a copy the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0137, Simplified Acquisition Procedures/FACNET, in all correspondence.

Dated: March 16, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–7105 Filed 3–18–98; 10:50 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 7 April 1998 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: March 16, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–7210 Filed 3–19–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendments are needed to update the current notice.

DATES: The amendment will be effective on April 20, 1998, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records

Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: March 16, 1998.

L. M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 07

SYSTEM NAME:

Defense Medical Information System (DMIS) *(October 3, 1997, 62 FR 51833).*

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Corporate Executive Information System Program Office, Six Skyline Place, Suite 809, 5111 Leesburg Pike, Falls Church, VA 22041–3201'.

* * * * *

RECORD SOURCE CATEGORIES:

Add to the entry 'the National Mail Order Pharmacy, Defense Supply Center, Philadelphia, PA'.

* * * * *

DHA 07

SYSTEM NAME:

Defense Medical Information System (DMIS).

SYSTEM LOCATION:

Primary location: Directorate of Information Management, Building 1422, Fort Detrick, MD 21702–5000 with Region-specific information being kept at each Office of the Assistant Secretary of Defense (Health Affairs) designated regional medical location. A complete listing of all regional addresses may be obtained from the system manager.

Secondary location: Service Medical Treatment Facility Medical Centers and Hospitals, and Uniformed Services Treatment Facilities. For a complete listing of all facility addresses write to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Uniformed services medical beneficiaries enrolled in the Defense Enrollment Eligibility Reporting System (DEERS) who receive medical care at one or more of DoD's medical treatment facilities (MTFs), or one or more of the Uniformed Services Treatment Facilities (USTFs), or who have care provided under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or TRICARE programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Selected data elements extracted from the DEERS beneficiary and enrollment records. Electronic files containing beneficiary identifier, date of birth, gender, sponsor status (active duty or retired), relationship of patient to sponsor, pay grade of sponsor, state or country, zip code, and enrollment and eligibility status.

Individual patient hospital discharge records. Electronic files containing patient ID, date of birth, gender, sponsor status (active duty or retired), relationship to sponsor, pay grade of sponsor, state or country, zip code, health care dates and services, provider, service status, health status, billed amount, allowed amount, amount paid by beneficiary, amount applied to deductible, and amount paid by government.

Selected data elements extracted from the CHAMPUS, National Mail Order Pharmacy, or other purchased care medical claims records. Electronic files containing patient ID, date of birth, gender, sponsor status (active duty or retired), relationship to sponsor, pay grade of sponsor, state or country, zip code, health care dates and services, provider, service status, health status, billed amount, allowed amount, amount paid by beneficiary, amount applied to deductible, and amount paid by government.

Data elements extracted from the DEERS electronic Non-availability Statement application. Records containing beneficiary ID, date and types of health care services not covered by the issuing entity (MTFs, etc.), along with other demographic and issuing entity information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 10 U.S.C., Chapter 55; and E.O. 9397 (SSN).

PURPOSE(S):

DMIS collects data from multiple DoD electronic medical systems and processes and integrates the data in a manner that permits health management policy analysts to study, evaluate, and recommend changes to DoD health care programs. Analysis of beneficiary utilization of military medical and other program resources is possible using DMIS. Statistical and trend analysis permits changes in response to health care demand and treatment patterns. The system permits the projection of future Medical Health Services System (MHSS) beneficiary population, utilization requirements, and program costs to enable health care management concepts and programs to be responsive and up to date.

The detailed patient level data at the foundation of DMIS permits analysis of virtually any aspect of the military health care system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Health Care Finance Administration for conducting demographic and financial analytical studies.

To the Congressional Budget Office for projecting costs and workloads associated with DoD Medical benefits.

To the Department of Veterans Affairs (DVA) for coordinating cost sharing activities between the DoD and DVA.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on optical and magnetic media.

RETRIEVABILITY:

Records may be retrieved by individual's Social Security Number, sponsor's Social Security Number, Beneficiary ID (sponsor's ID, patient's name, patient's DOB, and family member prefix or DEERS dependent suffix).

SAFEGUARDS:

Automated records are maintained in controlled areas accessible only to

authorized personnel. Entry to these areas is restricted to personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of a cipher lock. Back-up data maintained at each location is stored in a locked room.

Access to DMIS records is restricted to individuals who require the data in the performance of official duties. Access is controlled through use of passwords.

RETENTION AND DISPOSAL:

Disposition pending (until NARA disposition is approved, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Corporate Executive Information System Program Office, Six Skyline Place, Suite 809, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Corporate Executive Information System Program Office, Six Skyline Place, Suite 809, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

Requests should contain the full names of the beneficiary and sponsor, sponsor Social Security Number, sponsor service, beneficiary date of birth, beneficiary sex, treatment facility(ies), and fiscal year(s) of interest.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written requests to Corporate Executive Information System Program Office, Six Skyline Place, Suite 809, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

Requests should contain the full names of the beneficiary and sponsor, sponsor Social Security Number, sponsor service, beneficiary date of birth, beneficiary sex, treatment facility(ies) that have provided care, and fiscal year(s) of interest.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual data records that are assembled to form the DMIS data base are submitted by the Military Departments, the Defense Enrollment Eligibility Reporting System, the Office of the Civilian Health and Medical Program for the Uniformed Services, the Uniformed Service Treatment Facility Managed Care System, the Health Care Finance Administration, and the National Mail Order Pharmacy, Defense Supply Center, Philadelphia, PA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–7209 Filed 3–19–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for the BRAC 95 Realignment of Personnel and Functions to Fort Wainwright, AK

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Pub. L. 101–510, the Defense Base Realignment and Closure (BRAC) Commission recommended the realignment of the Northern Warfare Training Center (NWTC) and the Cold Regions Test Center (CRTC) from Fort Greely, Alaska, to Fort Wainwright, Alaska. The action could begin no earlier than July 1997 and is to be completed no earlier than July 2001.

The EA analyzed the environmental and socioeconomic realignment effects to Fort Wainwright and the adjacent Fairbanks area. In addition to the directed moves, discretionary moves of such units as the Aviation Detachment and Law Enforcement Command are planned. These units will be absorbed into similar activities at Fort Wainwright. A total of approximately 92 military and 47 civilian positions would be relocated from Fort Greely to Fort Wainwright.

BRAC-funded projects at Fort Wainwright are analyzed. These include two military construction projects—a Missile Test Facility to support the CRTC and four 5-bedroom housing units. Existing facilities will also be renovated for use as office space.

The EA considered five alternatives for effecting the realignment from Fort Greely to Fort Wainwright. These were: (1) constructing four 5-bedroom units for additional housing and upgrading existing on-post facilities for office space, (2) using off-base housing to meet housing needs and upgrading existing on-post facilities for office space, (3) constructing four 5-bedroom units for additional housing and constructing new on-post office facilities, (4) using off-base housing to meet housing needs and constructing new on-post office facilities, and (5) no action, *i.e.*, continuation of existing conditions of the affected environment, without implementing the proposed action. Alternative 1 is the preferred alternative.

The Army has concluded that the realignment of the NWTC and the CRTC from Fort Greely to Fort Wainwright does not constitute a major Federal action significantly affecting the quality of the natural or human environment. Because no significant impacts would result from implementing the proposed action, an environmental impact statement is not required and will not be prepared.

DATES: Public comments must be submitted on or before April 20, 1998.

ADDRESSES: Copies of the EA and FNSI may be obtained by writing or inquiring to the U.S. Army Corps of Engineers, ATTN: CENPA–EN–CW–ER (Mr. Guy McConnell), P.O. Box 898, Anchorage, Alaska 99506–0898, or by telefax at (907) 753–2625. The EA is also available for review at the Environmental Office, Building 3023, Fort Wainwright, Alaska. Please contact Mr. Ken Spiers at (907) 353–6323.

Dated: March 18, 1998.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 98–7468 Filed 3–19–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, ED.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans (Commission). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend. Less than fifteen day notice is given because of administrative misunderstandings regarding the Executive Board's meeting guidelines.

DATES AND TIMES: Friday, April 3, 1998, 9 a.m.–5 p.m. (pst) and Saturday, April 4, 1998, 9 a.m.–4:30 p.m. (pst).

ADDRESSES: The meeting will be held at Pitzer College of The Claremont Colleges; 1050 N. Mills Avenue; Claremont, CA 91711–6101. On Friday, April 3, 1998, the Commission will convene at the Gold Student Center, 2nd Floor, Rapaport Room 204–206. On Saturday, April 4, 1998, the meeting continue at the Broad Center, 1st Floor, Broad Center Performance Space Building.

FOR FURTHER INFORMATION CONTACT: Edmundo DeLeon, Special Assistant, White House Initiative on Educational Excellence for Hispanic Americans (Initiative) at 202–401–1411 (telephone), 202–401–8377 (FAX), ed__deleon@ed.gov (e-mail) or mail: U.S. Department of Education, 600 Independence Ave. SW., room 2115; Washington, DC 20202–3601.

SUMMARY INFORMATION: The Commission was established under Executive Order 12900 (February 22, 1994) to provide the President and the Secretary of Education with advice on (1) the progress of Hispanic Americans toward achievement of the National Goals and other standards of educational accomplishment; (2) the development, monitoring, and education for Hispanic Americans; (3) ways to increase, State, county, private sector and community involvement in improving education; and (4) ways to expand and complement Federal education initiatives.

The Commission will report the progress to date since its September 1997 meeting. This will include the decisions reached by the Executive Board at its January 1998 meeting, as well as the work of the five Commission committees (Children-Family-Community, K–12, Higher Education, Public Policy, and Foundations-Corporations-Public Affairs). Finally, the Commission will review and discuss bilingual education in California and the potential effects of the proposed Unz initiative. Public testimony is scheduled for Saturday, April 4, 1998 at 10 a.m.

Records are kept of all Commission proceedings and are available for public inspection at the Initiative, U.S. Department of Education, 600 Independence Ave., SW., Room 2145, Washington, DC from 9 a.m. to 5 p.m. (est).

Dated: March 16, 1998.

G. Mario Moreno,

Assistant Secretary.

[FR Doc. 98–7203 Filed 3–19–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–270–000]

ANR Pipeline Company; Notice of Application

March 16, 1998.

Take notice that on March 9, 1998, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–270–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale a subsea side valve assembly (Interconnection) at West Cameron Area Block 601, offshore Louisiana, to Tennessee Gas Pipeline Company (Tennessee) and Columbia Gulf Transmission Company (Columbia Gulf), all as more fully set forth in the application on file with the Commission and open to pubic inspection.

ANR states that the Interconnection, which was certificated in Docket No. CP81–281–000 along with other facilities, ties into pipeline facilities owned by Tennessee and Columbia Gulf. ANR also states that after the facilities authorized in Docket No. CP81–281–000 were placed in service, Samedan Oil Corporation (Samedan) tied its facilities into ANR's Interconnection. ANR states that the sale/abandonment of the Interconnection would allow Samedan to connect directly to Tennessee's and Columbia Gulf's facilities rather than indirectly through ANR.

ANR states that the proposed abandonment by sale will not result in any termination of service, and will not otherwise change the authorizations granted ANR in Docket No. CP98–281–000. ANR also states that the sale price will be the lesser of the net book value or $243,680.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided or, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7255 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No PR98–8–000]

Arkansas Western Gas Company; Notice of Petition for Rate Approval

March 16, 1998.

Take notice that on March 3, 1998, Arkansas Western Gas Company (AWG) filed an application pursuant to Sections 284.224 and 284.123(b)(2) of the Commission's Rules of Practice and Procedure and the Commission's Order Issued November 9, 1995, for approval of rates as fair and equitable. AWG proposes to decrease its maximum rate for interruptible transportation from $0.1596 per MMBtu to $0.1024 per MMBtu and to increase the rate for compressor fuel and lost and unaccounted for gas from 3.1 percent to 3.43 percent.

Any person desiring to participate in this rate proceeding must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Sections 383.214 and 385.211 of the Commission's Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before April 1, 1998. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to must file a motion to intervene. Copies of the petition are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7260 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–269–000]

Arkansas Western Pipeline Company and Arkansas Western Pipeline L.L.C.; Notice of Application

March 16, 1998.

Take notice that on March 6, 1998, Arkansas Western Pipeline Company (AWP) and Arkansas Western Pipeline, L.L.C. (AWP, LLC) (collectively the Applicants) filed an application under Section 7(c) of the Natural Gas Act (NGA), requesting that the Commission approve a transaction whereby AWP, LLC would succeed AWP as the owner of facilities and holder certificates of public convenience and necessity related to those facilities and services previously authorized by this Commission, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, AWP requests permission and approval under NGA 7(b) to abandon by transfer to AWP, LLC pipeline and appurtenant facilities currently dedicated to interstate service as well as the various certificates of public convenience and necessity which AWP currently holds. It is stated that for its part, AWP, LLC requests issuance under NGA Section 7(c) of certificates of public convenience and necessity identical to those abandoned by AWP, under which AWP, LLC will operate the facilities and render the services previously operated and performed by its predecessor, AWP. In addition, AWP and AWP, LLC request approval under Part 154 of this Commission's Regulations to make minor modifications to AWP's existing FERC Gas Tariff necessary to reflect AWP, LLC's succession to AWP's currently effective tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1998, file with Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein or if the Commission on its own review of the matter finds that a grant of the application is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion, believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7252 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–203–000]

Columbia Gas Transmission Corporation; Notice of Application

March 16, 1998.

Take notice that on January 27, 1998, as supplemented on March 13, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030, filed a request with the Commission in Docket No. CP98–203–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate six delivery points in West Virginia to serve existing customers, all as more fully set forth in the application which is open to the public for inspection.

Columbia proposed to construct and operate six delivery points in Cabell, Lewis, Roane, and Wayne counties to serve one commercial and five residential customers of Mountaineer Gas Company (MGC). Columbia states that it would deliver a total of up to 9 dekatherms equivalent of natural gas per day and up to 900 dekatherms equivalent of natural gas annually at the six proposed delivery points for the account of MGC under its blanket certificate issued in Docket No. CP86–240–000. Columbia also states that MGC has not requested an increase in its peak day entitlements in conjunction with this request for the herein proposed six new delivery points. Columbia further states that it would treat the estimated $900 total construction cost for this proposal as an operational and maintenance expense.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 23, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7253 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–7–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 16, 1998.

Take notice that on March 10, 1998, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of April 1, 1998.

ESNG states that the purpose of the instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) and Columbia Gas Transmission Corporation (Columbia). The storage services purchased from Transco are under its Rate Schedules GSS and LSS, the costs of which comprise the rates and charges payable under ESNG's Rate Schedule GSS and LSS. The storage service purchased from Columbia is under its Rate Schedule SST and FSS, the costs of which comprise the rates and charges under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS, LSS, and CFSS, respectively.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7262 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Enogex Interstate Transmission L.L.C. and Ozark Gas Transmission, L.L.C.; Notice of Application

March 16, 1998.

Take notice that on March 5, 1998, Enogex Interstate Transmission L.L.C. (Enogex Interstate) and Ozark Gas Transmission, L.L.C. (Applicants) filed an abbreviated application under Section 7(c) of the Natural Gas Act, requesting that the Commission grant to Enogex Interstate certificate authorization to acquire the assets of Ozark Gas Transmission System (Ozark), an existing interstate natural gas pipeline subject to the Commission's jurisdiction under the Natural Gas Act. Applicants further seek authorization to dedicate to interstate service the assets of NOARK Pipeline System, Limited Partnership (NOARK), an existing intrastate pipeline operating within the state of Arkansas, and to integrate the Ozark and NOARK systems into a single interstate pipeline system. Applicants propose, and seek authorization to, operate the integrated pipeline system as a single interstate pipeline, providing open access transportation services pursuant to Part 284 of the Commission's Regulations, and to perform all services currently performed by Ozark, subject to the terms and conditions, including the maximum rates, set forth in Ozark's currently effective FERC Gas Tariff. To this end, Applicants propose to adopt Ozark's existing FERC Gas Tariff, First Revised Volume No. 1, as revised in certain minor respects, pursuant to Part 154, Subpart G of the Commission's Regulations, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that in order to effectuate the integration of the Ozark and NOARK systems, Applicants request certificate authorization to construct new facilities necessary to interconnect the existing Ozark system with the intrastate pipeline and related facilities of NOARK. Applicants also propose to construct certain minor facilities in order to expand capacity at a point located in Latimer County, Oklahoma (known as the Boiling Springs interconnect) at which the existing Ozark system currently receives gas from Enogex Inc., an Oklahoma interstate pipeline which provides interstate transportation service under Section 311 of the Natural Gas Policy Act of 1978.

The Applicants request an advance determination that rolled-in treatment of the costs associated with Enogex Interstate's acquisition of the NOARK system and its construction of the facilities required to interconnect the Ozark and NOARK systems is appropriate under the Commission's Pricing Policy Statement.

Applicants also request blanket certificates under Part 284 of the Commission's Regulations to provide open access service and Part 157 to engage in routine construction activities.

Applicants state that, immediately following Enogex Interstate's acceptance of certificate authorization relating to its acquisition of Ozark and the consummation of the contemplated purchase and sale transaction, Enogex Interstate intends, and therefore requests authorization from this Commission, to change its name (and thus the name of the certificate holder) from Enogex Interstate Transmission L.L.C. to Ozark Gas Transmission, L.L.C.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1998, file with Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rule.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the

time required herein or if the Commission on its own review of the matter finds that a grant of the application is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion, believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7254 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–10–000]

Helmerich & Payne, Inc.; Notice of Petition for Adjustment

March 16, 1998.

Take notice that on March 3, 1998, Helmerich & Payne, Inc. (H&P), filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for an adjustment of the Commission's refund procedures [15 U.S.C. 3142(c) (1982)] with respect to H&P's Kansas ad valorem tax refund liability.

The Commission's September 10, 1997 order on remand from the D.C. Circuit Court of Appeals,[1] in Docket No. RP97–369–000 *et al.*,[2] directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in its *Order Clarifying Procedures* [82 FERC ¶ 61,059 (1998)], stating therein that producers [first sellers] could request additional time to establish the uncollectability of royalty refunds, and that first sellers may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on their individual circumstances.

H&P requests a 1-year deferral of payment, to the relevant Pipelines [Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, KN Interstate Gas Transmission Company, and Colorado Interstate Gas Company], of the principal and interest refunds attributable to royalties until March 9, 1999. In addition, H&P requests that it be allowed to place into an escrow account certain portions of the remaining refunds allegedly due to Pipelines. H&P asserts that these procedures are needed to ensure that it pays only that which is legitimately owed, and to ensure that it can recover the overpayment, if it is subsequently determined that its refund liability was less than that originally claimed by the Pipelines. H&P states that a 1-year deferral in the obligation to make royalty refunds is necessary in order to allow it to confirm the refund amounts due, to locate the prior royalty owners, and to seek recovery of such amounts from the proper royalty owners.

On or before March 9, 1999, H&P proposes to file with the Commission documentation of those royalties which were not collectible and disburse to Pipelines those royalty refunds which were recovered (principal only), except for refunds attributable to pre-October 3, 1983, production. At that time, H&P proposes to place the interest from royalty refunds which was recovered in its escrow account to protect the royalty owners. In addition, H&P asserts that its proposal for an escrow account is necessary to protect its property and that of its royalty owners. H&P also proposes to place the following amounts into that escrow account:

(1) The principal amount of refunds and interest thereon attributable to royalty refunds (during the 1-year deferral period);

(2) The principal and interest amount of refunds attributable to production prior to October 3, 1983 (excluding royalties attributable thereto during the 1-year deferral period); and

(3) The interest due on principal refunds other than royalty refunds (during the 1-year deferral period) and pre-October 3, 1983, production refunds.

H&P requests the 1-year deferral and the authorization to place such monies into an escrow account pursuant to the Commission's January 28, 1998, *Order Clarifying Procedures.*

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7263 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–7–000]

Midcoast Interstate Transmission, Inc.; Notice of Filing

March 16, 1998.

Take notice that on March 5, 1998, Midcoast Interstate Transmission, Inc. (Midcoast) filed standards of conduct in response to a February 5, 1998 order from the Director, Office of Pipeline Regulation, requiring that Midcoast revise its standards of conduct to reflect the relocation of the offices of its marketing affiliate.[1]

Midcoast states that it has served copies of its revised standards of conduct upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 31, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7258 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

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[1] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[2] See 890 FERC ¶61,264 (1997); order denying reh'g issued January 28. 1998, 82 FERC ¶61,058 (1998).

[1] 82 FERC ¶ 62,074 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–3–25–005]

Mississippi River Transmission Corporation; Notice of Refund Report

March 16, 1998.

Take notice that on February 17, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing its refund report associated with the January 16, 1998 distribution of refunds, including interest, for its Miscellaneous Revenue Flowthrough Adjustment balance applicable to the period November 1, 1995 through August 31, 1996.

MRT states that based on inquiries from several customers, MRT has discovered that several FTS customers were inadvertently excluded from the refund distribution. MRT states that attached to the filing are revised exhibits for the corrected distribution of refunds to MRT's FTS customers.

MRT states that copies of the filing is being mailed to each of MRT's affected customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7265 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–11–000]

Mull Drilling Company, Inc.; Notice of Petition for Adjustment

March 16, 1998.

Take notice that on March 5, 1998, Mull Drilling Company, Inc. (MDC), filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) [15 U.S.C. 3142(c) (1982)], requesting an order from the Commission determining: (1) that a Termination Agreement between MDC and Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company, (Williams) absolves MDC of its liability to make Kansas ad valorem tax refunds under those terminated contracts; (2) that MDC is only responsible for Kansas ad valorem tax refund amounts attributable to its working interest; (3) that the payment of Kansas ad valorem tax refunds will create a special hardship for MDC and, therefore, that MDC should be permitted to amortize its refunds over a reasonable period of time; and (4) that MDC's liability for Kansas ad valorem tax refunds attributable to the Clarke and Zundle leases should be waived, on the basis that MDC can no longer recoup any refunds from the owners of those leases.[1] Absent adjustment relief, the Kansas ad valorem tax refunds are required by the Commission's September 10, 1997 order in Docket No. RP97–369–000 *et al.*[2] MDC's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. That order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

MDC states that it was a party to certain gas purchase contracts entered into with Cities Service Gas Company (Williams' predecessor in interest). MDC explains that, as the operator, of the leases dedicated under those contracts, MDC acted on behalf of itself and, in some cases, third-party working interest owners. MDC adds that it passed along the funds, including the Kansas ad valorem tax reimbursement funds, to the other working interest owners, and only retained those funds attributable to its own working interest. In addition, MDC states that all but two of the contracts with Williams were terminated on March 31, 1993, and that the Termination Agreement with Williams contained broad release and indemnity provisions under which the parties agreed that all existing claims on the effective date of the Termination Agreement, arising from the rights and obligations under the subject contracts, would be forever "released and discharged."

MDC asserts that, because Williams did not exclude the Kansas ad valorem tax refund liability from the terms of the Termination Agreement, MDC should not owe any refunds to Williams for the Kansas ad valorem tax reimbursements that Williams made (to MDC) under those contracts.[4]

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the Federal Register of this notice, file with the Federal energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7264 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

[1] MDC states that the Clarke and Zundle leases were each dedicated to a Williams contract, and that the leases were sold to a third party some years ago. In view of this, MDC asserts that it has no ability to recoup refunds from future production of these two leases.

[2] See 80 FERC ¶61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶61,058 (1998).

[3] *Public Service Company of Colorado* versus, *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

[4] MDC's adjustment petition identifies its Williams contracts and the leases under those contracts, but does not specify which two contracts were not covered by the 1993 Termination Agreement.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–265–000]

Ozark Gas Transmission System; Notice of Application

March 16, 1998.

Take notice that on March 5, 1998, Ozark Gas Transmission System (Ozark) filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Regulations of the Federal Energy Regulatory Commission (Commission) thereunder, for a certificate of public convenience and necessity authorizing

the abandonment by sale to Enogex Interstate Transmission L.L.C. (Enogex Interstate) of all its pipeline facilities and services provided under the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Ozark has requested that the Commission expedite its review of the abandonment application and issue an order approving the transfer of the Ozark system to Enogex Interstate no later than July 1, 1998. Ozark states that it has entered into a Purchase and Sale Agreement wherein Ozark has agreed, subject to necessary Commission authorizations, to sell to Enogex Interstate all of Ozark's pipeline and appurtenant facilities that provide service under Ozark's FERC Gas Tariff and the Commission's jurisdiction under the Natural Gas Act. Ozark states that Enogex Interstate is simultaneously filing an application under Section 7(c) of the NGA seeking authority to own and operate, without interruption, the Ozark system.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1998, file with Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction of the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA, and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that abandonment by sale of the facilities is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Ozark to appear or to be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7251 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–17–002]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

March 16, 1998.

Take notice that on March 11, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, certain tariff sheets filed in compliance with the Commission's February 24, 1998 Letter Order in this Docket. PG&E GT–NW states that this compliance filing corrects certain pagination and formatting errors identified by the Commission.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7257 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–276–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

March 16, 1998.

Take notice that on March 9, 1998, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP98–276–000 a request pursuant to Sections 157.205, and 157.211, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a delivery point under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas proposes to construct and operate a delivery point for Protein Technologies, Inc. (Protein Technologies) in Shelby County, Tennessee. Protein Technologies has requested that Texas Gas construct the delivery point and will reimburse Texas Gas in full for the cost of the facilities which is estimated to be $121,500. Protein Technologies is requesting up to 12,000 MMBtu of natural gas per day of interruptible transportation service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7256 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–159–000]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Cash-Out Report

March 16, 1998.

Take notice that on March 11, 1998, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing, pursuant to Article 9.7(d) of the General Terms and Conditions of its FERC Gas Tariff, its report to net revenue received from cash-outs. Williams proposes to make the refund upon Commission approval of its calculation method as set out in this report.

Williams states that pursuant to the cash-out mechanism in Article 9.7(a)(iv) of its FERC Gas Tariff, Shippers were given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing-out such imbalances at 100% of the spot market price applicable to Williams as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred. Net monthly imbalances which were not resolved by the end of the second month following the month in which the imbalance occurred and which exceeded the tolerance specified in Article 9.7(b) were cashed-out at a premium or discount from the spot price according to the schedules set forth in Article 9.7(c). Williams is herewith filing its report of net revenue (sales less purchase cost) received from cash-outs.

Williams states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7261 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–54–000, et al.]

Boston Edison Company, et al., Electronic Rate and Corporate Regulation Filings

March 13, 1998.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. DR98–54–000]

Take notice that on February 26, 1998, Boston Edison Company, filed a request for approval of changes in depreciation rates for distribution plant from 2.38% to 2.98%, for accounting purposes only, pursuant to Section 302 of the Federal Power Act. The proposed changes were approved for retail purposes by the Massachusetts Department of Telecommunications and Energy.

Comment date: April 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Delhi Energy Services, Inc.

[Docket No. ER95–940–011]

Take notice that on March 10, 1998, Delhi Energy Services, Inc., tendered for filing quarterly report for the quarter ending December 31, 1997.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. VTEC Energy, Inc.

[Docket No. ER95–1855–009]

Take notice that on March 9, 1998, VTEC Energy, Inc., tendered for filing quarterly sales report, reporting no sales for the fourth quarter of 1997.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Megan-Racine Associates, Inc.

[Docket Nos. ER96–1477–002, EL95–40–002, EL95–47–003, and QF89–58–007]

Take notice that, on March 9, 1998, Megan-Racine Associates, Inc., Niagara Mohawk Power Corporation and the Federal Deposit Insurance Corporation, as Receiver for New Bank of New England, N.A., filed a Joint Motion to withdraw certain pleadings now pending before the Commission in the above-referenced proceedings and to terminate these proceedings with prejudice. This Joint Motion implements the terms and conditions of a Liquidating Plan of Reorganization involving Megan-Racine Associates, Inc.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER98–1855–000]

Take notice that on March 9, 1998, the California Independent System Operator Corporation (ISO), amended its filing in this docket by submitting a superseding Meter Service Agreement for Scheduling Coordinators between the ISO and Illinova Energy Partners, Inc., for filing and acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96–19–003 and ER96–1663–003, including the California Public Utilities Commission.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER98–1857–000]

Take notice that on March 9, 1998, the California Independent System Operator Corporation (ISO), amended its filing in this docket by submitting a superseding Meter Service Agreement for Scheduling Coordinators between the ISO and Salt River project Agricultural Improvement and Power District for filing and acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96–19–003 and ER96–1663–003, including the California Public Utilities Commission.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. California Independent System Operator Corporation

[Docket No. ER98–2114–000]

Take notice that on March 6, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and the California Department of Water Resources for Acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96–

19–003 and ER96–1663–003, including the California Public Utilities Commission.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER98–2122–000]

Take notice that on March 9, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and the California Department of Water Resources for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96–19–003 and ER96–1663–003, including the California Public Utilities Commission.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER98–2124–000]

Take notice that on March 9, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement Between the ISO and the California Department of Water Resources for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96–19–003 and ER96–1663–003, including the California Public Utilities Commission.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power

[Docket No. ER98–2130–000]

Take notice that on March 10, 1998, Washington Water Power tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with Research Energy Services, Inc. WWP requests waiver of the prior notice requirement and requests an effective date of February 23, 1998.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Puget Sound Energy, Inc.

[Docket No. ER98–2131–000]

Take notice that on March 10, 1998, Puget Sound Energy, Inc., tendered for filing a revised Governing Agreement of the Northwest Regional Transmission Association. A copy of the filing was served upon all Parties to the Agreement.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. The Dayton Power and Light Company

[Docket No. ER98–2132–000]

Take notice that on March 9, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Griffin Energy Marketing, L.L.C., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Griffen Energy Marketing, L.L.C., and the Public Utilities Commission of Ohio.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Electric Company Cambridge Electric Light Company

[Docket No. ER98–2133–000]

Take notice that on March 10, 1998, Commonwealth Electric Company (Commonwealth), and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Market-Based Power Sales Customers (collectively referred to herein as the Customers):

PG&E Energy Trading-Power, L.P.
Fitchburg Gas and Electric Light Company

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). Theses Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customers to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Co.

[Docket No. ER98–2134–000]

Take notice that on March 10, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Cargill Energy Division under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the open Access Transmission Tariff.

Copies of the filing were served upon Cargill Energy Division, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. The Dayton Power and Light Company

[Docket No. ER98–2135–000]

Take notice that on March 10, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Amoco Energy Trading Corporation, Strategic Energy Ltd., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the this filing were served upon Amoco Energy Trading Corporation, Strategic Energy Ltd., and the Public Utilities Commission of Ohio.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. The Dayton Power and Light Company

[Docket No. ER98–2136–000]

Take notice that on March 9, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Amoco Energy Trading Corporation, Strategic Energy Ltd., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the

Commission's notice requirements. Copies of the this filing were served upon Amoco Energy Trading Corporation, Strategic Energy Ltd., and the Public Utilities Commission of Ohio.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. PacifiCorp

[Docket No. ER98–2137–000]

Take notice that PacifiCorp, on March 10, 1998, tendered for filing in accordance with 18 CFR 35.28 of the Commission's Rules and Regulations, an amendment to its filing of an unexecuted contract entitled Amendment No. 1, to the AC Intertie Agreement between PacifiCorp and Bonneville Power Administration (Bonneville).

Copies of this filing were supplied to Bonneville, the Public Utility Commission of Oregon, Public Service Commission of Utah, and the Washington Utilities and Transportation Commission.

PacifiCorp renews its requests the an effective date of January 3, 1997, be assigned to the Agreement.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, a bits, no parity, 1 stop bit).

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. PacifiCorp

[Docket No. ER98–2138–000]

Take notice that PacifiCorp, on March 10, 1998, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Service Agreement with Commonwealth Energy Corporation under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER98–2139–000]

Take notice that on March 10, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff entered into between Cinergy and Duke Power, a division of Duke Energy Corporation (Duke Power).

Cinergy and Duke Power are requesting an effective date of February 15, 1998.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Cinergy Services, Inc.

[Docket No. ER98–2140–000]

Take notice that on March 5, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and PacifiCorp Marketing, Inc., (PacifiCorp).

Cinergy and PacifiCorp are requesting an effective date of February 16, 1998.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER98–2141–000]

Take notice that on March 5, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Duke Power, a division of Duke Energy Corporation (Duke Power).

Cinergy and Duke Power are requesting an effective date of February 15, 1998.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Virginia Electric and Power Company

[Docket No. ER89–2142–000]

Take notice that on March 10, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Cargill Energy Division under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Cargill Energy Division, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Desert Generation & Transmission

[Docket No. ER98–2143–000]

Take notice that Desert Generation & Transmission Cooperation on March 10, 1998, tendered for filing an executed umbrella non-firm point-to-point service agreement with Aquila Power Corporation under its open access transmission tariff. Desert requests a waiver of the Commission's notice requirements for an effective date of March 10, 1998. Desert's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. Acquila Power Corporation has been provided a copy of this filing.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Maine Public Service Company

[Docket No. ER98–2144–000]

Take notice that on March 10, 1998, Maine Public Service Company submitted Amendments to Agreements for full requirements wholesale power with both Van Buren Light and Power Company, and with Eastern Maine Electric Cooperative.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Pacific Gas and Electric Company

[Docket No. ER98–2145–000]

Take notice that on March 6, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing errata to the amendments to its Master Must-Run Agreements with the California Independent System Operator (ISO), filed on January 29, 1998. The errata correct proposed modifications to the billing, settlement and payment procedures in these agreements.

PG&E has served this filing on all parties listed on the official service list in Docket Nos. ER98–495–000 and ER98–495–001, including the California Public Utilities Commission.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Niagara Mohawk Power Corporation

[Docket No. ER97–2146–000]

Take notice that on March 10, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), filed Service Agreements for transmission and wholesale requirements services in conjucntion with an electric retail access pilot program that are established by the New York Public Service Commission effective November 1, 1997. The Service Agreements for

transmission services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 3; as modified by an Order of the Commission in this proceeding dated November 7, 1997. The Service Agreements for wholesale requirements services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 4; as modified by an Order of the Commission in this proceeding dated November 7, 1997. Niagara Mohawk's customer is Energetix, Inc.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Otter Tail Power Company

[Docket No. ER97–2147–000]

Take notice that Otter Tail Power Company (OTP), on March 10, 1998, tendered for filing a transmission service agreement between itself and PECO Energy. The agreement establishes PECO Energy as a customer under OTP's transmission service tariff (FERC Electric Tariff, Original Volume No. 7).

OTP respectfully requests an effective date sixty days after filing. OTP is authorized to state that PECO Energy joins in the requested effective date.

Copies of the filing have been served on PECO Energy, Pennsylvania Public Utility Commission, Minnesota Public Utilities Commission, North Dakota Public Service Commission, and the South Dakota Public Utilities Commission.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Louisville Gas And Electric Company

[Docket No. ER98–2148–000]

Take notice that on February 27, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and Tenaska Power Services Company under LG&E's Open Access Transmission Tariff.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Louisville Gas and Electric Company

[Docket No. ER98–2149–000]

Take notice that on February 27, 1998 Louisville Gas and Electric Company (LG&E), tendered for filling a Consent to Assignment form between LG&E and Cargill–IEC, LLC, assigning its Purchase and Sales Agreement with Heartland Energy Services dated April 1, 1996 and filed with the Commission in Docket No. ER96–2001–000 to Cargill–IEC, LLC.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Public Service Company of New Mexico

[Docket No. ER98–2152–000]

Take notice that on March 10, 1998, Public Service Company of New Mexico (PNM), filed as an amendment to the San Juan Project Operating Agreement (Operating Agreement), an Interim Invoicing Agreement with respect to invoicing for coal deliveries from San Juan Coal Company among PNM, Tucson Electric Power Company (TEP), and the other owners of interests in the San Juan Generating Station. This interim agreement effectively modifies Modification 8 to the Operating Agreement for an interim period from January 1, 1998 through December 31, 1998.

PNM requests waiver of the Commission's notice requirements in order to allow the Interim Invoicing Agreement to be effective as of January 1, 1998.

Copies of this filing have been served upon the New Mexico Public Utility Commission, TEP and each of the owners of an interest in the San juan Generating Station.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Androscogging Energy LLC

[Docket No. QF96–114–001]

Take notice that on March 10, 1998, Androscoggin Energy LLC (Applicant), tendered for filing a supplement to its filings of October 27, 1997, and February 18, 1998, in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining to the owners' stream of benefits from the cogeneration facility.

Comment date: April 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7236 Filed 3–19–98; 8:45 am]

BILING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1377–001, et al.]

New Century Operating Companies, et al.; Electric Rate and Corporate Regulation Filings

March 12, 1998

Take notice that the following filings have been made with the Commission:

1. New Century Operating Companies

[Docket No. ER98–1377–001]

Take notice that on March 9, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company submitted an amendment to the original filing in this docket.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Oklahoma Gas and Electric Company

[Docket No. ER98–2107–000]

Take notice that on March 9, 1998, Oklahoma Gas and Electric Company (OG&E), revised it's Open Access Tariff to provide Point-To-Point Transmission Service under the Southwest Power Pool, Inc. (SPP), Regional Tariff.

Copies of this filing have been served on the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Consumers Energy Company

[Docket No. ER98–2112–000]

Take notice that on March 9, 1998, Consumers Energy Company (CECo), tendered for filing a Service Agreement for Network Integration Service and a Network Operating Agreement for the Keebler Company. This filing was made pursuant to CECo's Open Access Transmission Tariff and the Michigan Public Service Commission's retail direct access program. CECo requests an

effective date of December 22, 1997. Copies of the filing were served on the Keebler Company and the Michigan Public Service Commission.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. DTE Energy Trading, Inc.

[Docket No. ER98–2117–000]

Take notice that on March 9, 1998, DTE Energy Trading, Inc., tendered for filing a Master Agreement for Power Sales Tariff between DTE Energy Trading, Inc., and Northern Indiana Public Service Company, dated as of February 27, 1998. DTE Energy Trading, Inc., requests that the Master Agreement be made effective as of February 27, 1998.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER98–2121–000]

Take notice that PacifiCorp, on March 9, 1998, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Service Agreement with American Electric Power Co., Inc. (AEP), under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12 and AEP's Certificate of Concurrence.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Central Louisiana Electric Company, Inc.

[Docket No. ER98–2123–000]

Take notice that on March 9, 1998, Central Louisiana Electric Company, Inc., (LECO), tendered for filing two service agreements under which CLECO will provide non-firm and short term firm point-to-point transmission services to Merchant Energy Group of the Americas, Inc., under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Merchant Energy Group of the Americas, Inc.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER98–2125–000]

Take notice that on March 9, 1998, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and ConAgra Energy Services, Inc., and Western Resources and EnerZ Corporation. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective March 3, 1998, and March 2, 1998, respectively.

Copies of the filing were served upon ConAgra Energy Services, Inc., EnerZ Corporation, and the Kansas Corporation Commission.

Comment date: March 27, 1998, in accordance with Standard paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. ER98–2126–000]

Take notice that on March 9, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated March 2, 1998, between KCPL and Cargill-Alliant, LLC. KCPL proposes an effective date of March 2, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: March 27, 1998, in accordance with Standard paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER98–2127–000]

Take notice that on March 9, 1998, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for non-firm point-to-point transmission service and a service agreement providing for firm point-to-point transmission service to Municipal Electric Authority of Georgia (MEAG), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on March 10, 1998.

Comment date: March 27, 1998, in accordance with Standard paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER98–2128–000]

Take notice that on March 9, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date March 13, 1998. Wisconsin Electric is authorized to state that Columbia Power Marketing Corporation joins in the requested effective date.

Copies of the filing have been served on Columbia Power Marketing Corporation, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 27, 1998, in accordance with Standard paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER98–2129–000]

Take notice that on March 9, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Scana Energy Marketing will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 1, 1998.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7233 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–19–000m et al.]

Ogden Energy China (Delta) Ltd., Electric Rate and Corporate Regulation Filings

March 10, 1998.

Take notice that the following filings have been made with the Commission:

1. Ogden Energy China (Delta) Ltd.

[Docket No. EG98–19–000]

Take notice that, on March 3, 1998, Ogden Energy China (Delta) Ltd. (OECD), filed with the Federal Energy Regulatory Commission (Commission) an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations..

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Citizens Power LLC and Peabody Investments, Inc.

[Docket Nos. EC98–30–000, ER94–1685–019, ER95–393–018, ER95–892–019, and ER96–2652–009]

Take notice that on March 6, 1998, Citizens Power LLC and Peabody Investments, Inc., filed an application for an order authorizing the proposed sale and transfers of control over their power marketing affiliates and subsidiaries (Citizens Power Sales; Hartford Power Sales, L.L.C.; CL Power Sales One, L.L.C.; CL Power Sales Two, L.L.C.; CL Power Sales Three, L.L.C.; CL Power Sales Four, L.L.C.; CL Power Sales Five, L.L.C.; CL Power Sales Six, L.L.C.; CL Power Sales Seven, L.L.C.; CL Power Sales Eight, L.L.C.; CL Power Sales Nine, L.L.C.; and CL Power Sales Ten, L.L.C.) to P&L Coal Holdings Corporation. Applicants request that the Commission approve the application by April 15, 1998. The application also constitutes a notice of change in status for each of the power marketing affiliates and subsidiaries.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Merilectrica I S.A. & Cia, S.C.A. E.S.P.

[Docket No. EG98–48–000]

On March 2, 1998, Merilectrica I S.A. & Cia, S.C.A. E.S.P., a Colombia corporation (Merilectrica), c/o Prospeccion S.A., A.A. 12203, Medellin, Colombia, S.A., 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.

Merilectrica is a company established for the purpose of operating the Termomerilectrica Project for the generation and sales of wholesale electric power to utilities and retail electric power to industrial end users in Colombia. The sponsors of the Merilectrica and their respective interests are as follows: Conoco Global Energy Company (Conoco) (36.3825%); Wing Colombia, L.L.C. (Wing) (36.3825%); Merilectrica Colombia Partners I, Limited Partnership (MCP) (1.48499%); Compania Suramericana de Construcciones S.A. (Suramericana) (4.85099%); Compania de Investigaciones Economicas Prospección S.A. (Prospección) (0.495%); Merilectrica I S.A. (1.0%) (General Partner); Compania de Cemento Argos, S.A. (Cemento Argos) (4.85099%); Compania Nacional de Chocolates S.A. (Chocolates) (4.85099%); Corporation Financiere Nacional y Suramericana S.A. (Financiere) (4.85099%); and Reasegurado do Colombia S.A. (Reaseguarado) (4.85099%). A 160 MW single-cycle gas-fired electric generating plant will be installed in Barrancabermeja, Santander, Colombia and owned by Applicant excepting the equipment installed in such plant which will be owned by TLC International LDC.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. TLC International LDC

[Docket No. EG98–49–000]

On March 2, 1998, TLC International LDC (TLC), a Cayman Islands limited duration company, c/o Prospeccion S.A., A.A. 12203, Medellin, Colombia, S.A., 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.

TLC is a company established for the purpose of owning the Termomerilectrica Project for the generation and sales of wholesale electric power to utilities and retail electric power to industrial end users in Colombia. A 160 MW single-cycle gas-fired electric generating plant will be installed in Barrancabermeja, Santander, Colombia and owned by Merilectrica I S.A. & Cia, S.C.A. E.S.P. excepting the equipment in such plant will be owned by TLC International LDC. Merilectrica I S.A. & Cia, S.C.A. E.S.P. will lease the equipment from the owner.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. California Power Exchange Corporation

[Docket Nos. ER98–210–000 and ER98–1729–000 *et al.*]

Take notice that the California Power Exchange Corporation (PX), on March 5, 1998, filed the following substitute tariff sheets to be effective on March 31, 1998, pursuant to Section 205 of the Federal Power Act:

Substitute First Revised Sheet No. 207
Substitute First Revised Sheet No. 298

On January 30, 1998, the PX filed an amended rate filing. Subsequent to that time, the PX discovered three errors in two of its tariff sheets that were filed in the January 30 amended rate filing. The PX submits that its filing corrects such errors.

The PX seeks any waivers necessary to allow this tariff sheet to go into effect on March 31, 1998.

Copies of the filing were served upon all persons included on the service list compiled in Docket Nos. ER98–210–000 and ER98–1729–000.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER98–1759–000]

Take notice that on March 5, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreements to provide Non-Firm Point-To-Point Transmission Service to the Williams Energy Services Company under the NU System Companies Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the Williams Energy Services Company.

NUSCO requests that the Service Agreement become effective February 2, 1998.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER98–2028–000]

Take notice that on March 5, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy

Arkansas, Inc. (EAI), (formerly Arkansas Power & Light Company), tendered for filing an amendment in the above-referenced docket.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas And Electric Company

[Docket No. ER98–2088–000]

Take notice that on February 27, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Tenaska Power Services Company under LG&E's Open Access Transmission Tariff.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER98–2089–000]

Take notice that on March 5, 1998, Public Service Company of New Mexico (PNM), submitted for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Amoco Energy Trading Corporation (2 agreements, dated February 26, 1998, for Non-Firm and Firm Service), and ConAgra Energy Services, Inc. (1 agreement, dated March 3, 1998, for Non-Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. PP&L, Inc.

[Docket No. ER98–2090–000]

Take notice that on March 5, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated March 2, 1998, with Tractebel Energy Marketing, Inc. (Tractebel), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Tractebel as an eligible customer under the Tariff.

PP&L requests an effective date of March 5, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Tractebel and to the Pennsylvania Public Utility Commission.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Services Company

[Docket No. ER98–2091–000]

Take notice that on March 5, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service between ASC and Public Service Electric and Gas Company (PSE&G). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to PSE&G pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER98–2092–000]

Take notice that on March 5, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated March 1, 1998, with Griffin Energy Marketing, L.L.C., entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of March 1, 1998, for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Griffin Energy Marketing, L.L.C., the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER98–2093–000]

Take notice that on February 27, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Illinois Power Company under LG&E's Open Access Transmission Tariff.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket No. ER98–2094–000]

Take notice that on March 5, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing a change in rates for Economic Development Power (EDP), service under FERC Rate Schedule No. 179.

NYSEG requests waiver of the Commission's 60 day notice requirements and an effective date of October 9, 1997, for the rate change. NYSEG has served copies of the filing on the New York State Public Service Commission, the New York Power Authority, and affected EDP customers.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Washington Water Power

[Docket No. ER98–2097–000]

Take notice that on March 5, 1998, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed a Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with City of Burbank California, which replaces an unexecuted service agreement previously filed with the Commission under Docket No. ER97–1252–000, Service Agreement No. 27, effective December 15, 1996.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER98–2098–000]

Take notice that on March 5, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and VTEC Energy, Inc., under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97–3561–001. Under the tendered Service Agreement, Virginia Power will provide services to VTEC Energy, Inc., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of March 5, 1998, for the Service Agreement.

Copies of the filing were served upon VTEC Energy, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. San Diego Gas & Electric Company

[Docket No. ER98–2096–000]

Take notice that on March 4, 1998, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.13, a

Service Agreement with Public Service Company of New Mexico for Point-To-Point Transmission Service under SDG&E's Open Access Transmission Tariff (Tariff), in compliance with FERC Order No. 888A.

SDG&E filed the executed Service Agreement with the Commission in compliance with applicable Commission Regulations. SDG&E also provided Sheet No. 114 (Attachment E) to the Tariff, which is a list of current subscribers. SDG&E requests waiver of the Commission's notice requirement to permit an effective date of March 30, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–2099–000]

Take notice that on March 5, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a revised tariff sheet amending Con Edison's Electric Rate Schedule No. 3, for the Wholesale Sale of Electricity to Implement Retail Access in New York City and Westchester County. The filing would modify the price for in-city capacity sales by Con Edison under that rate schedule. The price for such sales will remain subject to cost-based maximum and minimum rates.

Con Edison states that a copy of this filing has been served by mail upon The New York State Public Service Commission and upon parties to Con Edison's service restructuring proceeding before the New York State Department of Public Service.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Western Resources, Inc.

[Docket No. ER98–2100–000]

Take notice that on March 5, 1998, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and Engage Energy US, L.P. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective March 2, 1998.

Copies of the filing were served upon Engage Energy US, L.P., and the Kansas Corporation Commission.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. PacifiCorp

[Docket No. ER98–2101–000]

Take notice that PacifiCorp, on March 5, 1998, tendered for filing, in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Exhibit A (Revision No. 20, effective September 30, 1997), to the February 25, 1976, Transmission Agreement (PacifiCorp Rate Schedule FERC No. 123) between PacifiCorp and Tri-State Generation and Transmission Association, Inc. (Tri-State), and Supplement and Amendment No. 5 to the Transmission Agreement.

Copies of this filing were supplied to Tri-State, the Wyoming Public Service Commission, the Public Utility Commission of Oregon and the Washington Utilities and Transmission Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7234 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–50–000, et al.]

Zhengzhou Dengwei Power Company Ltd., et al.; Electric Rate and Corporate Regulation Filings

March 11, 1998.

Take notice that the following filings have been made with the Commission:

1. Zhengzhou Dengwei Power Company Ltd.

[Docket No. EG98–50–000]

Take notice on March 2, 1998, Zhengzhou Dengwei Power Company Ltd. (Dengwei), a Chinese cooperative joint venture, 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.

Dengwei is a company established for the purpose of owning the 55 MW coal-fired power project in Dengfeng City, Henan Province (Project), for the generation and sales of wholesale electric power to utilities and retail electric power to industrial end users in China. The sponsors of the Project and their respective interests are as follows: Henan Dengfeng Power Group Company Limited (Power Group) (51%) and Western Resources International Limited (49%).

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Tucson Electric Power Company

[Docket No. ER98–856–000]

Take notice that on February 17, 1998, Tucson Electric Power Company (TEP), tendered for filing its response to the deficiency letter issued by the Director, Division of Rate Applications, Office of Electric Power Regulation in the above referenced docket on January 15, 1998.

Comment date: April 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Texas Utilities Electric Company

[Docket No. ER98–1202–000]

Take notice that on March 6, 1998, Texas Utilities Electric Company (TU Electric), tendered for filing its compliance filing of certain revised unexecuted Transmission Service Agreements (TSA's) with Central Power & Light Company (CPL), and West Texas

Utilities Company (WTU), for service from TU Electric pursuant to TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections (TFO Tariff), pursuant to the Commission's Order issued February 20, 1998.

Copies of the compliance filing were served on Central Power & Light Company and West Texas Utilities Company, as well as the Public Utility Commission of Texas.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–2102–000]

Take notice that on March 6, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a service agreement with Columbia Power Marketing Corporation under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER98–2103–000]

Take notice that on March 6, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated February 23, 1998, with the City of Carlisle, IA (Carlisle) entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff), and a Wholesale Full Requirements Power Sales Agreement dated February 23, 1998, with the City of Carlisle, IA, entered into pursuant to the Service Agreement and the Tariff.

MidAmerican requests an effective date of February 23, 1998, for these Agreements, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Carlisle, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER98–2104–000]

Take notice that on March 6, 1998, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Long-Term Point-to-Point Transmission Service with Enron Power Marketing, Inc.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective March 1, 1998.

A copy of this filing was caused to be served upon Enron Power Marketing, Inc., as noted in the filing letter.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Central Illinois Light Company

[Docket No. ER98–2105–000]

Take notice that Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, on March 6, 1998, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for one new customer, Tennessee Valley Authority.

CILCO requested an effective date of February 25, 1998.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Portland General Electric Company

[Docket No.ER98–2106–000]

Take notice that on March 6, 1998, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma tariff FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term and Non-Firm Point-to-Point Transmission Service with Amoco Energy Trading Company.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreements to become effective March 1, 1998.

A copy of this filing was caused to be served upon Amoco Energy Trading Company as noted in the filing letter.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Carolina Power & Light Company

[Docket No. ER98–2108–000]

Take notice that on March 6, 1998, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customers: Amoco Energy Trading Corporation and Merchant Energy Group of the Americas, Inc.; and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Merchant Energy Group of the Americas, Inc. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Pool

[Docket No. ER98–2109–000]

Take notice that on March 6, 1998, the New England Power Pool (NEPOOL), Executive Committee filed a service agreement for Through or Out Service or Other Point-to-Point Transmission Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's Regulations.

Acceptance of this Service Agreement will permit NEPOOL to provide transmission service to New York State Electric & Gas Corporation in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented, under the above-referenced dockets. NEPOOL requests a retroactive effective date of February 15, 1998 for commencement of transmission service. Copies of this filing were sent to all NEPOOL members, the New England Public Utility Commissioners and all parties to the transaction.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PP&L, Inc.

[Docket No. ER98–2110–000]

Take notice that on March 6, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated February 20, 1998, with Ontario Hydro (Ontario), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Ontario as an eligible customer under the Tariff.

PP&L requests an effective date of March 6, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Ontario and to the Pennsylvania Public Utility Commission.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER98–2111–000]

Take notice that Cinergy Services, Inc. (Cinergy), on March 4, 1998, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated December 15, 1997, between Cinergy, CG&E, PSI and City of Springfield, Illinois, City Water, Light and Power (Springfield CWL&P).

The Interchange Agreement provides for the following service between Cinergy and Springfield CWL&P:

1. Exhibit A—Power Sales by Cinergy
2. Exhibit B—Transaction Confirmation Letter

Cinergy and Springfield CWL&P have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Springfield, Illinois, City Water, Light and Power, the Illinois Commerce Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. El Paso Electric Company

[Docket No. ER98–2116–000]

Take notice that on March 6, 1998, El Paso Electric Company (EPE), tendered for filing a Certificate of Concurrence in the Southwest Reserve Sharing Group Participation Agreement that was previously filed in FERC Docket No. ER98–917–000.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. The Toledo Edison Company

[Docket No. ER98–2120–000]

Take notice that on March 6, 1998, Toledo Edison Company (TE), tendered for filing a revised tariff under which it is proposing to sell power at market-based rates (the TE Market Based Rate Tariff). TE states that the TE Market Based Rate Tariff incorporates changes to the existing tariff under which TE engages in the sale of electricity at market-based rates that are consistent which changes to be made to similar tariffs of certain affiliated entities if an Offer of Settlement in Docket Nos. ER95–1295–000 and ER96–371–000 is approved by the FERC. TE has proposed to make the TE Market Based Rate Tariff effective on the date on which the corresponding changes to the tariffs of its affiliated entities become effective.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Baltimore Gas and Electric Company; Central Illinois Public Service Co.; Union Electric Company; Duke Power Company; Nantahala Power and Light Company; Long Island Lighting Co.; Portland General Electric Company; South Carolina Electric and Gas Co.; Southern Company Services Alabama Power Company; Georgia Power Company; Gulf Power Company; Mississippi Power Company; Savannah Electric and Power Co.; Southern Indiana Gas and Electric Company; Tampa Electric Company; Tucson Electric Power Company

[Docket Nos. OA97–456–001; OA97–271–001; and OA97–271–001; OA97–450–001; OA97–427–001; OA97–276–001; OA97–416–001; OA97–398–001; OA97–308–001; OA97–461–001 and OA97–436–001]

Take notice that the companies listed in the above-captioned dockets submitted revised standards of conduct [1] under Order No. 889, *et seq.*[2]

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7235 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–P

[1] The revised standards of conduct were submitted between February 27 and March 5, 1998.

[2] Open Access Same-Time Information System (Formerly Real-Time Information network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–1996 § 31,035 (April 24, 1996), Order No. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), III FERC Stats. & Regs. ¶ 31,253 (November 25, 1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1933–011 and 2198–007]

Southern California Edison Company; Notice of Availability of Final Environmental Assessment

March 16, 1998.

A final environmental assessment (EA) is available for public review. The final EA analyzes the environmental impacts of an application by Southern California Edison Company (licensee) to relocate project facilities. The licensee proposes constructing a new penstock to replace part of the existing flowline for the Santa Ana River (SAR) 1 and 2 Hydroelectric Project No. 1933–011 and all of the flowline for the SAR 3 Hydroelectric Project No. 2198–007. The licensee proposes to construct a new powerhouse to replace both the SAR 2 and SAR 3 powerhouses. The U.S. Army Corps of Engineers is building a new flood control dam in the Santa Ana River Canyon below the SAR 1 and 2 Project. The Seven Oaks Dam will inundate and destroy the SAR 2 powerhouse and the SAR 3 flowline rendering both projects inoperable. The licensee's proposed construction would allow it to continue to operate the projects. Both projects are on the Santa Ana River and its tributaries in San Bernardino County, California.

The final EA finds that the application to relocate project facilities would not constitute a major federal action significantly affecting the quality of the human environment. The final EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission in cooperation with the U.S. Department of Agriculture—Forest Service, San Bernardino National Forest, Big Bear Ranger District. Copies of the final EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7284 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

March 16, 1998.

a. *Type of Application*: Transfer of License.

b. *Project No.*: 8535–029.

c. *Date filed*: February 4, 1998.

d. *Applicants*: Greenwood Ironworks and Virginia Hydrogeneration & Historical Society, L.C.

e. *Name of Project*: Battersea Dam.

f. *Location*: On the Appomattox River in Chesterfield and Dinwiddie Counties, Virginia.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact*: C.D.L. Perkins, General Manager, Virginia Hydrogeneration & Historical Society, L.C., 5001 Falmouth Street, Richmond, VA 23230, (804) 673–9667.

i. *FERC Contact*: Ahmad Mushtaq, (202) 212–2672.

j. *Comment Date*: April 20, 1998.

k. *Description of the Request*: Greenwood Ironworks, licensee, and the Virginia Hydrogeneration & Historical Society, L.C. (VHHS) jointly request that the license for the Battersea Dam Project be transferred from Greenwood Ironworks to VHHS.

l. This notice also consists of the following standard paragraph: B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.201, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7259 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5984–3]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Approval of an Application for Certification of Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of agency approval of an application for equipment certification.

SUMMARY: The Agency received a notification of intent to certify urban bus retrofit/rebuild equipment for 4-stroke petroleum fueled diesel engines pursuant to 40 CFR part 85, subpart O from Engelhard Corporation (Engelhard). Pursuant to § 85.1407(a)(7), a June 16, 1997 **Federal Register** notice summarized the notification and announced that the notification would be available for public review and comment, and initiated a 45-day period during which comments could be submitted. In the notice the Agency stated it would review this notification of intent to certify, as well as comments received, to determine whether the equipment should be certified. EPA has completed its review of this application and the Director of the Engine Program & Compliance Division (EPCD) has determined that it meets the requirements for certification. Accordingly, EPA certifies this equipment effective March 20, 1998.

The Agency received an application dated October 18, 1996 from Engelhard with principal place of business at 101 Wood Ave, South Iselin, New Jersey 08830–0770 for certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR Sections 85.1401–85.1415. On June 16, 1997 EPA published notification that the application had been received and made the application available for public review and comment for a period of 45 days (62 FR 32599). Testing documentation presented to the Agency demonstrates a reduction in particulate matter (PM) of at least 25% for 1992–1993 Cummins electronically controlled L–10 petroleum fueled diesel engines that were not originally equipped with an aftertreatment device. The equipment meets the life-cycle cost requirements of the urban bus retrofit/rebuild program for certification. As such, it triggers the requirements for operators choosing to comply with compliance program 1 for the applicable engines. It may also be used by operators utilizing program 2 to achieve target fleet emission levels.

DATES: The date of this notice March 20, 1998, is the effective date of certification for the equipment.

ADDRESSES: The application, as well as other materials specifically relevant to it, are contained in Public Docket A–93–42 (Category XVII–A), entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Compliance Programs Group, Engine Programs & Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 564–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On October 18, 1996 Engelhard applied for certification of a kit, for use on 4-cycle petroleum fueled diesel Cummins L–10 urban bus engines that were originally manufactured prior to and including the 1993 model year. The notification of intent to certify stated that the candidate equipment would reduce PM emissions by 25% or more on engines that have been rebuilt to Cummins specifications. The test engine

was a 1992 280 HP Cummins L–10 EC engine model. Two tests were performed, one test was performed on the engine without the CMX and a second test was performed on the same engine after retrofit with the CMX. The test data show a PM level of 0.105 g/bhp-hr for the base engine without the CMX, and a PM level of 0.073 g/bhp-hr with the candidate equipment installed. This represents a PM reduction of 30% with the candidate equipment installed. The test data also show that hydrocarbon (HC), carbon monoxide (CO) and oxides of nitrogen (NO_x) are less than applicable standards. Fuel consumption is not affected when the candidate equipment is installed based on comparison of the test results. Engelhard presented smoke emission measurements for the engine demonstrating compliance with applicable standards.

Pricing information was submitted indicating that the equipment will be offered to all affected operators for less than the incremental life-cycle cost ceiling ($2,000 in 1992 dollars). Therefore, certification of this equipment triggers the 25% reduction standard for the applicable engines.

The equipment being certified is a "catalytic Converter Muffler" or CMX™, that is a muffler containing an oxidation catalyst. The CMX is intended to replace the standard muffler previously installed in the engine exhaust system. The CMX is intended to be maintenance free, requiring no service for the full in-use compliance period. The engine fuel to be used with this equipment is diesel fuel with a maximum sulfur content of 0.05 wt.% sulfur.

Engelhard had requested approval for all Cummins L–10 engines manufactured prior to and including 1993 based on exhaust emission data from testing a 1992 280 HP Cummins L–10 EC (electronic control) engine. In the notice of June 16, 1997 EPA noted that this certification would only be applicable to the 1992–1993 L–10 EC model, based on the testing performed on a 1992 model year engine. Engelhard indicated that it planned to supply additional testing data on another engine in order to extend this certification to additional models. EPA indicated that it would consider such information and provide the opportunity for public comment upon receipt. However, sufficient additional information has not been received from Engelhard to alter the applicability of this application. In view of the delay being caused while the additional information is gathered, Engelhard requested that EPA proceed with this action with the applicability of this certification being limited to the 1992–1993 Cummins L–10 EC model at this time. Table A. below provides the emission levels that apply to this certification.

TABLE A.—ENGELHARD RETROFIT/REBUILD CERTIFICATION LEVELS FOR CUMMINS ENGINES

Cummins engine model	Model year	PM certification level with CMX (g/bhp-hr)
L–10 EC	1992–1993	0.19

Under program 1, all rebuilds or replacements of applicable engines performed 6 months following the effective date of this certification must use this certified Engelhard equipment (or other equipment certified to reduce PM by at least 25 percent). This requirement will continue for such engines until such time as it is superseded by equipment that is certified to trigger the 0.10 g/bhp-hr emission standard for less than a life-cycle cost of $7,940 (in 1992 dollars). Engelhard has certified this equipment to a post-rebuild PM certification level of 0.19 g/bhp-hr. Urban bus operators who choose to comply with program 2 and use this equipment will use this PM emission value from Table A. when calculating their average fleet PM level.

II. Summary and Analysis of Comments

EPA received comments from two parties on the Engelhard application during the comment period. The Chicago Transit Authority commented that, while it had no specific comments relative to the Engelhard application, durability testing should be performed with all catalytic converters and expressed a concern over increased backpressure and possible negative effects as the catalytic converter accumulates mileage in service. Engine Control Systems, Ltd.(ECS) commented that this application should only apply to the 1992–1993 L–10 EC model. ECS also asked if the muffler system for which certification is requested by Engelhard will include a removable catalyst section or be fully sealed.

In regard to concerns expressed relative to the need for durability testing, the retrofit/rebuild regulation does not require durability testing. However, while the regulation does not require durability testing, it does require that the certifier supply a defect warranty over the initial 100,000 mile period of use of a certified system. Accordingly, the certifier is required to replace any defective part that is included in the certified kit during the 100,000 mile warranty period. With regard to the issue of backpressure increase and concern over negative effects on the engine, no specific information was provided by the CTA relative to the certification being discussed herein. Therefore, EPA does not find reason to deny this certification based on these concerns. However, should operators experience backpressure increase during use and negative engine effects, such information should be provided to EPA so that this issue may be reviewed in greater detail.

ECS commented that this application should only apply to the 1992–1993 L–10 EC model. EPA has determined that it is appropriate to limit this certification to apply to the 1992–1993 Cummins L–10 EC model based on the test data provided. In the future, Engelhard may supply additional information to extend the applicability of this certification to other models. If this occurs, EPA will provide the opportunity for public comment. ECS also asked if the muffler system for which certification is requested by Engelhard will include a removable catalyst section or be fully sealed. In a letter dated September 29, 1997, Engelhard states that each muffler is specifically designed to fit a specific bus, engine and exhaust configuration. These designs may or may not include a removable center body. However, if at all possible it is Engelhard's practice to utilize the removable center body technology in its muffler designs.

III. Certification Approval

The Agency has reviewed this application, along with comments received from interested parties, and finds that this equipment reduces particulate matter emissions without causing urban bus engines to fail to meet other applicable Federal emission requirements. Additionally, EPA finds that installation of this equipment will not cause or contribute to an unreasonable risk to the public health, welfare or safety, or result in any additional range of parameter adjustability or accessibility to adjustment than that of the engine manufacturer's emission related part. The application meets the requirements for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR 85.1401 and 85.1415).

IV. Operator Requirements and Responsibilities

This equipment may be used immediately by urban bus operators who have chosen to comply with either program 1 or program 2. Operators having certain engines who have chosen to comply with program 1 must use equipment certified within cost limitations to reduce PM emissions by 25 percent or more when those engines are rebuilt or replaced. Today's **Federal Register** notice certifies the above-described Engelhard equipment as meeting the PM reduction and cost limitation requirement. Urban bus operators choosing to comply with program 1 must use the certified Engelhard equipment (or other equipment that is certified in the meantime to reduce PM by at least 25%) for any engine that is listed in Table A that undergo rebuild on or after September 21, 1998, until such time as the 0.10 g/bhp-hr standard is triggered for the applicable engines.

Operators who choose to comply with program 2 and use the Engelhard equipment will use the appropriate PM emission level from Table A. when calculating their fleet level attained (FLA).

As stated in the regulations, operators should maintain records for each engine in their fleet to demonstrate that they are in compliance with the requirements, beginning January 1, 1995. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines.

Dated: March 12, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–7308 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5984–4]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45-day public review and comment period.

SUMMARY: Detroit Diesel Corporation (DDC) has submitted to the Agency a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, subpart O. The notification, with cover letter dated December 8, 1997 describes equipment intended to comply with the 0.10 g/bhp-hr particulate matter (PM) standard.

The candidate equipment is applicable to all 1985 through 1993 model year federal and California certified 6V92TA DDEC engines manufactured by Detroit Diesel Corporation (DDC). This includes all DDEC II engines, DDEC I engines (1985 through 1987), and methanol-fueled engines (manufactured from 1991 through 1993).

The equipment utilizes components from DDC's certified engine upgrade kit, modified fuel injectors, conversion from DDEC II to DDEC III engine control system, and a converter/muffler (previously certified to reduce particulate matter by 25 percent and manufactured by either Engine Control System Ltd, Engelhard Corporation, or Nelson Industries).

Both the federal and California exhaust emissions standards for NOx were lowered to 5.0 g/bhp-hr beginning with the 1991 model year. The emissions data provided with DDC's notification indicate that engines equipped with the candidate equipment can meet the 5.0 g/bhp-hr NO_x standard. Therefore, if certified, the equipment could be used for all applicable engines, including those in California.

No life cycle costs information has been submitted by DDC. If certified, no new requirements would be placed on operators, and no operator would be required to purchase this equipment as a result of the certification.

Pursuant to § 85.1407(a)(7), today's **Federal Register** notice summarizes the notification, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted.

The Agency will review this notification of intent to certify, as well as any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in Category XXIV of Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located at the address listed below.

Today's notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to Public Docket A–93–42, Category XXIV, at the address below, and an identical copy should be submitted to William Rutledge, also at the address below.

DATES: Comments must be submitted on or before May 4, 1998.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category XXIV), Room M–1500, 401 M Street SW., Washington, DC 20460.
2. William Rutledge, Engine Programs and Compliance Division (6403J), 401 "M" Street SW., Washington, DC 20460.

The DDC notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. Telephone: (202) 564–9297.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the

affected buses must use equipment which has been certified by the Agency. Requirements under either of the two compliance options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving at least a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

II. Notification of Intent To Certify

By a notification of intent to certify, DDC applied for certification of equipment applicable to all of its federal and California certified 6V92TA model engines having electronically controlled fuel injection (Detroit Diesel Electronic Control—DDEC) that were originally manufactured between 1985 through December 31, 1994. The notification, with cover letter dated December 8, 1997, signed with the erroneous date of December 12, 1998, and labeled with an "Issued" date of November 19, 1997, describes equipment that is intended to comply with the 0.10 g/bhp-hr standard and is applicable to 6V92TA DDEC engines of model years 1985—1993. DDEC I engines (1985 through 1987) and methanol-fueled engines (manufactured from 1991 through 1993) may also utilize this kit.

The equipment utilizes components from DDC's certified engine upgrade kit, modified fuel injectors, conversion from DDEC II to DDEC III engine control system, and a converter/muffler (previously certified to reduce particulate matter by 25 percent and manufactured by either Engine Control Systems Ltd, Engelhard Corporation, or Nelson Industries).

The equipment to be certified is included in three constituent kits. The three constituent kits included in this submission are as follows:

Engine Rebuild Kit—Newly Manufactured Parts: This kit is comprised of newly manufactured parts and consist of a gasket kit, air inlet hose, blower drive gear (2.05 to 1), blower by-pass valve assembly, cylinder kits (piston assemblies and cylinder liners), new electronic unit fuel injectors and DDEC II to DDEC III conversion kits.

Engine Rebuild Kit—Reliabilt® Parts: This kit includes Reliabilt® remanufactured parts, including camshafts, blower assembly, turbocharger and head assemblies.

Converter/Muffler Kits: In order to provide the greatest flexibility to transit operators by providing several converter/muffler options, DDC plans to include the converter/mufflers provided by three suppliers: Engelhard Corporation, Engine Control Systems Ltd, and Nelson Industries. Transit operators will be able to select a converter/muffler from any one of the suppliers which will be packaged as a direct replacement for the vehicle muffler and which will accommodate the installation requirements of the various engine/vehicle combinations. Certification of the Engelhard CMX™ converter/muffler is described in a **Federal Register** notice of May 31, 1995 (60 FR 28402. The Engine Control Systems' converter/muffler is described in a **Federal Register** notice of January 6, 1997 (62 FR 746). Nelson Industries' converter/muffler is described in a **Federal Register** notice of November 26, 1997 (62 FR 63159).

One of each type of constituent kit is required for the rebuild of an engine. The engine rebuild kit usage is based on the required engine power rating (253 and 277 horsepower is available), engine rotation direction and orientation (43 degree tilt, 15 degree tilt, and upright). The notification includes parts lists. The converter/muffler kit usage is based on the operator's choice of converter supplier and the engine/vehicle combination.

DDC states that standard procedures, as described in the service manual of 92 Series engines, are to be used when rebuilding the base engine using the candidate kit. No unique rebuild procedures are required. Additionally, there are no differences in service intervals or maintenance practices for the base engine associated with the installation of the kit. The converter/muffler requires no regularly scheduled maintenance, only an occasional cleaning if the maximum back pressure of the exhaust system is exceeded.

DDC presents exhaust emission data that were developed for the engine configuration rated at 277 horsepower. Testing of the candidate kit was conducted using each of the three converter/mufflers with the upgraded engine configuration. The test data indicate that the emissions of hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_X), and smoke measurements for the engine equipped with the candidate equipment are less than exhaust emissions standards applicable to 1993 model year urban buses. The data is shown in the table below.

EXHAUST EMISSIONS FROM 6V92TA DDEC II (277 HP)

Gaseous and particulate (g/bhp-hr)					Smoke (percent opacity)			Comment
HC	CO	NO_X	PM	BSFC[a]	ACC	LUG	Peak	
1.3 ...	15.5	5.0	0.10[b]	.....	20	15	50	1993 Urban Bus Standards.
0.3 ...	1.0	4.8	0.08	0.516	1.7	1.2	3.0	Converter/Muffler A.
0.1 ...	0.2	4.7	0.08	0.506	2.2	1.9	2.9	Converter/Muffler B.
0.2 ...	0.5	4.9	0.095	0.517	1.6	1.3	2.7	Converter/Muffler C.

[a] Brake specific fuel consumption in units of pounds of fuel per brake-horsepower-hour.
[b] Non-compliance penalties are available up to 0.25 g/bhp-hr.

No life cycle costs information has been submitted by DDC. DDC does not intend certification of this equipment to trigger program requirements for the applicable engines.

Even if ultimately certified by EPA, the equipment described in DDC's notification may require additional review by the California Air Resources Board (CARB) before use in California. EPA recognizes that special situations

may exist in California that are reflected in the unique emissions standards, engine calibrations, and fuel specifications of the State. While requirements of the federal urban bus program apply to several metropolitan areas in California, EPA understands the view of CARB that equipment certified under the urban bus program, to be used in California, must be provided with an executive order exempting it from the anti-tampering prohibitions of that State. Those interested in additional information should contact the Aftermarket Part Section of CARB, at (818) 575–6848.

Certification of the candidate DDC equipment would affect operators as follows. EPA has not yet certified equipment, for the applicable DDEC engines, to comply with the 0.10 g/bhp-hr standard and as being available for less that the applicable life cycle cost. Therefore, the 0.10 g/bhp-hr PM standard has not been triggered for the applicable engines. If the candidate equipment is certified, then no new requirements would be placed on operators and no operator would be required to purchase this equipment as a result of certification.

If the DDC kit is certified, then it would be available to be used in full compliance with urban bus program requirements. Certification of CMX™ converter/muffler manufactured by the Engelhard Corporation (60 FR 28402; May 31, 1995) triggered the requirement for the applicable engines, when rebuilt or replaced, to reduce PM by at least 25 percent. Until such time that the 0.10 g/bhp-hr standard is triggered, the certification of the CMX™ means that operators who elect to use compliance program 1 must use equipment certified to reduce PM emissions by at least 25 percent, when rebuilding or replacing the applicable engines. If certified, the DDC kit would meet, and exceed, this requirement. The DDC kit could also be used in full compliance when the program requirement to use equipment certified to the 0.10 g/bhp-hr standard is triggered.

If the Agency certifies the candidate equipment, then operators who choose to comply with Program 2 and install this equipment, would use the 0.10 g/bhp-hr certification level in their calculations for fleet level attained (FLA) as specified in the program regulations.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) The certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge relevant to: (a) Problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment described in the DDC notification of intent to certify should be certified pursuant to the Urban Bus Rebuild Requirements. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket. These documents will also be available for public review and comment.

Dated: March 12, 1998.

Richard D. Wilson,

Acting Assistant Administrator, Air and Radiation.

[FR Doc. 98–7309 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5489–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed March 09, 1998 Through March 13, 1998 Pursuant to 40 CFR 1506.9

EIS No. 980070, FINAL EIS, NPS, ME, Saint Croix Island International Historic Site, General Management Plan, Implementation, Calais, Washington County, ME, Due: April 20, 1998, Contact: David Clark (207) 288–5472.

EIS No. 980071, DRAFT EIS, IBR, UT, Narrows Dam and Reservoir Project, Construction of Supplemental Water Supply for Agricultural and Municipal Water Use, Gooseberry Creek, Sanpete and Carbon Counties, UT, Due: May 04, 1998, Contact: Kerry Schwartz (801) 379–1167.

EIS No. 980072, FINAL EIS, NRC, ADOPTION—NAT, Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs, Implementation, Due: April 20, 1998, Contact: Dr. Edward Y. Shum (301) 415–8545. The U.S. Nuclear Regulatory Commission's has adopted the US Department of Energy's FEIS #950163 filed with the U.S. Environmental Protection Agency on 04–21–95, NRC was not a Cooperating Agency on this project. Recirculation of the document is necessary under Section 1506.3(b) of the Council on Environmental Quality Regulations

EIS No. 980073, DRAFT SUPPLEMENT, FHW, PA, Marshalls Creek Traffic Study, Construction, New and Updated Information, Connector between PA–209, Business 209 and PA–402, COE Section 404 and NPDES Permits, Middle Smithfield and Smithfield Townships, Monroe County, PA, Due: May 04, 1998, Contact: Ronald W. Carmichael (712) 221–3461.

EIS No. 980074, DRAFT EIS, AFS, MT, Stillwater Mine Revised Waste Management Plan and Hertzler Tailings Impoundment, Construction and Operation, Plan-of-Operation, and COE Section 404 Permit, Custer National Forest, Stillwater County, MT, Due: May 19, 1998, Contact: Pat Pierson (406) 446–2103.

EIS No. 980075, DRAFT SUPPLEMENT, COE, NY, NJ, Arthur Kill Channel—Howland Hook Marine Terminal, Deepening and Realignment, Limited Reevaluation Report (LRR) Port of New York and New Jersey, NY and NJ, Due: May 04, 1998, Contact: Mark H. Burlas (212) 264–4663.

EIS No. 980076, FINAL EIS, FHW, MO, MO–60, Transportation Improvements, Connecting the Van Buren to Poplar Bluff (Job No. J9P0455Z), COE Section 404 Permit, Butter and Carter Counties, Mo, Due: April 20, 1998, Contact: Donald Neumann (573) 636–7104.

EIS No. 980077, DRAFT EIS, BOP, DC, District of Columbia, Department of Corrections (DCDC), Felony Inmate Population, Implementation, Contracting Private Correctional Facilities for Housing of Inmate Population, United States Capitol, City of Washington, D.C., Due: May

05, 1998, Contact: David J. Dorworth (202) 514–6470.

EIS No. 980078, FINAL EIS, USN, FL, SC, VA. NC, Cecil Field Naval Air Station, Realignment of F/A–18 Aircraft and Operational Functions, to Other East Coast Installations; NAS Oceana, VA; MCAS Beaufort, SC and MCAS Cherry Point, NC, Implementation, COE Section 404 Permit, FL, SC, NC and VA, Due: April 20, 1998, Contact: J. Daniel Cecchini (703) 604–5469.

EIS No. 980079, DRAFT EIS, IBR, CA, Programmatic—CALFED Bay-Delta Program, Long-Term Comprehensive Plan to Restore Ecosystem Health and Improve Water Management, Implementation, San Francisco Bay—Sacramento/San Joaquin River Bay-Delta, CA, Due: June 01, 1998, Contact: Rick Brietenbach (916) 657–2666.

EIS No. 980080, DRAFT EIS, IBR, CA, NV, CA, NV, Truckee River Operating Agreement (TROA, Modify Operation and Selected Non-Federal Reservoirs, Implementation, Truckee River Basin, EL Dorado, Nevada, Placer and Sierra Counties, CA and Douglas, Lyon, Storey and Washoe Counties, NV, Due: June 19, 1998, Contact: David Overvold (702) 884–8367.

EIS No. 980081, DRAFT EIS, NOA, AK, Kachemak Bay National Estuarine Research Reserve (KBNERR) Management Plan, Operations and Development, Southcentral, AK, Due: May 04, 1998, Contact: Stephanie Thornton (301) 713–3125.

EIS No. 980082, FINAL EIS, AFS, MT, Poorman Project, Implementation, Harvesting and Road Construction, Helena National Forest, Lincoln Ranger District, Lewis and Clark County, MT, Due: April 20, 1998, Contact: Thomas J. Andersen (406) 449–5201 ext. 277.

EIS No. 980083, FINAL EIS, MMS, AK, Beaufort Sea Planning Area Outer Continental Shelf Oil and Gas Lease Sale 170 (1997) Lease Offering, Offshore Marine, Beaufort Sea Coastal Plain, North Slope Borough of Alaska, Due: April 20, 1998, Contact: George Valiulis (703) 787–1662.

EIS No. 980084, FINAL EIS, FHW, RI, Newport Marine Facilities Project, To Develop the Marine Mode of the Intermodal Gateway Transportation Center, Selected siting in various locations within the City of Newport, Towns of Middletown and Portsmouth, Funding, COE Section 404 Permit and US Coast Guard Permit, Aquidreck Island, RI, Due: April 20, 1998, Contact: Daniel Berman (401) 528–4541.

EIS No. 980085, FINAL EIS, AFS, CA, Liberty Forest Health Improvement Project, Implementation, Tahoe National Forests, Sierraville Ranger District, Sierra and Nevada Counties, CA, Due: April 20, 1998, Contact: John Kennedy (530) 994–3401.

Amended Notices

EIS No. 980018, DRAFT EIS, AFS, AK, Crane and Rowan Mountain Timber Sales, Implementation, Tongass National Forest, Stikine Area, Kuiu Island, AK, Due: March 30, 1998, Contact: Everett Kissenger (907) 772–3841.

Published FR 02–06–98—Review Period extended.

EIS No. 970500, DRAFT SUPPLEMENT EIS, AFS, MT, Asarco Rock Creek Copper and Silver Mining Construction and Operation Project, Plan of Operations Approval, Special Use Permit (s), Road Use Permit, Mineral Material Permit, Timber Sale Contract and COE Section 404 Permit Issuance, Kootenai National Forest, Sanders County, MT, Due: 04–10–98, Contact: Paul Kaiser, (406) 293–6211.

Published FR 01–09–98—Review Period extended.

Dated: March 17, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–7355 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5490–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 02, 1998 Through March 06, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–COE–E30039–FL Rating EC2, Sunny Isles (North Miami) Proposed Modification to a segment of the Dade County Beach Erosion Control and Hurricane Protection Project, Dade County, FL.

Summary: EPA expressed environmental concerns regarding unavoidable losses of biotic resources and how effectively they will be mitigated.

ERP No. D–COE–K30030–CA Rating EO2, Unocal Avila Beach Cleanup Project, Petroleum Hydrocarbon Contamination, Approval and Implementation, US Army COE Section 10 and 404 Permits Issuance, San Luis Obispo County, CA.

Summary: EPA expressed environmental objections that the DEIS did not adequately address the environmental consequences of implementing the "No-Action" alternative in Area 7 despite data in the DEIS which indicates that Area 7 is extensively contaminated with hydrocarbons which may be adversely affecting shellfish and other aquatic species. EPA commented that it is unclear whether the preferred "No-Action" alternative for Area 7 is consistent with Federal and State environmental laws. EPA also indicated that there was insufficient discussion in the DEIS to determine the extent to which existing contamination in the intertidal zone Area 7 may be affecting the environment and human health and whether a "No-Action" decision in Area 7 would exacerbate those impacts.

ERP No. D–COE–K39046–AZ Rating EC2, Rio Salado Environmental Restoration of two Sites along the Salt River: (1) Phoenix Reach and (2) Tempe Reach, Feasibility Report, in the Cities of Phoenix and Tempe, Maricopa County, AZ.

Summary: EPA expressed environmental concerns that the project's recreational and interpretive aspects received a higher value than potential wildlife and aquatic-related functions. EPA expressed concerns about the potential relationship of this project with several sand and gravel mining operations in the area, in particular, whether mitigation implemented by the sand and gravel operators may be adversely affected by the Salado project.

Final EISs

ERP No. F–COE–K67020–CA, Syar Mining Operation and Reclamation Plan, Six Sites Selected along the Russian River, Construction, Mining-Use-Permit and COE Section 404 Permit, City of Healdsburg, Sonoma County, CA.

Summary: EPA continued to have environmental objections with the Supplemental DEIS. EPA requested that the Record of Decision reflect the

mitigation measures contained in the FEIS.

ERP No. F-FHW-E40747-NC, Fayetteville Outer Loop Project, US 401 to I–95 at the existing US 13 Interchange, Funding and USCOE Section 10 and 404 Permit Issuance, City of Fayetteville, Cumberland County, NC.

Summary: EPA continued to have environmental concerns about the project's impact despite the deletion of the segment west of US 401. Eighty-two acres of wetlands would be lost by the 7-mile long project. Alternatives to the Eastern terminus were not addressed in the document, as EPA requested.

ERP No. F–FHW–E40758–NC, US–17/ Wilmington Bypass TransportationImprovement Program, Updated Information, TIP R–2633C, Construction from I–40 to US 421, Funding, NPDES and US Coast Guard and COE Section 10 and 404 Permits, New Hanover County, NC.

Summary: EPA continued to have environmental concerns about this segment of the proposed bypass, because of expected impacts to wetlands. EPA is pleased with the new Center Alternative, now preferred by NCDOT, because it minimizes several impacts. Other bypass segments, however, have significant issues yet to be resolved.

ERP No. F–FHW–E40760–NC, Sunset Beach Bridge No. 198 on Secondary Road NC–1172 Replacement, Over the Atlantic Intracoastal Waterway, Funding, COE Section 10 and 404 Permit, Brunswick County, NC.

Summary: EPA continued to have environmental preference to the mid-level bascule bridge alternative, our comments on the DEIS have been responded to satisfactorily.

ERP No. F–IBR–K39043–CA, American River Water Resources Investigation, Implementation, Placer, Suter, EL Dorado, Sacramento and San Joaquin Counties, CA.

Summary: EPA continued to express environmental objections to the Auburn Dam alternative, and noted that if the Auburn Dam proposal is carried forward as the preferred alternative without correcting its unacceptable impacts, it will be considered a candidate for referral to CEQ. EPA also noted that Reclamation has not identified a Federal role at this program level or a Federal preferred alternative. EPA urged Reclamation and other program sponsors to reject the Auburn Dam alternative and pursue "conjunctive use" solutions to water management in the study area.

EPA believed a balanced combination of demand management, water reclamation, transfers, and new facilities can meet area water supply needs while preserving water quality and flows needed instream for aquatic resources.

Dated: March 17, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–7356 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5984–5]

STEJ Grants Program Request for Applications Guidance FY 1998

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this document is to solicit applications from eligible candidates under the State and Tribal Environmental Justice (STEJ) Grants Program, sponsored by the U.S. Environmental Protection Agency, Office of Environmental Justice.

For FY 1998, EPA expects to award a total of $500,000 to states and tribes to demonstrate how to effectively address environmental justice issues. A maximum of $100,000 will be awarded to each recipient, contingent upon the availability of funds. A total of five grants are expected to be awarded. The standard project and budget periods are for one year. The grantee can request that the project and budget periods be extended up to three years, with the total budget of $100,000 provided during the first year. This guidance outlines the purpose, authorities, eligibility, and general procedures for application and award of the FY 1998 STEJ Grants.

The application must be postmarked no later than Friday, May 29, 1998.

Grants Program Overview

The State and Tribal Environmental Justice (STEJ) Grants Program was created to provide financial assistance to state and tribal environmental departments that are working to address environmental justice issues. With the increased interest in Title VI of the Civil Rights Act of 1964, EPA is seeking, through this assistance program, to support individual state's and tribe's efforts to effectively comply with Title VI in their environmental programs and/or establish an environmental justice program.

A. Program Goals

The STEJ Grants Program is intended to assist states and tribes in ultimately achieving the following environmental justice goals and objectives:

- Enhance the state or tribal government's effectiveness in complying with Title VI of the Civil Rights Act of 1964.
- Reduce or prevent disproportionately high and adverse human health or environmental effects on low-income communities and/or minority communities.
- Integrate environmental justice goals into a state's or tribe's policies, programs, and activities.
- Provide financial and technical resources to develop an enabling infrastructure at the state/local community level and tribal/tribal community level.
- Set up model programs to address enforcement and compliance issues in affected environmental justice (EJ) communities.
- Integrate measurable EJ goals within the annual Performance Partnership Agreements (PPAs) and Memorandums of Understandings (MOUs) between a state and EPA, or integrate measurable EJ goals within the Tribal Environmental Agreements (TEAs).
- Improve public participation in the decision-making processes (e.g. permitting processes, development of regulations and policies)

B. Background on Environmental Justice

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, or income with respect to the development, implementation, enforcement and compliance of environmental laws, regulations, and policies. Fair treatment means that no groups of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local and tribal programs and policies.

Environmental justice has focused attention on the need to ensure environmental protection for all, and to empower those most often disenfranchised from the decision-making process, the low-income and/or minority communities. On February 11, 1994, President Clinton issued Executive Order (EO) 12898, AFederal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations@ (Appendix A).

C. Background on Title VI

Title VI states:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Presidential memorandum accompanying EO 12898 directs Federal agencies to ensure compliance with the nondiscrimination requirements of Title VI for all Federally-funded programs and activities that affect human health or the environment.

Title VI itself prohibits intentional discrimination. The Supreme Court has ruled, however, that Title VI authorizes Federal agencies, including EPA, to adopt implementing regulations that prohibit discriminatory *effects*. Frequently, discrimination results from policies and practices that are neutral on their face, but have the *effect* of discriminating. Facially-neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative. (See Appendix B for additional information on Title VI).

Eligible Applicants and Activities

D. Who May Submit an Application?

Any state or tribal agency that manages, or is eligible to manage, an EPA program, which has an expressed interest in working with community-based grassroots organizations and other environmental justice stakeholders to address environmental justice concerns in communities. EPA requests that only one application be submitted from each state or tribe interested in receiving assistance. The project can be a partnership involving more than one state department, or if from a tribe, more than one tribal department. The degree of support provided by top government officials from either the state or tribe will be an important factor in the selection process.

E. May an Individual or Organization Apply?

No. Only a state or federally-recognized tribal government may apply. However, the applying states or tribes should work with community-based grassroots organizations when developing their proposals. Preference may be given to the states or tribes who involve community-based grassroots organizations in the development of their proposals.

F. What Types of Projects Are Eligible for Funding?

Funds are to be used for activities authorized by the appropriate statutory provisions listed in paragraph G below, to accomplish one or both of the following:

1. The development or enhancement of a program to work directly with communities to improve the state's or tribe's compliance with Title VI of the Civil Rights Act of 1964 in the development and implementation of environmental programs.

Example 1: Create a review team to analyze the state's or tribe's future conduct or action to help ensure its environmental programs have no discriminatory environmental or human health effects based on race, color, or national origin.

Example 2: Demonstrate how to establish an appropriate enforcement program for disproportionately affected communities; and create meaningful community participation opportunities throughout enforcement & compliance activities [e.g. from the time of initial Notice of Violations to final agency enforcement decisions.]

2. The development of a model state or tribal environmental justice executive order, strategic plan, and/or conduct studies, analyses, and training in the development of a state or tribal environmental justice program.

Preferences

Preference may be given to each state or tribe which include the following in their application:

(1) A description of how environmental justice/community-based grassroots organizations were involved in the development of the proposal, and

(2) Identification of the matching or cost sharing funds to be provided by the state or tribe for the project.

G. What are the Statutory Authorities for the Grants?

The State and Tribal Environmental Justice Grants are for multimedia environmental justice activities. For this reason, each project must include activities which are authorized by two or more of the following environmental statutes.

a. Clean Water Act, Section 104(b)(3): Conduct and promote the coordination of research, investigations, experiments, training, demonstration, surveys, and studies relating to the causes, extent, prevention, reduction, and elimination of water pollution.

b. Safe Drinking Water Act, Sections 1442(c)(3): Develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

c. Solid Waste Disposal Act, Section 8001(a): Conduct and promote the coordination of research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to solid waste management and hazardous waste management.

d. Clean Air Act, Section 103(b)(3): Conduct and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys, and studies related to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

e. Toxic Substances Control Act, Section 10(a): Conduct research, development, and monitoring activities on toxic substances.

f. Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(A): Conduct research on pesticides.

g. Comprehensive Environmental Response, Compensation, and Liability Act, Section 311(c): Conduct research related to the detection, assessment, and evaluation of the effects on, and risks to, human health from hazardous substances.

h. Marine Protection, Research, and Sanctuaries Act, Section 203: Conduct research, investigations, experiments, training, demonstrations, surveys, and studies relating to the minimizing or ending of ocean dumping of hazardous materials and the development of alternatives to ocean dumping.

H. What Regulations Apply to These Grants?

The STEJ Grants will be governed by 40 CFR part 31, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments, and OMB Circular A–87. Note, in particular, that there are restrictions on the use of grant funds for lobbying and that grant funds may not be use for intervention in federal regulatory or adjudicatory proceedings.

Funding

I. Are Matching Funds Required?

Matching funds are not required, but are encouraged. EPA may give preference to those states or tribes which provide matching funds, since this would demonstrate a greater commitment.

Application Requirements

J. What Is Required for Applications?

In order to be considered for funding under this program, proposals must have the following:

1. Application for Federal Assistance (SF 424) the official form required for all federal grants that requests basic information about the grantee and the proposed project. The applicant must submit the original application, and three copies, signed by a person duly authorized.

2. Federal Standard Form (SF 424A) and budget detail, which reflects the total budget for the entire duration of the project. Budget figures/projections should support your work plan/narrative. The EPA portion of these grants will not exceed $100,000, therefore your budget should reflect this upper limit on federal funds.

3. Signed "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" form, and "Certification Regarding Lobbying" form, which can be found in Appendix C.

4. Narrative/work plan of the proposal. A narrative/work plan describes the applicant's proposed project. The pages of the work plan must be letter size 8½" x 11"), with normal type size (12 cpi), and at least 1" margins. The narrative/work plan should be no more than five pages.

The narrative/work plan must describe how the proposed project will meet the Program Goals, as described in Section A, and whether one or both of the Eligible Projects, as defined in Section E, are being proposed. In addition, the work plan must describe how the project addresses issues related to at least two of environmental statutes listed in Section G. Lastly, the work plan must: (a) Discuss how the project will be evaluated, (b) discuss what will be the measures of success, and (c) describe how the project/program will be sustained.

5. A letter of commitment from the department head or government head (e.g. governor, president, chairperson, chief)

6. State and Tribal applicants should establish working relationships with local community-based organizations in developing their proposals.* A list of the organizations who participated in the development of the grant proposal, along with contact names and numbers, is required.

*Many community-based organizations across the nation have already begun implementing environmental justice programs at the local level, which states and tribes may want to use as examples to help build their environmental justice programs. By asking those who are most impacted by environmental injustices to participate in building the state's or tribe's environmental justice program, the states and tribes will be more likely to obtain broad support for the concept and the partnership it reflects.

K. When and Where Must Applications Be Submitted?

The applicant must submit one signed original application with the required attachments and three copies to the primary contact of the appropriate EPA regional office (see page 8 and Appendix D). The application must be postmarked no later than Friday, May 29, 1998.

Process for Awarding Grants

Proposals are to be developed by states or tribes (EPA encourages the involvement of community-based/grassroots organizations) and submitted to their respective EPA Regional Offices. The initial review will be conducted by each Region through a Regional panel, which will select the top proposals for submission to EPA Headquarters, for final review and selection. The grants will be processed for award and managed by the Regions. The plan is to fund the five best State and/or Tribal Environmental Justice project proposals.

March 27–May 29—States and Tribes Develop Proposals and Submit to EPA Regions

June 1–June 26—EPA Regions Review Proposals and Provide Recommendations to Headquarters

June 22–July 24—OEJ Headquarters Convenes Review Panel, Receives Recommendations, Completes Selections and Submits Final Selections to Grants Office

July 27–September 1—EPA Regional Grants Management Offices Process Applications and Award Grants

September 11—National Announcement on Awards

Reporting

State and Tribal agencies that are awarded the State and Tribal Environmental Justice (STEJ) grants will be required to submit semi-annual reports, in accordance with 40 CFR 31.40 and 31.41, to the appropriate Regional Environmental Justice Coordinator and Project Officer. Reports will include, but not be limited to, information on:

- Funds expended
- Tasks accomplished
- Issues/problems encountered and method of resolution
- Results achieved

A final summary report is required by 40 CFR 31.40(b) at the end of the project period. This final report should include a discussion on the continuation and institutionalization of the state's and/or tribe's efforts to comply with Title VI and provide for environmental justice.

If you have any questions regarding the interpretation of this guidance, please call your regional contact listed below, or Daniel Gogal, STEJ Grants Manager, Office of Environmental Justice, at (202) 564–2576 or 1–800–962–6215.

Regional Contact Names and Addresses

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Primary Contact: Rhona Julien (617) 565–9454, USEPA Region 1 (RAA), John F. Kennedy Federal Building, Boston, MA 02203

Secondary Contact: Pat O'Leary (617) 565–3834

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Primary Contact: Melva Hayden (212) 637–5027, USEPA Region II, 290 Broadway, 26th Floor, New York, NY 10007

Secondary Contact: Natalie Loney (212) 637–3639

Region III—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Primary Contact: Reginald Harris (215) 566–2988, USEPA Region III (3DA00), 841 Chestnut Building, Philadelphia, PA 19107

Secondary Contact: Mary Zielinski (215) 566–5415

Region IV—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Primary Contact: Connie Raines (404) 562–9671, USEPA Region IV, 61 Forsyth Street, Atlanta, GA 30303

Secondary Contact: Deborah Carter (404) 562–9668

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Primary Contact: Ethel Crisp (312) 353–1442, USEPA Region V, 77 West Jackson Boulevard (DR–7J), Chicago, IL 60604–3507

Secondary Contact: Karla Johnson (312) 886–5993

Region VI—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Primary Contact: Shirley Augurson (214) 665–7401, USEPA Region VI (6E–N), 1445 Ross Avenue, 12th Floor, Dallas, TX 75202–2733

Region VII—Iowa, Kansas, Missouri, Nebraska

Primary Contact: Althea Moses (913) 551–7649 or 1–800–223–0425, USEPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101

Secondary Contact: Kim Olson (913) 551–7539

Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Primary Contact: Marcella Devargas (303) 312–6161, USEPA Region VIII (8ENF–EJ), 999 18th Street, Suite 500, Denver, CO 80202–2466
Secondary Contact: Elisabeth Evans (303) 312–6053

Region IX—Arizona, California, Hawaii, Nevada, American Samoa, Guam

Primary Contact: Katy Wilcoxen (415) 744–1565, USEPA Region IX (CMD–6), 75 Hawthorne Street, San Francisco, CA 94105
Secondary Contact: Willard Chin (415) 744–1204

Region X—Alaska, Idaho, Oregon, Washington

Primary Contact: Susan Morales (206) 553–8580, USEPA Region X (OI–085), 1200 Sixth Avenue, Seattle, WA 98101
Secondary Contact: Joyce Kelly (206) 553–4029

Robert J. Knox,

Acting Director, Office of Environmental Justice.

[FR Doc. 98–7310 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5980–6]

Proposed De Minimis Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, Hayford Bridge Road Groundwater Superfund Site, St. Charles County, MO

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into a de minimis administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g). This settlement is intended to resolve the liability of the following parties for response costs incurred and to be incurred at the Hayford Bridge Road Groundwater. Superfund Site, St. Charles County, Missouri: AlliedSignal, Inc.; United States Department of Energy; Borden, Inc.; Campbell Soup Company; Cargill, Incorporated; Cooper Industries; Hoechst Celanese Corporation; Chemtech Industries, Inc.; The Dow Chemical Company; E.I. du Pont de Nemours & Company; Ford Motor Company; General Electric Company; Hager, C. & Sons Hinge Manufacturing Company, Inc.; Intalco Aluminum Corporation; Nilok Chemicals, Incorporated; PPG Industries, Inc.; Reichhold Chemicals, Inc.; Rohr Inc.; St. Claire Die Casting Company; Union Camp Corporation; and Westinghouse Electric Corporation. The proposed settlement consent order was signed by the Environmental Protection Agency (EPA) on September 23, 1997, and approved by the United States Department of Justice on February 25, 1998.

DATES: Written comments must be provided on or before April 20, 1998.

ADDRESSES: Comments should be addressed to Baerbel Schiller, Senior Counsel, Superfund Division, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: *In the matter of Hayford Bridge Road Groundwater Site*, EPA Docket No. VII–97–F–0017.

The proposed administrative consent order may be examined in person at the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. To request a copy of the administrative consent order, write to the address shown above and refer to the matter by name and docket number.

SUPPLEMENTARY INFORMATION: The proposed administrative settlement concerns the Hayford Bridge Road Groundwater Superfund Site which is located in the east central portion of Missouri just north of the City of St. Charles in St. Charles County, Missouri. The Findett Corporation has operated a recycling business at the Site since 1962. Between 1962 and 1973, about 80% of Findett's business involved the reclamation of heat transfer fluids, hydraulic fluids, solvents and catalysts. Through these reclamation processes, wastes containing polychlorinated biphenyls (PCBs) and volatile organic chemicals (VOCs) were disposed at the Site resulting in contamination of the soils and groundwater.

EPA conducted a Remedial Investigation and Feasibility Study ("RI/FS") at the Site and the RI/FS Report was completed in 1988. The decision by EPA on the remedial action to be implemented at the Site was embodied in a Record of Decision ("ROD"), executed on December 28, 1988. In May 1995, EPA issued an amendment to the 1988 ROD. In 1989, EPA and the Findett Corporation signed a consent decree which obligated Findett to implement the ROD. Findett is currently implementing the groundwater remedy and is expected to commence soil bioremediation on its property in the near future. Between May 1997 and August 1997, the de minimis parties signed the administrative consent order, agreeing to reimburse EPA $250,535 for a portion of the Agency's past and future response costs in exchange for the United States' covenant not to sue the parties pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607, subject to certain reservations of rights by the United States.

Dated: March 9, 1998.

Baerbel Schiller,

Acting Director, Superfund Division, EPA Region VII.

[FR Doc. 98–7304 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2263]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

March 16, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to these petitions must be filed April 6, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands (ET Docket No. 95–183, RM–8553).

Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 37.0–38.6 and 38.6–40.0 GHz (PP Docket No. 93–253)

Number of Petitions Filed: 12.

Subject: Amendment of 73–202(b), Table of Allotments, FM Broadcast Station (Wellington, Texas) (MM Docket No. 97–104, RM–9048).

Number of Petitions Filed: 1.

Subject: Reallocation of Television Channels 60–69, the 746–806 MHz Band (ET Docket No. 97–157).

Number of Petitions Filed: 4.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–7325 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, March 24, 1998, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum re: Executive Management Report for the Year-Ending December 31, 1997.

Memorandum and resolution re: Final Amendments to Part 337—Expanded Examination Cycle for Certain Small Insured Institutions.

Memorandum and resolution re: Final Amendments to Part 309–E–FOIA.

Discussion Agenda:

Memorandum and resolution re: Federal Financial Institutions Examination Council, Supervisory Policy Statement on Investment Securities and End-User Derivative Activities.

Memorandum and resolution re: Final Amendments to Parts 303, 325, 326, 327, 346, 347, 351, and 362 of the FDIC's Rules and Regulations—International Banking.

Memorandum and resolution re: General Counsel's Opinion No. 10 which interprets charges constituting "interest" for purposes of section 27 of the Federal Deposit Insurance Act.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: March 17, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–7416 Filed 3–18–98; 10:26 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, March 17, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) reports of the Office of Inspector General and (2) matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Director Joseph H. Neely (Appointive), concurred in by Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)((9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: March 17, 1998.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 98–7417 Filed 3–18–98; 10:26 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1208–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1208–DR), dated March 9, 1998, and related determinations.

EFFECTIVE DATE: March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 9, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from severe storms and flooding beginning on March 7, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster: Coffee, Dale, Escambia, Geneva, and Houston Counties for Individual Assistance.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–7294 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Manatee County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7288 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Broward, Flagler, and St. Johns Counties for Individual Assistance.

Nassau County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7289 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 11, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Liberty County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7290 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Clay County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7291 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1193–DR]

Government of Guam; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for Government of Guam (FEMA–1193-DR), dated December 17, 1997, and related determinations.

EFFECTIVE DATE: February 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the cost share arrangement under FEMA–1193-DR is adjusted at 90 percent Federal funding for eligible costs for the Individual and Family Grant Program and the Public Assistance and Hazard Mitigation Grant Programs. This cost share adjustment is subject to the conditions set forth in the FEMA/Government of Guam Agreement addressing floodplain management measures.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–7287 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1207–DR]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1207-DR), dated March 3, 1998, and related determinations.

EFFECTIVE DATE: March 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 3, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from a severe winter storm on February 4–6, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act").

I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster: Bath, Estill, Jackson, Laurel, Lewis, McCreary, Powell, Rockcastle, and Wayne Counties for Public Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–7295 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1206–DR]

State of New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1206-DR), dated March 3, 1998, and related determinations.

EFFECTIVE DATE: March 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery

Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 3, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New Jersey, resulting from a severe winter coastal storm, high winds, and flooding on February 4–9, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joseph Picciano of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Jersey to have been affected adversely by this declared major disaster: Atlantic and Cape May Counties for Individual Assistance and Public Assistance.

All counties within the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548. Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 98–7293 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 203–011075–043.

Title: Central America Discussion Agreement.

Parties: Concorde Shipping, Inc., Dole Fresh Fruit, King Ocean Central America, S.A., Crowley American Transport, Inc., Seaboard Marine, Ltd., A.P. Moller-Maersk Line, Sea-Land Service, Inc.

Synopsis: The proposed Amendment revises Article 7(k) of the Agreement to provide that the amount of the required security is $5,000, or one-half of the total estimated operating expenses of the Agreement in the year immediately preceding the calendar year in which the new member joins the Agreement.

By Order of the Federal Maritime Commission.

Dated: March 16, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–7273 Filed 3–19–98; 8:45 am]

BILLING CODE 6730–01–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. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Community Trust Bancorp, Inc., Pikeville, Kentucky; to acquire 100 percent of the voting shares of Community Trust Bank of West Virginia, Williamson, West Virginia.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Northern Trust Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of TrustBank Financial Corporation, Denver, Colorado, and thereby indirectly acquire Trust Bank of Colorado, Denver, Colorado.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mercantile Bancorporation, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of CBT Corporation, Paducah, Kentucky, and thereby indirectly acquire Citizens Bank & Trust Company of Paducah, Paducah, Kentucky; Bank of Marshall County, Benton, Kentucky; Graves County Bank, Inc., Mayfield, Kentucky; Pennyrile Citizens Bank and Trust Company, Hopkinsville, Kentucky.

In connection with this application, Applicant also has applied to acquire United Commonwealth Bank, FSB, Murray, Kentucky, and thereby engage in operating a savings association pursuant to § 228.28(b)(4) of the Board's Regulation Y. **Comments regarding this**

notice should be received not later than April 3, 1998.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. South Tulsa Financial Corporation, Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Bank South, N.A., Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, March 16, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7245 Filed 3–19–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Planters Corporation, Memphis, Tennessee, and its second tier subsidiary, Union Planters Holding Corporation, Memphis, Tennessee, to acquire Capital Savings Bancorp, Inc., Jefferson City, Missouri, and thereby indirectly acquire Capital Savings Bank, FSB, Jefferson City, Missouri, and thereby engage in operating a thrift, pursuant to § 225.28(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 16, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7246 Filed 3–19–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, March 25, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets NW, Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 18, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7419 Filed 3–18–98; 10:33 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Workshop

Name: Workshop on Public and Occupational Health Concerns at Los Alamos National Laboratory.

Dates: March 24, 1998.

Times: 2 p.m.–9:30 p.m.

Place: Northern New Mexico Community College, 921 Paseo De Onate, Espanola, New Mexico 87532

Tel: 505/747–2100.

Dates: March 26, 1998.

Times: 4p.m.–10 p.m.

Place: Fuller Lodge, 321 Central Avenue, Los Alamos, New Mexico 87545.

Tel: 505/622–8403.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 100 people.

Purpose: The purpose of the Workshop is to provide guidance to public health researchers on community participation in the planning, conduct, and application of research. History has demonstrated that the quality of medical and public health science is enhanced when it is planned and conducted in the social context of its work. This includes planning and conducting research that involves and impacts communities. This workshop will provide a unique opportunity to open dialogue among government, American Indian Tribes, labor, communities, and researchers. This dialogue is expected to lead to a proposed framework through which CDC promotes public health, advances democratic principles, establishes an ethical basis for community-based research, enhances scientific credibility, and provides mechanisms for building public trust while advancing the science of public health.

Matters to be Discussed: Agenda items will include presentations on ongoing projects by the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health, the Agency for Toxic Substances and Disease Registry, and the New Mexico Department of Public Health. Time will be set aside for public comments and discussions with Agency staff, followed by the workshop being divided into two breakout sessions: (1) Environmental Health Issues; and (2) Occupational Health Issues.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Sage, Deputy Chief, Radiation Studies Branch (RSB), or Carolyn M. Hart, RSB, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: March 17, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–7403 Filed 3–19–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F-0165]

Edward S. Josephson; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Edward S. Josephson has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ionizing radiation for the reduction of salmonella in fresh shell eggs.

FOR FURTHER INFORMATION CONTACT: William J. Trotter, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3088.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8M4584) has been filed by Edward S. Josephson, University of Rhode Island, Food Science and Nutrition Research Center, 530 Liberty Lane, West Kingston, RI 02892-1802. The petition proposes that the food additive regulations in part 179 Irradiation in the Production, Processing and Handling of Food (21 CFR part 179) be amended to provide for the safe use of ionizing radiation for the reduction of salmonella in fresh shell eggs.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: March 4, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–7187 Filed 3–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Transmissible Spongiform Encephalopathies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on April 15, 1998, 8 a.m. to 5:30 p.m., and April 16, 1998, 8 a.m. to 6 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12392. Please call the Information Line for up-to-date information on this meeting.

Agenda: On April 15, 1998, the committee will: (1) Discuss and make recommendations regarding the safety of tallow and tallow derivatives used in pharmaceuticals, cosmetics, and other FDA-regulated products; and (2) discuss U.S. and global issues on edible and nonedible tallow. On April 16, 1998, the committee will discuss gelatin and dura mater products as a followup to the April 1997 and October 1997 committee meetings.

Procedure: On April 15, 1998, from 8 a.m. to 5:30 p.m., and on April 16, 1998, from 8 a.m. to 4:45 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 12, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m on April 15, 1998, and between approximately 10:50 a.m. and 11:20 a.m. and between approximately 2:45 p.m. and 3 p.m. on April 16, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 12, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On April 16, 1998, from 4:45 p.m. to 6 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion of this material.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 13, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–7354 Filed 3–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0143]

"Guidance for Industry: Supplemental Testing and the Notification of Consignees of Donor Test Results for Antibody to Hepatitis C Virus (Anti-HCV);" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Supplemental Testing and the Notification of Consignees of Donor Test Results for Antibody to Hepatitis C Virus (Anti-HCV)." The guidance document provides recommendations for donor screening and further testing for antibody to HCV, notification of consignees, transfusion recipient tracing and notification, and counseling by physicians regarding transfusion with

blood components at increased risk for transmitting HCV. This guidance is being issued in response to the recommendations of the Public Health Service Advisory Committee on Blood Safety and Availability (PHS Advisory Committee). This guidance supplements the July 19, 1996, guidance document entitled "Recommendations for the Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis B Virus (HBV), Hepatitis C Virus (HCV), and Human T-Lymphotropic Virus Type I (HTLV-I)" (the July 1996 document).

DATES: Written comments may be submitted at any time; however, comments should be submitted by May 19, 1998, to ensure their adequate consideration in preparation of any revision of the document.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Guidance for Industry: Supplemental Testing and the Notification of Consignees of Donor Test Results for Antibody to Hepatitis C Virus (Anti-HCV)," to the Office of Communication, Training and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail or by calling the CBER Voice Information System at 1-800-835-4709 or 301-827-1800, or by fax by calling the FAX Information System at 1-888-CBER-FAX or 301-827-3844. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance. Submit written comments on the guidance document to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-6210.

For technical/scientific questions contact Robin M. Biswas, Center for Biologics Evaluation and Research (HFM-325), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-3011 or by FAX at 301-496-0338.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Supplemental Testing and the Notification of Consignees of Donor Test Results for Antibody to Hepatitis C Virus (Anti-HCV)." The guidance document provides recommendations for the following: Further testing of donors who are repeatedly reactive for antibody to HCV, quarantine of prior collections from such donors and notification of consignees, recordkeeping, retrospective review of records of donor testing following the implementation of a licensed multi-antigen screening test for antibody to HCV, actions to be taken following indeterminate test results, actions to be taken for donors testing repeatedly reactive for antibody to HCV with no record of additional testing for HCV, and transfusion recipient notification and counseling by physicians. This guidance document supplements the July 1996 document, which provided recommendations for consignee notification for the purpose of product quarantine and disposition of prior collections from a donor who subsequently tests repeatedly reactive for antibody to HCV. The July 1996 document did not provide recommendations for the notification of recipients of such donations because no clear consensus on the public health benefit had emerged at that time.

The guidance is issued in response to recommendations from the PHS Advisory Committee. The PHS Advisory Committee met on April 24 and 25, 1997, and August 11 and 12, 1997. Topics of discussion included the improvements in the treatment and management of HCV infection, the improvements in testing for antibody to HCV, and the public health benefits of notification of transfusion recipients receiving prior collections from a donor who subsequently tests repeatedly reactive for antibody to HCV.

This guidance document represents the agency's current thinking with regard to donor screening and further testing for antibody to HCV, notification of consignees, transfusion recipient tracing and notification, and counseling by physicians regarding transfusion with blood components potentially contaminated with HCV. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements. This guidance document may contain collections of information that require OMB clearance under the Paperwork Reduction Act of 1995. FDA will seek such approval and provide an opportunity for public comment as appropriate.

II. Comments

This document is being distributed for comment purposes and for implementation at this time. FDA has determined that under its good guidance practices, that although this is a level 1 guidance document, it should be implemented while comments are obtained due to the recommendations providing further safeguards to the public health and as recommended by the PHS Advisory Committee. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Written comments may be submitted at any time, however, comments should be submitted by May 19, 1998, to ensure adequate consideration in preparation of any revision of the document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments and requests for copies should be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access, connect to CBER at http://www.fda.gov/cber/guidelines.htm".

Dated: March 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98-7184 Filed 3-19-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1998 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT) announce the availability of FY 1998 funds for grants and cooperative agreements for the following activities. These activities are discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activities; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available (millions)	Estiamted number of awards	Project period (years)
Action Grants with Hispanic Priority	05/27/98	$3.5	25–30	1
Women and Violence	05/27/98	$7.5	13	2–5

Note: SAMHSA also published notices of available funding opportunities in FY 1998 in the **Federal Register** on January 6, 1998, January 20, 1998, and on February 26, 1998.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1998 funds for activities discussed in this announcement were appropriated by the Congress under Pub. L. 105–78. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of each of the activities (i.e., the GFA) described in Section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission

Unless otherwise stated in the GFA, applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.*

(* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines

The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual activities.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 4).

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline
- Purpose
- Priorities
- Eligible Applicants
- Grants/Cooperative Agreements/ Amounts
- Catalog of Federal Domestic Assistance Number
- Contacts
- Application Kits

Table of Contents

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 1998 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1998 KD&A programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council (if applicable) review process.

Other funding criteria will include: Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1998 SAMHSA Activities

4.1 Grants

4.1.1 Community Action Grants For Service Systems Change (GFA No. SM 98–003)

Application Deadline: May 27, 1998.

Purpose: The Center for Mental Health Services (CMHS) announces the continuation of its *basic program*—Community Action Grants for Service Change. CMHS is making FY 1998 funds available to communities to support the adoption of exemplary service delivery practices related to the delivery and/or organization of services or supports for children with serious emotional disturbances and adults with serious mental illness. The adult population may also have co-occurring disorders.

In addition to the "Basic Program" sponsored by CMHS, SAMHSA's Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT) have joined CMHS in making FY 1998 funds available for a priority initiative for Hispanic communities to support exemplary practices for Hispanic adults and adolescents with mental health and/or substance abuse problems. This priority initiative offers the same grant vehicle as the Basic Program to Hispanic communities to address mental health and/or substance abuse problems.

This program is intended to stimulate the adoption of exemplary practices through convening partners, building consensus, aiding in eliminating barriers, decision-support and adaptation of service models to meet local needs. Grants will not support direct funding of services themselves. Projects will be successful if a grantee can develop consensus among key decision makers to adopt an exemplary practice.

Priorities: Hispanic Initiative.

Eligible Applicants: Applications may be submitted by units of State or local governments and by domestic private nonprofit and for-profit organizations such as community-based organizations, universities, colleges, and hospitals. SAMHSA encourages applications from consumer and family organizations.

Applications for the Hispanic Priority Initiative must target Hispanics, identify

an exemplary practice specific to the needs of Hispanic Americans and demonstrate the involvement of Hispanic community leadership.

Applicants must demonstrate that they are in a position to engage all the key stakeholders in the proposed consensus building/decision making process.

Grants/Amounts: It is estimated that approximately $2.75 million will be available under the Basic Program to support approximately 20 awards in FY 1998. The average award is expected to range from $50,000 to $150,000 in total costs.

In addition to the estimated $2.75 million available under the Basic Program, an additional $750,000 will be made available to support 5 to 10 awards under the Hispanic Priority Initiative in FY 1998. The average award under this initiative is expected to range from $50,000 to not more than $150,000 in total costs.

Catalog of Federal Domestic Assistance Number: 93.230.

Program Contacts: For programmatic or technical information regarding Adult Serious Mentally Ill Populations, contact: Santo (Buddy) Ruiz, Community Support Programs Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services, Substance Abuse and Mental Health Service Administration, Parklawn Building, Room 11C–22, (301) 443–3653.

For programmatic or technical information regarding Homeless Populations, contact: Michael Hutner, PhD., Homeless Program Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services, Substance Abuse and Mental Health Service Administration, Parklawn Building, Room 11C–05, (301) 443–3706.

For programmatic or technical information regarding Children and Adolescents with Serious Emotional Disorders and their Families, contact: Michele Herman, Child, Adolescents and Family Services Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services, Substance Abuse and Mental Health Service Administration, Parklawn Building, Room 18–49, (301) 443–1333.

For programmatic or technical information regarding Substance Abuse Treatment, contact: David C. Thompson, Division of Practice and Systems Development, Clinical Interventions Branch, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II Building, Suite 740, (301) 443–6523.

For programmatic or technical information regarding Substance Abuse Prevention, contact: Addie Key, Division of State and Community Systems Development, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II Building, Suite 940, (301) 443–9438.

For grants management assistance, contact: Stephen J. Hudak, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 15C–05, (301) 443–4456.

The mailing address for the individuals listed above is: 5600 Fishers Lane, Rockville, MD 20857.

Application Kits: Application kits are available from: Center for Mental Health Services Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015. Voice: (800) 789–2647; TTY: (301) 443–9006; FAX: (301) 984–8796

4.2 Cooperative Agreements

A major activity for a SAMHSA cooperative agreement program is discussed below. Substantive Federal programmatic involvement is required in cooperative agreement programs. Federal involvement will include planning, guidance, coordination, and participating in programmatic activities (e.g., participation in publication of findings and on steering committees). Periodic meetings, conferences and/or communications with the award recipients may be held to review mutually agreed-upon goals and objectives and to assess progress. Additional details on the degree of Federal programmatic involvement will be included in the application guidance materials.

4.2.1 Cooperative Agreements to Study Women with Alcohol, Drug Abuse, and Mental Health (ADM) Disorders Who Have Histories of Violence (Short Title: Women and Violence Study—GFA No. TI 98–004)

Application Deadline: May 27, 1998.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA) announces the availability of cooperative agreements to support the first of a two-phase study on women, ADM disorders and violence: PHASE ONE—Developing an Integrated System of Care with Services Intervention Models, Implementing the Qualitative Phase One Evaluation, and Developing Evaluation Protocols for Phase Two; and PHASE TWO—Full Scale Implementation of Integrated strategies, Services Intervention Models and Outcome Evaluation. There is a possibility of a PHASE THREE—long-term evaluation, depending on Phase Two outcome and availability of funds. This Knowledge Development and Application (KDA) program is a result of a partnership among SAMHSA and its three centers—the Center for Substance Abuse Treatment (CSAT), the Center for Substance Abuse Prevention (CSAP) and the Center for Mental Health Services (CMHS).

The goal of Phase One is the generation of new knowledge in response to two questions: (1) What constitutes an integrated system of care for women with co-occurring disorders who are victims of violence, and for their children; and (2) what are the most promising services integration models for this population and what is the rationale for their selection.

SAMHSA requests applications for cooperative agreements to conduct Phase One of the study. This phase includes: (1) the development and implementation of an integrated system of care as a vehicle for delivering effective services intervention models (also to be developed in Phase One) for women with co-occurring substance abuse and mental health disorders who are victims of physical and/or sexual abuse, and for delivering services for their children who have been impacted as a result of these problems; (2) the development and implementation of Phase One's qualitative evaluation; and (3) the development of evaluation protocols for Phase Two of the study.

Applications are being solicited for up to twelve study sites and a Coordinating Center to provide programmatic and evaluation assistance to the study sites.

Priorities: None.

Eligible Applicants: Applications may be submitted by units of State or local governments and by domestic private nonprofit and for-profit organization such as community-based organizations, universities, colleges, and hospitals.

Applicants for study sites must provide evidence of having at least two years demonstrated experience working in the field of women, ADM disorders and violence.

Applicants for the Coordinating Center must provide evidence of having at least one year of demonstrated experience working in the field of women, ADM disorders and violence, at the treatment or research level.

Note: Applicants may apply for both a study site and Coordinating Center award; however, a separate application for each must be submitted. If an organization chooses to apply for multiple awards, there should be no overlap in research/evaluation and support personnel.

Cooperative Agreement/Amounts: It is estimated that approximately $7.5 million (total costs, i.e., direct and indirect costs) will be available to support up to twelve study site awards and one Coordinating Center under this GFA in FY 1998.

Catalog of Domestic Federal Assistance Number: 93.230.

Program Contact: For programmatic or technical assistance contact:

Linda White Young, Division of Practice and Systems Development, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 740, (301) 443–8392.

Susan Salasin, Division of Knowledge Development and Systems Change, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 11C–26, (301) 443–3653.

Jeanette Bevitt-Mills, Division of Knowledge Development and Evaluation, enter for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 1075, (301) 443–4564.

For grants management assistance, contact: Ms. Peggy Jones, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 360, (301) 443–9666.

The mailing address for the individuals listed above is: 5600 Fishers Lane, Rockville, MD 20857.

Application Kits: Application kits are available from: National Clearinghouse for Alcohol and Drug Information, PO Box 2345, Rockville, Maryland 20847–2345. 1–800–729–6686, 1–800–487–4889; via Internet: http://www.samhsa.gov.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard Form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1998 activity described above is/is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to all FY 1998 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: March 15, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–7280 Filed 3–19–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–02]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT:

Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 12, 1998.

Fred Karnas, Jr.

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–6912 Filed 3–19–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–840307

Applicant: James Clinton Nalley, Clemson University, Clemson, South Carolina.

The applicant requests authorization to take (harass during surveys) the endangered red-cockaded woodpecker, Picoides borealis, throughout the species range in Georgetown County, South Carolina, for the purpose of enhancement of survival of the species.

PRT–840384

Applicant: Brian W. Keeley, Bat Conservation, International, Inc., Austin, Texas.

The applicant requests authorization to take (harass during surveys) the endangered gray bat, Myotis grisescens, Indiana bat, Myotis sodalis, and Ozark big-eared bat, Plecotus townsendii ingens, from throughout the species' ranges in Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Kentucky, Illinois, Tennessee, Arkansas, Missouri, and Oklahoma for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by April 20, 1998.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: March 16, 1998.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 98–7274 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[HE–952–9911–24 1A; OMB Approval Number 1004–NEW]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On August 29, 1997, BLM published a notice in the **Federal Register** (62 FR 45867) requesting comments on this proposed collection. The comment period ended October 28, 1997. No comments were received from the public in response to this notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration of your comments, suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–NEW), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for BLM's proper functioning, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: In-Kind Crude Helium Contract.

OMB Approval Number: 1004–NEW.

Abstract: BLM is seeking OMB approval to collect information under a revised helium distribution contract, called. The Helium Privatization Act of 1996 altered the method by which private firms can acquire Federal helium gas. This required revising the contract. Two reporting formats are attached to the contract. One requests information about deliveries of refined helium to a Federal agency or Federal agency contractor. The other requests information about the sales of refined helium. Deliveries are reported quarterly; sales are reported annually.

Bureau Form Number: Part of contract, 1004–NEW (to be supplied when OMB attaches an approval number.)

Frequency of Collection: Annually for sales, quarterly for deliveries.

Description of Respondents: Respondents are holders of approved helium distribution contracts. These contracts allow qualified entities to receive Federal crude helium gas according to the amount of refined helium supplied to Federal agencies and their contractors. Estimated completion time: 15 minutes, four times a year, for reporting deliveries; 30 minutes, once a year, for reporting sales; plus record keeping time of 5 minutes four times per year.

Annual Respondents: 14.

Annual Responses: 70.

Annual Burden Hours: 26.8, including record keeping.

Information Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: March 5, 1998.

Carole Smith,

BLM Infarmatian Clearance Officer.

[FR Doc. 98–7231 Filed 3–19–98; 8:45 am]

BILLING CODE 4316–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–066–08–1610–00]

Proposed South Coast Resource Management Plan Amendment, Palm Springs-South Coast Field Office, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), the Federal Land Policy Management Act of 1976 (FLPMA) and the Code of Federal Regulations (40 CFR 1501.7, 43 CFR 1610.2), notice is hereby given that the Bureau of Land Management (BLM) will prepare an environmental assessment and proposed

South Coast Resource Management Plan amendment affecting public lands within the Palm Springs-South Coast Field Office management area. The proposed plan amendment would consist of three separate amendments. Amendment One would change the disposal categories of two parcels of BLM public land from R for retention to P for protective disposal. Amendment Two proposes to designate three existing Stephens' Kangaroo Rat core reserves in western Riverside County as Areas of Critical Environmental Concern (ACEC). Amendment Three proposes to adjust the boundary of the Santa Ana River Wash ACEC from 755 to 595 acres.

DATES: Citizens are requested to help identify significant issues or concerns related to the proposed plan amendments. Recommendations from citizens regarding additional plan amendments may also be considered, for example, new ACECs or changing land use designations. Comments must be submitted no later than April 20, 1998.

ADDRESSES: Please submit your comments in writing to the following address: Ms. Julia Dougan, Field Manager, Bureau of Land Management, Palm Springs-South Coast Field Office, P.O. Box 1260, North Palm Springs, CA 92258–1260. Citizens submitting comments will automatically be included in the mailing list to receive a copy of the Proposed Plan Amendments and Environmental Assessment when available.

FOR FURTHER INFORMATION CONTACT: Ms. Elena Misquez, Planning and Environmental Coordinator, Bureau of Land Management, Palm Springs-South Coast Field Office, telephone (760) 251–4800.

SUPPLEMENTARY INFORMATION: The affected public land parcels in Amendment One are located in Township 5 South, Range 4 West, Section 22 (19.8 acres; BLM parcel No. 176–221), and in portions of Sections 29, 31, 32, Township 8 South, Range 2 West and part of Section 6, Township 9 South, Range 2 West (970.94 acres; BLM parcel No. 219–291). The BLM is proposing to change the disposal category of these two parcels from R for retention to P for protective disposal, in which these lands would be made available for disposal from BLM stewardship provided the new land owner will compensate or protect any sensitive resources contained on those lands. If the proposed amendment is approved, these lands would then be transferred to the Bureau of Indian Affairs by Act of Congress for the benefit of the Pechanga Band of Luiseno Mission Indians.

Amendment Two. In 1996, the U.S. Fish and Wildlife Service granted a Section 10(a) permit to the Riverside County Habitat Conservation Agency (RCHCA) which allowed take of the federally-listed-as-endangered Stephens' kangaroo rat (SKR) thereby facilitating new construction in western Riverside County. To compensate for the loss of the SKR, seven core reserves were established by the RCHCA for the protection of SKR habitat. Negotiations are in progress such that BLM may take responsibility for managing three of these core reserves. To be consistent with the management objectives for which the SKR reserves were established, BLM proposes to designate the three core reserves as Areas of Critical Environmental Concern. The three core reserves are located as follows: (1) Estelle Mountain Reserve in portions of Sections 13, 14, 22–24, Township 4 South, Range 6 West; in portions of Sections 18–20, 29–33 Township 4 South and 5 West; in portions of Sections 4–8, Township 5 South, Range 5 West; (2) Badlands Core Reserve in portions of Sections 2, 4 and 10, Township 3 South, Range 2 West; (3) Steele Peak Reserve in portions of Sections 4, 9, 20, Township 5 South, Range 4 West, and portions of Sections 27, 32, Township 4 South, Range 4 West.

Amendment Three. The Santa Ana River Wash ACEC contains an illegally created pit in the NE ¼ of Section 10, Township 1 South, Range 3 West. This quarter section (160 acres) does not contain pristine Alluvial Sage Scrub habitat. The BLM proposes to drop this quarter section from the ACEC and to make this land available for exchange to acquire more biologically viable areas.

Nothing in this Proposed Plan shall have the effect of terminating any validly issued rights-of-way or customary operation, maintenance, repair, and replacement activities in such rights-of-way in accordance with Sections 509(a) and 701(a) of the Federal Land Policy Management Act of 1976.

Dated: March 13, 1998.

Julia Dougan,

Field Manager.

[FR Doc. 98–7332 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–340–1430–01; CACAAA 160265]

Opening Order; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice opens 4,607.87 acres of public lands to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The lands were withdrawn by the Act of Congress of March 3, 1927 (44 Stat. 1359) for the Bureau of Land Management's Cow Mountain Recreation Area. The Act also authorized the Secretary of the Interior to restore any of the lands, withdrawn by that Act, to the operation of the public land laws if he or she deemed that action to be in the public interest. The Act did not withdraw the lands from either the mining or the mineral leasing laws. This opening order is necessary to facilitate the completion of a pending land exchange and other pending conveyances. The withdrawal no longer serves a needed purpose as to the lands and it is in the public interest to complete the pending lands actions.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825–0451; telephone number 916–978–4675.

SUPPLEMENTARY INFORMATION: The Act of Congress of March 3, 1927 (44 Stat. 1359) withdrew the following public lands for the Bureau of Land Management's Cow Mountain Recreation Area. The lands are withdrawn from the operation of the public lands laws, but not the mining or mineral leasing laws. The lands are described as follows:

Mount Diablo Meridian

T. 13 N., R. 10 W.,
  Sec. 9, S½SW¼, SW¼SE¼.
T. 16 N., R. 10 W.,
  Sec. 7, SE¼;
  Sec. 17, SE¼NW¼, SW¼SE¼;
  Sec. 18, E½NE¼, SE¼NW¼, NE¼SW¼;
  Sec. 19, lots 3–6, inclusive, NE¼, E½NW¼;
  Sec. 20, W½NE¼, SE¼NE¼, NE¼NW¼, S½NW¼, NW¼SW¼, SE¼SW¼, NE¼SE¼;
  Sec. 28, N½NE¼, NE¼NW¼;
  Sec. 29, SW¼;
  Sec. 30, lots 9, 11, 12, and 16;
  Sec. 31, lots 5, 10–16, inclusive.
T. 13 N., R. 11 W.,

Sec. 13, NE¼.
T. 16 N., R. 11 W.,
Sec. 13, SW¼, SW¼SE¼;
Sec. 14, S½N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 15, NW¼NW¼, N½SW¼, SE¼SW¼, W½SE¼;
Sec. 22, SE¼NW¼, SW¼SW¼, E½SW¼, SE¼;
Sec. 23, NE¼, S½ SW¼, N½SE¼, SW¼SE¼;
Sec. 24, lots 5 and 6, W½NE¼, NW¼, N½SW¼, SW¼SE¼, W½SE¼;
Sec. 25, lots 5 and 6;
Sec. 26, N½NW¼;
Sec. 27, lot 1, NE¼NE¼.

The areas described aggregate 4,607.87 acres in Lake and Mendocino Counties.

The Act of Congress of March 3, 1927 (44 Stat. 1359, 1361) authorized the Secretary of the Interior to restore any of the lands, withdrawn by that Act, to the operation of the public land laws if he or she deemed that action to be in the public interest. The regulations contained in 43 CFR 2091.5–6(b) authorize the Secretary of the Interior to publish in the **Federal Register** an opening order specifying to what extent lands will be opened and when, if the withdrawing Act of Congress does not so specify.

At 10 a.m. on April 20, 1998, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirement of applicable law. All valid applications received at or prior to 10 a.m. on April 20, 1998 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: March 13, 1998.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 98–7268 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The purpose of this notice is to inform the public and interested state and local governments of the filing of plats of survey in Idaho.

The supplemental plat prepared to create lot 6 in section 18, and lots 5 and 6 in section 19, T. 39 N., R 2E., Boise Meridian, Idaho, was accepted and officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m. February 2, 1998.

The plats representing the corrective dependent resurvey of a portion of the northerly boundary of the Boise Barracks Military Reservation, T. 34 N., R. 2 E., Boise Meridian, Idaho, Group 981, was accepted and officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m. February 9, 1998.

The plat representing the dependent resurvey of a portion of Homestead Entry Survey Nos. 123 and 124, and the survey of tract 38, partially surveyed T. 5 N., R. 17 E., Boise Meridian, Idaho, Group 968, was accepted on March 9, 1998, and will be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., April 20, 1998.

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, effective 9 a.m. March 9, 1998:

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 10, T. 10 S., R. 12 E., Boise Meridian, Idaho, Group 1009, was accepted March 9, 1998. The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 25, 26, and 27, T. 10 S., R. 34 E., Boise Meridian, Idaho, Group 1002, was accepted March 9, 1998.

The supplemental plat, in two sheets, prepared to lot small parcels of federal lands in section 20, created by two one-quarter section corners of sections 17 and 20, T. 56 N., R. 2 E., Boise Meridian, Idaho, was accepted March 9, 1998.

The protraction diagram for partially surveyed T. 26 N., R. 10 E., Boise Meridian, Idaho, was accepted March 9, 1998.

All inquiries concerning the surveys of the above described lands must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: March 9, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–7205 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–08–1420–00]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior

ACTION: Notice

SUMMARY: The plats of the amended protraction diagrams accepted March 9, 1998, of the following described lands are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication. Included in this notice are the plats of the amended protraction diagrams accepted and filed during 1996.

Principal Meridian, Montana

Tps. 16 N., Rs. 7, 8, and 9 W.

The plat, representing the Amended Protraction Diagram 25 Index of unsurveyed Townships 16 North, Ranges 7, 8, and 9 West, Principal Meridian, Montana, was accepted March 9, 1998.

T. 16 N., R. 7 W.

The plat, representing the Amended Protraction Diagram 25 of unsurveyed Township 16 North, Range 7 West, Principal Meridian, Montana, was accepted March 9, 1998.

T. 16 N., R. 8 W.

The plat, representing the Amended Protraction Diagram 25 of unsurveyed Township 16 North, Range 8 West, Principal Meridian, Montana, was accepted March 9, 1998.

T. 16 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 25 of unsurveyed Township 16 North, Range 9 West, Principal Meridian, Montana, was accepted March 9, 1998.

Tps. 16 N., Rs. 10 and 11 W.

The plat, representing the Amended Protraction Diagram 24 Index of unsurveyed Townships 16 North, Ranges 10 and 11 West, Principal Meridian, Montana, was accepted March 9, 1998.

T. 16 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 24 of unsurveyed Township 16 North, Range 10 West, Principal Meridian, Montana, was accepted March 9, 1998.

T. 16 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 24 of unsurveyed Township 16 North, Range 11 West, Principal Meridian, Montana, was accepted March 9, 1998.

Tps. 11 and 12 N., Rs. 17, 18, 19, and 20 E.

The plat, representing the Amended Protraction Diagram 12 Index of unsurveyed Townships 11 and 12 North, Ranges 17, 18, 19, and 20 East, Principal Meridian, Montana, was accepted July 29, 1996.

T. 11 N., R. 18 E.

The plat, representing the Amended Protraction Diagram 12 of a portion of unsurveyed Township 11 North, Range 18 East, Principal Meridian, Montana, was accepted July 29, 1996.

T. 12 N., R. 17 E.

The plat, representing the Amended Protraction Diagram 12 of a portion of

unsurveyed Township 12 North, Range 17 East, Principal Meridian, Montana, was accepted July 29, 1996.

T. 12 N., R. 18 E.

The plat, representing the Amended Protraction Diagram 12 of unsurveyed Township 12 North, Range 18 East, Principal Meridian, Montana, was accepted July 29, 1996.

T. 12 N., R. 19 E.

The plat, representing the Amended Protraction Diagram 12 of unsurveyed Township 12 North, Range 19 East, Principal Meridian, Montana, was accepted July 29, 1996.

T. 12 N., R. 20 E.

The plat, representing the Amended Protraction Diagram of a portion of unsurveyed Township 12 North, Range 20 East, Principal Meridian, Montana, was accepted July 29, 1996.

Tps. 29, 30, 31, and 32 N., Rs. 10, 11, 12, and 13 W.

The plat, representing the Amended Protraction Diagram 44 Index of unsurveyed Townships 29, 30, 31, and 32 North, Ranges 10, 11, 12, and 13 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 29 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 44 of a portion of unsurveyed Township 29 North, Range 10 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 29 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 44 of a portion of unsurveyed Township 29 North, Range 11 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 29 N., R. 12 W.

The plat, representing the Amended Protraction Diagram 44 of unsurveyed Township 29 North, Range 12 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 29 N., R. 13 W.

The plat, representing the Amended Protraction Diagram 44 of unsurveyed Township 29 North, Range 13 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 30 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 44 of a portion of unsurveyed Township 30 North, Range 11 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 30 N., R. 12 W.

The plat, representing the Amended Protraction Diagram 44 of a portion of unsurveyed Township 30 North, Range 12 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 30 N., R. 13 W.

The plat, representing the Amended Protraction Diagram 44 of unsurveyed Township 30 North, Range 13 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 31 N., R. 13 W.

The plat, representing the Amended Protraction Diagram 44 of unsurveyed Township 31 North, Range 13 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 32 N., R. 13 W.

The plat, representing the Amended Protraction Diagram 44 of a portion of unsurveyed Township 32 North, Range 13 West, Principal Meridian, Montana, was accepted August 28, 1996.

Tps. 25, 26, 27, and 28 N., Rs. 9, 10, 11, and 12 W.

The plat, representing the Amended Protraction Diagram 36 Index of unsurveyed Townships 25, 26, 27, and 28 North, Ranges 9, 10, 11, and 12 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 25 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 25 North, Range 9 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 26 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 26 North, Range 9 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 25 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 25 North, Range 10 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 26 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 26 North, Range 10 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 27 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 27 North, Range 10 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 28 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 36 of a portion of unsurveyed Township 28 North, Range 10 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 25 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 25 North, Range 11 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 26 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 26 North, Range 11 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 27 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 27 North, Range 11 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 28 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 28 North, Range 11 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 25 N., R. 12 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 25 North, Range 12 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 26 N., R. 12 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 26 North, Range 12 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 27 N., R. 12 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 27 North, Range 12 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 28 N., R. 12 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 28 North, Range 12 West, Principal Meridian, Montana, was accepted August 29, 1996.

Tps. 21, 22, 23, and 24 N., Rs. 9, 10, and 12 W.

The plat, representing the Amended Protraction Diagram 35 Index of unsurveyed Townships 21, 22, 23, and 24 North, Ranges 9, 10, and 12 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 21 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 35 of a portion of unsurveyed Township 21 North, Range 9 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 22 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 22 North, Range 9 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 23 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 23 North, Range 9 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 24 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 24 North, Range 9 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 21 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 21 North, Range 10 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 22 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 35 of a portion of

unsurveyed Township 22 North, Range 10 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 23 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 23 North, Range 10 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 24 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 24 North, Range 10 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 21 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 21 North, Range 11 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 22 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 22 North, Range 11 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 23 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 23 North, Range 11 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 24 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 24 North, Range 11 West, Principal Meridian, Montana, was accepted September 3, 1996.

Tps. 17, 18, 19, and 20 N., Rs. 7, 8, 9, 10, and 11 W.

The plat, representing the Amended Protraction Diagram 26 Index of unsurveyed Townships 17, 18, 19, and 20 North, Ranges 7, 8, 9, 10, and 11 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 17 N., R. 7 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 17 North, Range 7 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 17 N., R. 8 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 17 North, Range 8 West, Principal Meridian, Montana, was September 11, 1996.

T. 18 N., R. 8 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 18 North, Range 8 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 17 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 17 North, Range 9 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 18 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 18 North, Range 9 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 19 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 19 North, Range 9 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 20 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 20 North, Range 9 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 17 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 17 North, Range 10 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 18 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 18 North, Range 10 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 19 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 19 North, Range 10 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 20 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 20 North, Range 10 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 18 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 18 North, Range 11 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 19 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 19 North, Range 11 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 20 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 20 North, Range 11 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 16 N., R. 4 E.

The plat, representing the Amended Protraction Diagram 11-A of a portion of unsurveyed Township 16 North, Range 4 East, Principal Meridian, Montana, was accepted September 25, 1996.

T. 19 N., R. 8 E.

The plat, representing the Amended Protraction Diagram 11-B of a portion of unsurveyed Township 19 North, Range 8 East, Principal Meridian, Montana, was accepted September 25, 1996.

Tps. 13, 14, and 15 N., Rs. 7, 7½, 8, 9, and 10 E.

The plat, representing the Amended Protraction Diagram 11 Index of unsurveyed Townships 13, 14, and 15 North, Ranges 7, 7½, 8, 9, and 10 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 13 N., R. 7 E.

The plat, representing the Amended Protraction Diagram 11 of unsurveyed Township 13 North, Range 7 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 13 N., R. 7½ E.

The plat, representing the Amended Protraction Diagram 11 of unsurveyed Township 13 North, Range 7½ East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 13 N., R. 8 E.

The plat, representing the Amended Protraction Diagram 11 of a portion of unsurveyed Township 13 North, Range 8 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 14 N., R. 7 E.

The plat, representing the Amended Protraction Diagram 11 of a portion of unsurveyed Township 14 North, Range 7 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 14 N., R. 8 E.

The plat, representing the Amended Protraction Diagram of a portion of unsurveyed Township 14 North, Range 8 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 15 N. R. 8 E.

The plat, representing the Amended Protraction Diagram 11 of unsurveyed Township 15 North, Range 8 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 15 N., R. 9 E.

The plat, representing the Amended Protraction Diagram of a portion of unsurveyed Township 15 North, Range 9 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 15 N., R. 10 E.

The plat, representing the Amended Protraction Diagram of a portion of unsurveyed Township 15 North, Range 10 East, Principal Meridian, Montana, was accepted November 5, 1996.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagrams accepted March 9, 1998, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted March 9, 1998, as shown on these plats, is received prior to the date of the official

filings, the filings will be stayed pending consideration of the protests. These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: March 12, 1998.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 98–7198 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 30550 et al.]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed applications to withdraw 2,981.95 acres of National Forest System lands to protect Alto Pit OHV Area, Camp Anytown, Camp Patterdell Pines, Camp Pearlstein, Camp Wamotochick, Granite Basin Recreation Area, Lynx Creek Recreation Area, Miller Creek Summer Home Area, Pine Summit Camp, and Williamson Valley Trailhead. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATE: Comments and requests for a meeting should be received on or before June 18, 1998.

ADDRESS: Comments and meeting requests should be sent to the Forest Supervisor, Prescott National Forest, 344 S. Cortez Street, Prescott, Arizona 86303.

FOR FURTHER INFORMATION CONTACT: Beverley Everson or Doug Franch, Prescott National Forest, 520–445–7253.

SUPPLEMENTARY INFORMATION: The Forest Service has filed applications to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Prescott National Forest

Alto Pit OHV Area

T. 14 N., R. 3 W.,
Sec. 15, lots 1 to 5, inclusive, S½N½, N½SW¼, and NE¼SW¼SW¼;
Sec. 16, E½SE¼NE¼ and NE¼NE¼SE¼.

The area described contains 434.04 acres in Yavapai County.

Camp Anytown

T. 14 N., R. 3 W.,
Sec. 24, N½NW¼NW¼ and N½NE¼NW¼.

The area described contains 40 acres in Yavapai County.

Camp Patterdell Pines

T. 13 N., R. 2 W.,
Sec. 28, lots 9, 14, and 15.

The area described contains 120.50 acres in Yavapai County.

Camp Pearlstein

T. 13 N., R. 3 W.,
Sec. 12, lot 5;
Sec. 13, lot 2.

The area described contains 38.84 acres in Yavapai County.

Camp Wamotochick

T. 13 N., R 2 W.,
Sec. 35, lots 12 and 13.

The area described contains 86.56 acres in Yavapai County.

Granite Basin Recreation Area

T. 14 N., R. 3 W.,
Sec. 1, SW¼SW¼;
Sec. 2, E½SE¼NW¼, SW¼NE¼, SE¼, E½NW¼SE¼SW¼, NE¼SE¼SW¼, N½SE¼SE¼SW¼, E½NE¼SW¼, NW¼NE¼SW¼, and E½SW¼NE¼SW¼;
Sec. 3, W½NE¼SE¼, NE¼NE¼SE¼, W½SE¼NE¼SE¼, E½NW¼SE¼SE¼, W½NE¼SE¼SE¼, and W½SW¼SE¼SE¼ (except the Granite Mountain Wilderness Area);
Sec. 10, E½NE¼NE¼NE¼, W½NW¼NE¼NE¼, SE¼NE¼, S½NE¼NE¼, and E½SE¼;
Sec. 11, lots 11 to 17, inclusive, E½NE¼, W½NW¼, SW¼SW¼, and SE¼;
Sec. 12, W½ and SW¼NE¼;
Sec. 13, W½NW¼ and SW¼;
Sec. 14, lots 1 to 6, inclusive, E½NE¼, and NE¼NE¼SE¼;
Sec. 15, NE¼NE¼;
Sec. 24, lots 1, 3, and 4, S½NE¼NW¼, and S½NW¼NW¼.

The area described contains 1,588.29 acres in Yavapai County.

Lynx Creek Recreation Area Expansion

T. 13 N., R. 1 W.,
Sec. 5, lots 10 and 11, S½NW¼, and W½SW¼ (except the lands withdrawn by Public Land Order No. 5058);
Sec. 6, lot 8 and SE¼NE¼ (except the lands withdrawn by Public Land Order No. 5058);
Sec. 8, N½NW¼NW¼ and NE¼NW¼ (except the lands withdrawn by Public Land Order No. 5058).

The area described contains 260 acres in Yavapai County.

Miller Creek Summer Home Area

T. 14 N., R. 3 W.,
Sec. 35, NW¼SE¼SW¼ and W½NE¼SE¼SW¼.

The area described contains 15 acres in Yavapai County.

Pine Summit Camp

T. 13 N., R. 2 W.,
Sec. 34, lots 9 (except the patented portion of MS 4226), 10 (except the patented portion of MS 4226), 11, 12, and 18;
Sec. 35, lots 14 and 15.

The area described contains 247 acres in Yavapai County.

Williamson Valley Trailhead

T. 15 N., R. 2 W.,
Sec. 19, lot 4;
Sec. 30, lot 1.
T. 15 N., R. 3 W.,
Sec. 24, SE¼SE¼SE¼SE¼;
Sec. 25, NE¼NE¼NE¼NE¼;.

The area described contains 81.07 acres in Yavapai County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Forest Supervisor, Prescott National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to the Forest Supervisor, Prescott National Forest. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: March 11, 1998.

W. Cliff Yardley,

Acting Deputy State Director, Resources Division.

[FR Doc. 98–7199 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; SDM 87066]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The National Park Service proposes to withdraw .25 acre of national Forest System land in Custer County for construction of temporary quarters for summer seasonal employees. The National Park Service would have administrative jurisdiction of this area. This notice closes the land for up to 2 years from surface entry and mining. The land has been and will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by June 18, 1998.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, 406–255–2949.

SUPPLEMENTARY INFORMATION: On February 17, 1998, a petition was approved allowing the National Park Service to file an application to withdraw the following described National Forests System land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The land is described as follows:

Black Hills Meridian

T. 3 S., R. 4 E.,
Sec. 23, portion of the S½ of lot 19.

The area described contains .25 acre in Custer County.

The purpose of the proposed withdrawal is to enable construction of temporary quarters for summer seasonal employees.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. During this period, the Forest Service will continue to manage this land.

Dated: March 12, 1998.

John E. Moorhouse,

Acting Deputy State Director, Division of Resources.

[FR Doc. 98–7312 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–27]

Anant N. Mauskar, M.D.; Grant of Restricted Registration

On March 27, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Anant N. Mauskar, M.D. (Respondent), of Houston, Texas, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that he is without authority to handle controlled substances in the State of Texas, and that his registration would be inconsistent with the public interest.

By letter dated April 15, 1996, Respondent, through counsel, filed a request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. During prehearing procedures, the Government filed a Motion for Summary Disposition alleging that Respondent was not entitled to a DEA registration in the State of Texas since he was without authority to handle controlled substances in the State. However, on May 29, 1996, the Texas Department of Public Safety reissued Respondent's Department of Public Safety Registration Certificate enabling him to handle controlled substances in Texas. As a result, Judge Bittner denied the Government's Motion for Summary Disposition on July 25, 1996.

A hearing was then held on November 13, 1996, in San Antonio, Texas on the remaining issue raised in the Order to Show Cause. At the hearing, Respondent testified on his own behalf and both parties introduced documentary evidence. After the hearing, the Government submitted proposed findings of fact, conclusions of law and argument. Respondent did not submit a posthearing filing. On January 13, 1998, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for a DEA Certificate of Registration should be granted in Schedules II through V, excluding Schedule II narcotic controlled substances, subject to the maintenance of a log of his handling of controlled substances. Neither party filed exceptions to the Opinion and Recommended Ruling of Judge Bittner, and on February 17, 1998, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact of law.

The Acting Deputy Administrator finds that Respondent attended medical school in Pune, India, and as of the date of the hearing had been practicing family medicine in Harris County, Texas for 16 years. Respondent previously possessed DEA Certificate of Registration AM9760338.

On June 18, 1992, an Order to Show Cause was issued to Respondent proposing to revoke his previous DEA Certificate of Registration, alleging that his continued registration would be inconsistent with the public interest. Following a hearing before Administrative Law Judge Paul A. Tenney, the then-Administrator revoked Respondent's DEA registration effective November 1, 1993. See, *Anant N. Mauskar, M.D.*, 58 FR 51,385 (October 1, 1993).

In the prior proceeding, the then-Administrator found that on December 5, 1990, July 22, 1991, and August 29, 1991, Respondent issued prescriptions for the Schedule III controlled substance Tylenol #4 with codeine (Tylenol #4), and the Schedule IV controlled substance Xanax to an undercover law enforcement officer for no legitimate medical purpose. The undercover officer indicated that the Tylenol #4 made him feel good, yet on two occasions, Respondent falsified the patient record indicating that the "patient" was suffering from pain, even though the undercover officer made no such complaint.

Based upon these findings, the then-Administrator concluded that Respondent's continued registration would be inconsistent with the public interest, and revoked Respondent's previous DEA Certificate of Registration. *Id.* Subsequently, Respondent filed a petition for review of the then-Administrator's final order revoking his DEA registration. On August 25, 1994, the United States Court of Appeals for the Fifth Circuit found that the then-Administrator's findings of fact were supported by substantial evidence and affirmed his final order. *Mauskar* v. *Drug Enforcement Administration*, No. 93–5437, slip op. (5th Cir. Aug. 25, 1994).

On October 21, 1994, Respondent submitted an application for a new DEA registration in Schedules II through V. That application is the subject of these proceedings. At the hearing in this matter, Respondent argued that he should be allowed to relitigate the underlying facts which led to the revocation of his previous DEA registration, since he did not testify at the previous proceeding because there were pending criminal charges against him. Respondent presented evidence that sometime after February 1993, Respondent was found not guilty of some unspecified charge following a bench trial in the 183rd District Court of Harris County, Texas. Also, in June 1995, Respondent was again found not guilty following a July trial on an unspecified charge based on the same facts as those which were addressed in the previous administrative proceeding.

The Administrative Law Judge found however, that the then-Administrator's final order published in the **Federal Register** on October 1, 1993, regarding Respondent is *res judicata* for purposes of this proceeding. See, *Liberty Discount Drugs, Inc.*, 57 FR 2788 (1992) (where the findings in a previous revocation proceeding were held to be *res judicata* in a subsequent administrative proceeding.) The Acting Deputy Administrator agrees with Judge Bittner. The then-Administrator's determination of the facts relating to the previous revocation of the Respondent's DEA registration is conclusive. Accordingly, the Acting Deputy Administrator adopts the then-Administrator's 1993 final order in its entirety. The Acting Deputy Administrator concludes that the critical issue in this proceeding is whether the circumstances, which existed at the time of the prior proceeding, have changed sufficiently to support a conclusion that Respondent's registration would be in the public interest.

At the hearing before Judge Bittner, Respondent maintained that he never prescribed controlled substances for other than legitimate medical purposes, including those prescribed for the undercover officer. Respondent asserted that he is able to identify persons addicted to controlled substances because they "look different," usually ask directly for a controlled substance but do not want to submit to a physical examination, and appear to be in a hurry.

Respondent testified that since the previous proceeding, he has taken various courses to maintain his continuing medical education requirements, including courses in pain management which addressed the proper handling of controlled substances. Respondent testified that these courses instruct physicians, "[d]on't be scared of DEA," and "be very aggressive in treating the pain." However, Respondent stated that if granted a DEA registration, he does not intend to prescribe controlled substances very often, because there are now effective non-controlled pain relievers.

The Government argues that it has presented a prima facie case for the denial of Respondent's application for registration based upon the previous revocation of his DEA registration and the fact that he has not taken responsibility for the acts which led to the revocation. Nevertheless, the Government notes that Respondent's wrongdoing was limited to three instances of misprescribing in 1990 and 1991, and therefore, it may be appropriate to grant him a restricted registration. Respondent asserts that if granted a DEA registration, he would not prescribe controlled substances very often.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16,422 (1989).

Regarding factor one, the Acting Deputy Administrator notes that Respondent was without authority to handle controlled substances in the State of Texas for a period of time. However, it appears that the state took action against Respondent's Texas registration to handle controlled substances in light of the revocation of his previous DEA registration. On May 29, 1996, the Texas Department of Public Safety reissued Respondent his state controlled substance privileges in Schedules II nonnarcotic, III, IV and V. However, as Judge Bittner noted, "inasmuch as state licensure is a necessary but not sufficient condition for DEA registration, * * * this factor is not dispositive."

As to factors two and four, Respondent's experience in dispensing controlled substances and his compliance with controlled substance laws, it was found in the previous proceeding that Respondent prescribed controlled substance on three occasions in 1990 and 1991 to an undercover officer for no legitimate medical purpose, and therefore violated 21 CFR 1306.04. The Acting Deputy Administrator finds it troubling that Respondent continues to maintain that he did nothing wrong, and as the Government notes, this "calls into question his commitment to comply with controlled substance laws in the future." Respondent testified that since the revocation of his previous DEA registration, he has taken courses that have dealt with the handling of controlled substances. Yet, as Judge Bittner notes, "(it appears that these)

courses did not emphasize regulatory requirements and how to ensure that one's practices comply with them." Instead, Respondent testified that the courses encouraged doctors to not be scared of DEA and to take an aggressive approach to pain management. Nevertheless, Respondent testified that if granted a DEA registration, he would not prescribe controlled substances very often since safer noncontrolled substances are now available.

The Acting Deputy Administrator finds that there was no evidence presented relevant to factor three or factor five.

The Acting Deputy Administrator concludes that in light of Respondent's prescribing of controlled substances for no legitimate medical purpose and his failure to accept responsibility for his actions, the Government has established a prima facie case for the denial of Respondent's application for registration. However, as both Government counsel and Judge Bittner note, Respondent's wrongdoing is limited to three instances of prescribing controlled substances without a valid medical purpose in 1990 and 1991. Therefore, Judge Bittner recommended that Respondent be granted a restricted DEA Certificate of Registration. But, while Respondent has applied for a DEA registration in Schedules II through V, DEA has consistently held that it can only register a practitioner to handle controlled substances to the extent that he is authorized by the state. See, e.g., *Romeo J. Perez. M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.* 58 FR 51,104 (1993). Since the record indicates that Texas has not issued Respondent privileges in Schedule II narcotic, Respondent is not entitled to a DEA registration in Schedule II narcotic. Judge Bittner further recommended that Respondent be required to "submit quarterly logs of all his handling of controlled substances to the appropriate DEA Special Agent in Charge or his designee, for the term of his registration."

The Acting Deputy Administrator agrees that a restricted registration is appropriate under the facts and circumstances of this case. While Respondent's wrongdoing occurred a number of years ago and was limited in nature, it is in the public interest to monitor Respondent's handling of controlled substances, in light of his failure to acknowledge responsibility for his actions. Therefore, the Acting Deputy Administrator finds it in the public interest to grant Respondent a DEA registration in Schedules II through V, excluding Schedule II narcotic, subject to the following condition:

For three years from the date of issuance of the DEA Certificate of Registration, Respondent shall maintain a log of all controlled substances that he prescribes, administers or dispenses. At a minimum, the log shall indicate the date that the controlled substance was prescribed, administered or dispensed, the name of the patient, and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed. The log shall be submitted on a quarterly basis to the Special Agent in Charge of the DEA Houston Field Division, or his designee. Should Respondent not prescribe, administer or dispense any controlled substances during a given quarter, he shall so indicate to the Special Agent in Charge of the DEA Houston Field Division, or his designee.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application dated October 2, 1994, submitted by Anant N. Mauskar, M.D., be, and it hereby is, granted in Schedules II through V, excluding Schedule II narcotic, subject to the above described restriction. This order is effective April 20, 1998.

Dated: March 6, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–7188 Filed 3–19–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Service (CJIS) Advisory Policy Board; Meeting

The Criminal Justice Information Services (CJIS) Advisory Policy Board will meet on June 16–17, 1998, from 9 a.m., until 5 p.m., at the Swissôtel, One Avenue de Lafayette, Boston, Massachusetts, telephone 617–422–5528, to formulate recommendations to the Director, Federal Bureau of Investigation (FBI), on the security, policy, and operation of the National Crime Information Center (NCIC), NCIC 2000, the Integrated Automated Fingerprint Identification System (IAFIS), and the Uniform Crime Reporting and National Incident Based Reporting System programs.

The topics to be discussed will include the progress of the NCIC 2000 and IAFIS projects, and other topics related to the operation of the FBI's criminal information systems.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning the FBI CJIS Division programs or related matters with the Board. Anyone wishing to address this session of the meeting should notify the Designated Federal Employee, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, facsimile, or a hand-delivered note. It should contain the requestor's name, corporate designation, consumer affiliation, or Government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. A non-member requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specifically approved by the Chairman of the Board.

Inquiries may be addressed to the Designated Federal Employee, Mr. Demery R. Bishop, Section Chief, Programs Development Section, CJIS Division, FBI, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone 304–625–2740, facsimile 304–625–5090.

Dated: March 9, 1997.

Demery R. Bishop,

Section Chief, Programs Development Section, Federal Bureau of Investigation, Designated Federal Employee.

[FR Doc. 98–7202 Filed 3–19–98; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 17, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC

20503 ((202) 395–7316), on or before April 20, 1998.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Labor Standards for the Registration of Apprenticeship—29 CFR Part 29.

OMB Number: 1205–0223 (Extension).

Form Number: ETA 671.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, or local governments.

Section	Frequency	Respondents	Average time per respondent
29.3 (Apprentice)	One-Time	94,041	15 minutes.
29.6 (Apprentice)	One-Time	602,940	50 minutes.
29.5 (Sponsor)	One-Time	1,271	2 hours.
29.5 (SAC)	One-Time	635	2 hours.
29.7 (Sponsor)	One-Time	40	50 minutes.
29.12	One-Time	30	2 hours.

Total Burden Hours: 32,630.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Title 29 CFR Part 29 sets forth labor standards to safeguard the welfare of apprentices and to extend the application of such standards by prescribing policies and procedures concerning registration of apprenticeship programs.

Agency: Employment and Training Administration.

Title: Dislocated Worker Special Project Report.

OMB Number: 1205–0318 (Extension).

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Form No.	Respondents	Frequency	Average time per response (hours)
NRA Projects:			
Section I	90	Quarterly	4
Final Project	90	One-time	1
Recordkeeping	90	Quarterly	1.5
Clean Air Projects:			
Section I	15	Quarterly	4
Section II	15	Annually	97
Section III	15	Annually	1
Recordkeeping	15	Quarterly	1.5
Recordkeeping	15	1 Quarter	2.5
Defense Diversification:			
Section I	10	Annually	4
Section II	10	One-time	97
Section III	10	One-time	1
Recordkeeping:.			
Section I	10	One-time	1.5
Section II	10	One-time	2.5
Section III	10	One-time	1.5

Total Burden Hours: 4,968.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The information will be used to assess Defense, Clean Air and Title III National Reserve projects. Participant and financial data will be used to monitor program performance, and to prepare reports and budget requests.

Agency: Employment and Training Administration.

Title: Equal Employment Opportunity in Apprenticeship and Training Title 29 CFR Part 30.

OMB Number: 1205–0224 (extension).

Form Number: ETA 9039.

Frequency: One-Time.

Section No.	Affected public	Number of respondents	Average time per respondent
30.3	Apprenticeship Sponsors	1,024	30 minutes.
30.4	Apprenticeship Sponsors	247	1 hour.
30.5	Apprenticeship Sponsors	3,662	30 minutes.
30.6	Apprenticeship Sponsors	50	5 hours.
30.8	Apprenticeship Sponsors	35,848	1 minute.
30.8	Apprenticeship Programs	17,924	5 minutes.
ETA 9039	Apprentices	50	30 minutes.

Total Burden Hours: 4,959.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: Title 29 CFR Part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State apprenticeship agencies.

Agency: Employment and Training Administration.
Title: NAFTA Confidential Report.
OMB Number: 1205–0339 (extension).
Form Number: ETA 9043.

Form No.	Affected public	Respondents	Frequency	Average time per response (hours)
Questionnaire	Respondent	1,000	On Occasion	3
Questionnaire	State Review	1,000	On Occasion	4.5

Total Burden Hours: 7,500.
*Total annualized capital/startup costs:*0.
*Total annual costs (operating/maintaining systems or purchasing services):*0.
Description: Statutory requirements under amendments to the Trade Act of 1974 by the North American Free Trade Agreement Implementation Act, adding Subchapter D requires business confidential data in order to make timely determinations as to whether imports have contributed to workers separations and thus eligible to apply for NAFTA Adjustment Assistance.

Agency: Employment and Training Administration.
Title: JTPA Indian and Native American Reporting Revisions for Program Years 1995.
OMB Number: 1205–0308 (Reinstatement).
Affected Public: Federally and State-recognized Indian tribes, bands and groups; Alaska Native entities; Hawaiian Native entities; private non-profit organizations; State agencies; consortia of any and/or all of the above.

Required activity (JTPA title IV–A)	DINAP form No.	Number of respondents	Responses per year	Total responses	Hours per response	Total burden hours
Planning Narrative		170	1	170	12	2,040
Budget Information Summary	ETA 8600	170	1	170	17.5	2,975
Program Planning Summary	ETA 8601	170	1	170	17.5	2,975
Recordkeeping		170		18,720	3	56,160
Reporting (Financial Status Report)	ETA 8602	170	1	170	7.75	1,317.5
Program Status Summary	ETA 8603	170	1	170	9.67	1,643.9
Annual Status Report	ETA 8604	170	1	170	22.5	3,825
Totals			6	19,740	89.92	70,936.4

Required activity (JTPA title II–B)	DINAP Form No.	Number of Respondents	Responses per year	Total responses	Hours per response	Total burden hours
Planning Narrative		126	1	126	6	756
Budget Information Summary	ETA 8600	126	1	126	8	1,024
Program Planning Summary	ETA 8601	126	1	126	8	1,024
Recordkeeping		126		10,000	2	20,000
Reporting (Financial Status Report)	ETA 8602	126	1	126	7.75	976.5
Program Status Summary	ETA 8603	126	1	126	9.67	1,218.42
Totals			5	10,630	41.42	24,998.92

Total annualized capital/startup costs: 0.

Total annual costs operating/ maintaining systems or purchasing services: $1,142,400.

Description: This request is for approval of a reinstatement of the planning and reporting forms previously approved and in use for the JTPA section 401 program which provides employment and training services for Indians and Native Americans. Burden estimates do not include the tribes currently participating in the demonstration project under Public Law 102–477, but do include estimates for those tribal entities which also receive funding under title II–B of JTPA.

Agency: Occupational Safety and Health Administration.

Title: Hazard Communication Program.

OMB Number: 1218–0072 (extension).

Frequency: On occasion.

Affected Public: Business and other for-profit, Federal and State government, Local or Tribal governments.

Total Respondents: 5,041,918.

Estimated Time Per Respondent: Time per response ranges from 12 seconds to affix labels to in-plant containers containing hazardous chemicals to 5 hours to develop a hazard communication program.

Total Burden Hours: 7,301,762.

Total annualized capital/startup costs: 0.

Total annual costs (operating/ maintaining systems or purchasing services): 0.

Description: The purpose of the Hazard Communication Standard and its information collection requirements is to ensure that the hazards of all chemical produced or imported are evaluated and that information concerning their hazards is transmitted to employees and downstream employers. The standard requires chemical manufacturers and importers to evaluate chemicals they produce or import to determine if they are hazardous; for those chemicals determined to be hazardous, material safety data sheets and warning labels must be developed. Employers are required to establish hazard communication programs, to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets, and training programs. Implementation of these collection of information requirements will ensure all employees have the "right-to-know" the hazards and identities of the chemicals they work with and will reduce the incidence of chemically-related occupational illnesses and injuries.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–7341 Filed 3–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA980001 (Feb. 13, 1998)
MA980002 (Feb. 13, 1998)
MA980005 (Feb. 13, 1998)
MA980007 (Feb. 13, 1998)
MA980012 (Feb. 13, 1998)
MA980017 (Feb. 13, 1998)
MA980018 (Feb. 13, 1998)
MA980019 (Feb. 13, 1998)
New Jersey
NJ980002 (FEB. 13, 1998)

Volume II

Pennsylvania
PA980005 (Feb. 13, 1998)
PA980006 (Feb. 13, 1998)

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PA980019 (Feb. 13, 1998)
PA980021 (Feb. 13, 1998)
PA980026 (Feb. 13, 1998)

Volume III

Florida
FL980010 (Feb. 13, 1998)
FL980014 (Feb. 13, 1998)
FL980015 (Feb. 13, 1998)
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Volume IV

Illinois
IL980028 (Feb. 13, 1998)
IL980034 (Feb. 13, 1998)
IL980043 (Feb. 13, 1998)
IL980064 (Feb. 13, 1998)
IL980067 (Feb. 13, 1998)
IL980068 (Feb. 13, 1998)
IL980069 (Feb. 13, 1998)
Michigan
MI980033 (Feb. 13 1998)
Minnesota
MN980003 (Feb. 13, 1998)
MN980005 (Feb. 13, 1998)
MN980007 (Feb. 13, 1998)
MN980008 (Feb. 13, 1998)
MN980012 (Feb. 13, 1998)
MN980015 (Feb. 13, 1998)
MN980043 (Feb. 13, 1998)
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MN980048 (Feb. 13, 1998)
MN980049 (Feb. 13, 1998)
MN980058 (Feb. 13, 1998)
MN980059 (Feb. 13, 1998)
MN980061 (Feb. 13, 1998)

Volume V

Kansas
KS980007 (Feb. 13, 1998)
KS980011 (Feb. 13, 1998)
KS980013 (Feb. 13, 1998)
KS980018 (Feb. 13, 1998)
KS980019 (Feb. 13, 1998)
KS980020 (Feb. 13, 1998)
KS980021 (Feb. 13, 1998)
KS980023 (Feb. 13, 1998)
KS980026 (Feb. 13, 1998)
Lousiana
LA980005 (Feb. 13, 1998)
LA980012 (Feb. 13, 1998)
LA980040 (Feb. 13, 1998)

Volume VI

None

Volume VII

California
CA980029 (Feb. 13, 1998)
CA980030 (Feb. 13, 1998)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C., this 13th day of March, 1998.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–6981 Filed 3–19–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10421, et al.]

Proposed Exemptions; Tyson Foods, Incorporated Employee Profit Sharing Plan and Trust (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Tyson Foods, Incorporated, Employee Profit Sharing Plan and Trust (the Plan), Located in Springdale, Arkansas

[Application No. D–10421]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale by the Plan of certain hatcheries, a freezer facility and an office complex (collectively, the Properties), all located in Arkansas, to Tyson Foods, Incorporated (the Company), a party in interest with respect to the Plan, provided that the following conditions were satisfied:

(A) All terms of the transactions were at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The sale was a one-time transaction for cash;

(C) The Plan paid no commissions nor other expenses relating to the sale;

(D) The purchase price was the greater of: (1) the fair market value of each of the Properties as determined by a qualified, independent appraiser, or (2) the Plan's original acquisition cost; and

(E) Prior to the sale, an independent fiduciary reviewed the transactions and determined that the transactions described herein, were appropriate and in the best interests of the Plan and its participants and beneficiaries.

EFFECTIVE DATE: If granted, this exemption will be effective May 23, 1997.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 4,934 participants and beneficiaries and total assets of $80,648,308 as of March 31, 1996. The Plan is sponsored by Tyson Foods, Incorporated (the Company), a Delaware corporation, with its principal operations in Arkansas. The Company is primarily engaged in the business of producing and selling chicken-based food products. The Company is in the process of terminating the Plan. The trustees of the Plan are: John Tyson, Gerard Dowd, Lois S. Brottomley, William W. Lovette, and Dennis Leatherby (together, the Trustees). The Company represents that the Trustees are all currently employees of the Company and that they make investment decisions for the Plan.

2. Among the assets of the Plan, prior to May 23, 1997, were the Properties, consisting of four chicken hatcheries, a corporate office complex and a freezer facility. The Properties were all acquired by the Plan, from the Company in various transactions between 1966 and 1992. After each of the Properties was acquired by the Plan, the Plan leased the Properties to the Company.[1] On May 23, 1997, the Properties were sold by the Plan back to the Company. The percentage of the Plan's total assets invested in the Properties was 32%, based on fair market values of the Properties reported on the 1995 Form 5500.

3. The Trustees determined it was necessary to sell the Properties in order to convert illiquid real estate investments into liquid assets so that the Plan can make final terminating distributions to participants and beneficiaries under the terms of the Plan. The Board of Directors of the Company approved resolutions terminating the Plan. The Company represents that the Board of Directors also authorized the Company to purchase the Properties[2], if an independent fiduciary for the Plan, determined that the sale of the Properties to the Company was in the best interest of the Plan and its participants and beneficiaries.

4. On February 17, 1997, the Company engaged Arthur Andersen LLP (Arthur Andersen), of Atlanta, Georgia, to act as independent fiduciary on behalf of the Plan. Arthur Andersen is a major accounting and consulting firm which has extensive experience in the business of commercial real estate consulting and appraisal. Arthur Andersen represents that the scope of its engagement was to determine whether: (1) The Plan would receive adequate consideration for the Properties as determined by a qualified independent appraiser approved by Arthur Andersen; and (2) the sale of the Properties was appropriate and in the best interests of the Plan and its participants and beneficiaries. In addition, Arthur Andersen's duties included making a determination as to whether the Plan should sell the Properties to the Company.

5. Arthur Andersen represents, in its written report prepared for the Trustees and for review by the Department, that in its opinion, the sale of the Properties to the Company for $33,032,000 in cash was in the best interest of the Plan and its participants and beneficiaries. Arthur Andersen further states that the $33,032,000 aggregate sales price for the Properties represents the greater of (1) the fair market value of the Properties, or (2) the Plan's original acquisition cost for each of the Properties, on a property by property basis.

6. In order to determine that the sale of the Properties by the Plan to the Company, was in the best interests of the Plan and its participants and beneficiaries, Arthur Andersen sought current real estate appraisals for the Properties. The Trustees selected Reed & Associates, Inc. (Reed & Associates), a real estate appraisal firm in Springdale, Arkansas. After interviewing Reed & Associates, Arthur Andersen approved of the Trustees selection. Tom Reed, an MAI appraiser, along with another licenced appraiser employed by Reed & Associates, appraised the Properties between March 25 and May 16, 1997.

Reed & Associates opined that the fair market value of each of the four chicken hatcheries had declined, and that the corporate office complex and freezer facilities had both appreciated in value since they were acquired by the Plan. Reed & Associates assigned specific values for each of the Properties, as discussed below.

7. Arthur Andersen, in its capacity as independent fiduciary for the Plan, reviewed and evaluated the appraisals of the Properties performed by Reed & Associates. Arthur Andersen determined that (1) the appraisals were accurate, (2) the appraisals established the fair market value of each of the Properties, and (3) it was appropriate to rely upon such appraisals for the purpose of determining the sales price of the Properties.

8. Among the Properties are four chicken hatcheries. Three of the four hatcheries are located in Washington County, Arkansas. These hatcheries are known as: the Lincoln Hatchery, Johnson Road Hatchery and Randall Road Hatchery. The fourth hatchery is the Nashville Hatchery which is located in Howard County, Arkansas.

9. The Lincoln Hatchery is located on a 12.89 acre parcel of land and was

[1] The Department is not providing relief herein with respect to any transactions involving the Properties other than the sale of the Properties by the Plan to the Company. In this regard, the Department is referring the other transactions involving the Properties to the Internal Revenue Service for the imposition of any applicable excise taxes arising under section 4975 of the Code which may be due.

[2] Pursuant to the Company's offer to purchase the Properties, the Company agreed to pay all costs and expenses associated with its purchase of the Properties, including but not limited to, appraisals, commissions and taxes, and the costs of seeking the prohibited transaction exemption, proposed herein.

acquired by the Plan in 1973 for $1,173,000. The Plan received net rentals of $2,567,331 from April 1, 1986 to the date of sale. Reed & Associates determined that the fair market value of the Lincoln Hatchery was $710,000 as of March 31, 1997. The Company purchased the Lincoln Hatchery for $1,173,000.

The Johnson Road Hatchery is located on a four acre parcel of land and was acquired by the Plan in 1966 for $546,000. The Plan received net rentals of $747,663 from April 1, 1986 to the date of sale. Reed & Associates determined that the fair market value of the Johnson Road Hatchery was $485,000 as of April 2, 1997. The Company purchased the Johnson Road Hatchery for $546,000.

The Randall Road Hatchery is located on a 15.3 acre parcel of land and was acquired by the Plan in 1960 for $813,000. The Plan received net rentals of $1,178,070 from April 1, 1986 to the date of sale. Reed & Associates determined that the fair market value of Randall Road Hatchery was $725,000 on March 25, 1997. The Company purchased the Randall Road Hatchery for $813,000.

The Nashville Hatchery is located on a 2.76 acre parcel of land and it was acquired by the Plan in 1973 for $460,000. The Plan received net rentals of $666,543 from April 1, 1986 to the date of sale. Reed & Associates determined that the fair market value of the Nashville Hatchery was $290,000 as of April 4, 1997. The Company purchased the Nashville Hatchery for $460,000.

11. The corporate office complex (Corporate Office Complex), located in Washington County, Arkansas, is comprised of four buildings that were purchased in four separate transactions occurring, respectively, in 1969, 1987, 1991, and 1992. The Plan's original acquisition cost of the four buildings, in the aggregate, was $15,549,946. Between April 1, 1986 and the date of sale, the Corporate Office Complex produced net rental income for the Plan totaling $21,969,230. Reed & Associates determined that the fair market value of the Corporate Office Complex on May 9, 1997, was $18,850,000. The Company purchased the Corporate Office Complex for $18,850,000.

12. The freezer facility (Tyson Valley Freezer Facility) was acquired by the Plan in 1989, at an original acquisition cost of $6,023,457. The Tyson Valley Freezer Facility consisted of a ground lease in property and the freezer facility located thereon. From the date of acquisition, through the date sale, the Plan collected net rental income totaling $5,922,906. The Company, at its own expense, made improvements to the Tyson Valley Freezer Facility while it was owned by the Plan.

Arthur Andersen represents, that after reviewing the appraisal provided by Reed & Associates and considering the advice of legal counsel regarding the ownership of the improvements, it, in its capacity as independent fiduciary for the Plan, determined that the fair market value of the Tyson Valley Freezer Facility was $11,190,000. The Company purchased the Tyson Valley Freezer Facility for $11,190,000.

13. As to all the sales, Arthur Andersen concluded that the sale of each of the Properties to the Company was in the best interests of the Plan and its participants and beneficiaries. In addition, Arthur Andersen represents that the Company paid the greater of (1) the fair market value, or (2) and the original acquisition cost to the Plan, for each of the Properties, on a property by property basis. As a result of the sale of the Properties to the Company, the Plan received a total of $33,032,000 in cash, at closing.

14. Mr. Reed, of Reed & Associates, represents that in his capacity as appraiser, he reviewed the past rental rates paid on each of the Properties, from April 1, 1991, to the date of sale, and that the rental rates paid by the Company to the Plan for each of the Properties constituted fair market rental value.

The Company prepared an analysis of the rents received for each of the Properties from 1986 to the date of sale. The analysis shows that the annualized rates of return ranged from 12% to 24.27%, with most annualized returns in the 12% to 13% range.

15. Arthur Andersen represents, that in its opinion, the sale of the Properties to the Company was appropriate and in the best interests of the Plan and its participants and beneficiaries. Further, Arthur Andersen states that its review of the Plan's records confirm that the Plan has been terminated and that the Properties needed to be sold to permit the assets of the Plan to be distributed to the participants and beneficiaries in accordance with the terms of the Plan.

16. In summary, the applicant represents that the proposed transaction satisfies the 408(a) of the Act for the following reasons: (a) Prior to the sale, an independent fiduciary determined that the transaction was in the best interest of the Plan and its participants and beneficiaries; (b) the sale will enable the Plan to make distributions to participants and beneficiaries; (c) as of the date of sale, the Plan received cash for each of the Properties which was the greater of (1) the fair market value of the Properties, or (2) the Plan's original acquisition cost for each of the Properties, on a property by property basis; and (d) the sale was a one-time cash transaction and the Plan did not incur any expenses related to the sale.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change

after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 17th day of March, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–7272 Filed 3–19–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Cross-Trades of Securities by Investment Managers

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice.

SUMMARY: This document announces that the Department has under consideration certain applications for exemptions relating to cross-trades of securities by investment managers with respect to any account, portfolio or fund holding "plan assets" [1] subject to the fiduciary responsibility provisions of Part 4 of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The Department requests information to assist it in determining upon what standards and safeguards exemptive relief should be conditioned.

DATES: Responses must be received on or before May 19, 1998.

ADDRESSES: Responses (preferably, at least three copies) should be addressed to: Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, 200 Constitution Ave., NW., Washington, DC 20210. Attention: "Cross-Trades of Securities".

FOR FURTHER INFORMATION CONTACT: Louis J. Campagna or E.F. Williams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8883 or 219–8194 (not toll-free numbers); or Michael Schloss, Plan Benefits Security Division, Office of the Solicitor, (202) 219–4600 ext. 138 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

[1] See 29 CFR 2510.3–101, Definition of "plan assets"—plan investments.

A. Background

There are generally two types of securities cross-trading transactions: (i) Direct cross-trades, and (ii) brokered cross-trades.

Direct cross-trades occur whenever an investment manager causes the purchase and sale of a particular security to be made directly between two or more accounts under its management without a broker acting as intermediary. Under this practice, the manager executes a securities transaction between its managed accounts without going into the "open market"—such as a national securities exchange (*e.g.*, the New York Stock Exchange ("NYSE") or an automated broker-dealer quotation system (*e.g.*, the National Association of Securities Dealers Automated Quotation National Market System ("NASDAQ").

Brokered cross-trades occur whenever an investment manager places simultaneous purchase and sale orders for the same security with an independent broker-dealer under an arrangement whereby such broker-dealer's normal commission costs are reduced. In such instances, brokers are often willing to accept a lower commission because the transaction will be easier to execute where there are shares already available to complete the order for both the buyer and the seller.[2]

Cross-trading transactions could result in violations of one or more provisions of Part 4 of Title I of ERISA. Section 406(b)(2) provides that an ERISA fiduciary may not act in any transaction involving a plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. Where an investment manager has investment discretion with respect to both sides of a cross-trade of securities and at least one side is an employee benefit plan account, the Department has previously taken the position that a violation of section 406(b)(2) of ERISA would occur.[3] The Department has also taken the position that by representing the buyer on one side and the seller on the other in a cross-trade, a fiduciary acts on behalf of parties that have adverse interests to each other.[4] Moreover, the prohibitions embodied in section 406(b)(2) of ERISA are per se in nature. Merely representing both sides of a transaction presents an adversity of interests that violates section 406(b)(2) even absent fiduciary misconduct reflecting harm to a plan's beneficiaries.[5]

In addition, violations of section 403 and 404 could also arise where the investment manager represents both sides in a cross-trade. Section 404(a)(1)(A) of ERISA requires, in part, that a plan fiduciary must discharge its duties solely in the interests of the participants and beneficiaries of that plan and "for the exclusive purpose" of providing benefits to participants and beneficiaries and defraying reasonable plan expenses. Similarly, section 403(c)(1) of ERISA requires, in part, that the assets of a plan must be "* * *held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan."

The Department has granted a number of individual exemptions from the prohibitions of section 406(b)(2) of ERISA for cross-trades of securities by investment managers on behalf of employee benefit plan accounts or pooled funds which contain "plan assets" subject to ERISA.[6] These individual exemptions generally have focused on direct cross-trading transactions. The individual exemptions granted have not provided relief for any violations of section 406(b)(1) or (b)(3) of the Act [7] which may occur as a result

[2] This notice assumes that cross-trades, including brokered cross-trades, are not performed on the market as "wash sales" (in which the same party is the buyer and seller) or as "matched orders" (in which confederates simultaneously enter offsetting purchase and sale orders). These and similar types of trades may be used to manipulate stock prices and may raise other issues under ERISA.

[3] *Reich* v. *Strong Capital Management Inc.*, No. 96–C–0669, USDC E.D. Wis. (June 6, 1996).

[4] See *Strong Capital Management Inc.*, supra.

[5] See, *Cutaiar* v. *Marshall*, 590 F.2d 523 (3d Cir. 1979). In *Cutaiar*, the court held that, "* * * when identical trustees of two employee benefit plans whose participants and beneficiaries are not identical effect a loan between the plans without a section 408 exemption, a per se violation of ERISA exists." *Cutaiar*, 590 F.2d at 529.

[6] In this regard, see the following Prohibited Transaction Exemptions (PTEs): PTE 95–83, Mercury Asset Management (60 FR 47610, September 13, 1995); PTE 95–66, BlackRock Financial Management L.P., (60 FR 39012, July 31, 1995); PTE 95–56, Mellon Bank, N.A. (60 FR 35933, July 12, 1995); PTE 94–61, Batterymarch Financial Management (59 FR 42309, August 17, 1994); PTE 94–47, Bank of America National Trust and Savings Association (59 FR 32021, June 21, 1994); PTE 94–43, Fidelity Management Trust Company (59 FR 30041, June 10, 1994); PTE 94–36, The Northern Trust Company (59 FR 19249, April 22, 1994); PTE 92–11, Wells Fargo Bank, N.A. (57 FR 7801, March 4, 1992)—which replaced PTE 87–51 noted below; PTE 89–116, Capital Guardian Trust Company (54 FR 53397, December 28, 1989); PTE 89–9, State Street Bank and Trust Company (54 FR 8018, February 24, 1989); PTE 87–51, Wells Fargo Bank, N.A. (52 FR 22558, June 12, 1987); and PTE 82–133, Chase Manhattan Bank, N.A. (47 FR 35375, August 13, 1982).

[7] Section 406(b)(1) of ERISA prohibits a plan fiduciary from dealing with the assets of the plan in his own interest or for his own account. Section 406(b)(3) prohibits a plan fiduciary from receiving

of cross-trades where an investment manager has discretion for both sides of the trade. In this regard, the Department notes that the individual exemptions cannot provide exemptive relief for such managers from the provisions contained in sections 403 and 404. Thus, even when proceeding under an individual exemption, an investment manager remains fully liable under sections 403 and 404 of ERISA for the investment decision relating to a cross-trade.

The Department has also granted a class exemption which provides relief for, among other things, certain agency cross-trades of securities where an investment manager has discretion for, and/or provides investment advice to, either the seller or the buyer, but not both, or where the investment manager does not have discretion for, and/or provide investment advice to, any plan involved in the transaction (see PTE 86–128 (51 FR 41686, November 18, 1986)). Such cross-trades do not require individual exemptive relief if the conditions of PTE 86–128 are met.

The Department currently has under consideration a number of individual exemption applications which request relief for cross-trading programs that involve purchases and sales of securities by employee benefit plans.[8]

In the exemption applications, the applicants have represented to the Department that cross-trading provides certain benefits to employee benefit plans. For example, if a plan needs to sell certain securities, the potential negative impact that such transaction may have on the price of the security if the transaction had been executed in the open market may be avoided through the use of a cross-trade. In addition, both the buyer and seller save the transaction costs (e.g., brokerage commissions or the bid-offer spread) that would otherwise have been paid to a broker-dealer for executing the transaction as an agent. Finally, both parties to the cross-trade benefit by avoiding the uncertainty of whether they will be able to find a counter-party for a proposed trade.

Applicants have also represented to the Department that cross-trade opportunities may be triggered by a number of events. For example, the investment guidelines or objectives for one account may dictate that certain securities should be sold, but those same securities may be on the investment manager's "buy list" for other accounts. Thus, one account or fund may be selling a particular security at the same time that another account or fund may need to buy that security. For instance, one account may need additional liquidity while another account has excess cash that needs to be invested. Similarly, one account may be too heavily invested in a particular security while another account may have a need for that security.

While recognizing the advantages of cross-trading to plans, the Department has particular concerns where managers have investment discretion over both sides of a cross-trade transaction. The conditions contained in the Department's prior individual exemptions were intended to address these concerns and to safeguard plans against the inherent conflict of interest which exists when there is a common investment manager for both sides of a transaction. In this regard, the conditions incorporated into these exemptions were designed to protect plans against the potential that an investment manager may exercise discretion to favor one account over another; e.g., in the pricing of a particular cross-trade, in the decision to either buy and/or sell particular securities for an ERISA account, or to allocate securities among accounts including ERISA accounts.

Specifically, the Department's concerns are illustrated by, among other things, the potential for an investment manager to:

(i) Place relatively illiquid securities into ERISA accounts in order to, among other reasons, shift anticipated losses away from, or provide artificial liquidity and price stability for, favored accounts;

(ii) Use ERISA accounts as buyers or sellers of securities at particular times in order to promote the interests of more favored client accounts;

(iii) Allocate favorable cross-trade opportunities, and the transaction cost savings associated with such trades, to favored client accounts, such as those that have a performance-based fee arrangement with the manager in order to either increase the manager's fees or demonstrate superior investment performance;

(iv) Allow cross-trade opportunities to affect the underlying investment management decision as to which securities to buy or sell for particular ERISA accounts; and

(v) Use cross-trades to avoid the potential market impact of large trades on certain accounts where such trades may not be in the best interests of all accounts involved or may not result in the best execution for the acquisition or sale of such securities.

Types of Individual Exemptions Granted by the Department

The individual exemptions that the Department has granted in the past for cross-trading fall into two categories: (1) Those for Index and Model-Driven Funds; and (2) those for actively-managed or discretionary asset management arrangements.

In the Index Fund programs, trading decisions are "passive" or "process-driven" because the investment manager has been hired to invest money in a formulaic way that, for example, tracks the rate of return of an independently maintained index by either replicating the entire portfolio of the index or by investing in a representative sample of such portfolio. Model-Driven funds are based upon formulas by which an "optimal" portfolio is created to implement some specific investment strategy (e.g., hedge funds). While these "process-driven" programs ostensibly may be implemented only by investment in an index replicating portfolio (in the case of index funds) or some set "optimum" portfolio (in the case of model-driven funds), as noted below, selection of individual securities for such "process-driven" strategies may involve a more subtle exercise of discretion by an investment manager than the Department previously believed.

In actively-managed programs, trading decisions are made by individuals that have been hired to select particular securities as professional investment managers for "actively-managed" accounts.

The conditions for both types of exemptions are summarized below.

Index and Model-Driven Funds

1. The index used by the funds or accounts is established and maintained by an independent organization which is in the business of providing financial information to institutional clients.

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any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

The Department notes that some of the individual exemptions have provided, and some of the current exemption applications also request, relief from the prohibitions of section 406(a)(1)(A) of ERISA. Section 406(a)(1)(A) states, in pertinent part, that a fiduciary of a plan shall not cause the plan to engage in a transaction which constitutes a sale, exchange, or leasing of any property between the plan and a party in interest. Relief from this section was provided in certain of the cross-trading exemptions in response to the applicants' representations that some plans may be parties in interest to other plans participating in the cross-trading program.

[8] These exemption requests include the following: D–9584, Wells Fargo Bank, N.A.; D–10107, Bankers Trust Company of New York; D–10210 and D–10211, Rowe Price Fleming International, Inc., and T. Rowe Price Associates, Inc.; D–10290, State Street Bank and Trust Company; D–10322, Brinson Partners; D–10370, Putnam Advisory Company, Inc.; and D–10507, ANB Investment Management and Trust Company.

2. Discretion of the manager is limited because only certain "triggering events" effecting the composition or weighting of securities included in the index or model will give rise to a cross-trade opportunity.

3. The triggering events are generally outside the control of the manager and will "automatically" cause the buy or sell decision to occur.

4. Specific triggering events in the Index and Model-Driven Fund exemptions include:

(a) Changes in the composition or weighting of the index or model underlying the Fund by the third party who maintains the index;

(b) Changes in the composition or weighting of a portfolio used for a Model-Driven Fund resulting from an independent fiduciary's decision to exclude certain stocks from the Fund;

(c) Changes in the overall investment in a Fund due to investments and withdrawals; and

(d) Accumulations of cash in a Fund.

5. Cross-trades must take place within three (3) days of a triggering event.

6. Only large plans (i.e., over $50 million in assets) may cross-trade with an Index or Model-Driven Fund in connection with specific portfolio restructuring programs conducted by the manager which have been authorized in advance by an independent plan fiduciary.

7. The price of equity securities involved in a cross-trade must be the closing price of the security on the date of the trade.

Actively-Managed Funds

1. An independent plan fiduciary must specifically authorize in advance a plan's participation in the cross-trade program.

2. Cross-trade opportunities arise at the discretion of the investment manager but must be disclosed to, and authorized in advance by, an independent plan fiduciary prior to the execution of the proposed cross-trade. The authorization is effective for three (3) business days.

3. Written confirmation of the terms and price of the cross-trade must be provided within 10 days of the trade.

4. Equity securities are priced at the closing price as of the date of the cross-trade. As a further limitation, the cross-trade must take place at a price which is within 10 percent of the closing price for the security on the day before the manager receives authorization to engage in a cross-trade.

5. Unless the condition is specifically waived by the independent fiduciary, the cross-trade must involve less than 5 percent of the aggregate average daily trading volume for the security for the week immediately preceding the authorization of the transaction.

Other pertinent conditions applicable to both Index and Model-Driven Funds as well as Actively-Managed Funds.

1. Securities involved in a cross-trade must be securities for which there is a generally recognized market.

2. The investment manager must not charge or receive any commissions or other fees in connection with the cross-trade.

3. The price for any debt security involved in a cross-trade must be determined in accordance with objective and reputable market sources which are independent of the investment manager (e.g., the methodology described under rules promulgated by the Securities and Exchange Commission (SEC) for mutual funds, as discussed further below).

4. A fair system for allocating cross-trade opportunities among managed accounts has been required, with such allocation being made on an objective basis (e.g., pro rata) among buying and selling client accounts.

Issues and Developments

Through the development of cross-trading exemptions and enforcement proceedings the Department has become aware of new issues that have the potential to impact or change exemption policy involving cross-trading transactions. The Department recognizes that it is important to retain the flexibility to review our exemption policy in the context of changed circumstances or new facts that may be brought to our attention. Thus, one of the primary objectives of this notice is to request information from interested persons, e.g., plan fiduciaries, investment management firms, securities industry representatives and securities exchanges that may be affected by the Department's exemption policy for cross-trades of securities by employee benefit plans.

In the "process-driven" context, it has been represented to the Department that investment managers who maintain accounts or pooled funds often attempt to track the rate of return of an independently maintained third party index (e.g., the Standard & Poors 500 Composite Stock Price Index a/k/a the S&P 500 Index, the Wilshire 5000 Index, the Russell 2000 Index). These pooled funds are often collective investment funds established and trusteed by large banks that manage money for institutional investors, including employee benefit plans. Under the Department's individual exemptions, such funds usually cross-trade pursuant to certain narrowly-defined "triggering events" that were represented to involve little, if any, discretion on the part of the investment manager.

In the past, various applicants represented to the Department that the investment strategy of most Index Funds was to merely replicate the capitalization-weighted composition of a particular index. However, the Department now understands that the process of replication of an index may be more subtle since many, if not most, Index Funds do not totally replicate the exact portfolio of the index that is being tracked. In many instances, the manager maintains some discretion to select particular securities to track the rate of return of the overall index without actually holding all of the securities included in the index. In addition, some Index Funds are designed to exceed the rate of return of the index by altering the composition or weighting of the portfolio designated by the organization that maintains the index. These "enhanced" Index Funds often have strategies that resemble actively-managed accounts.

Model-Driven Funds, on the other hand, are portfolios that apply specific investment philosophies and criteria in formulaic fashion to create a specialized portfolio. Model-Driven Funds come in many different forms (e.g., hedge, sector, contra, etc). Some Model-Driven Funds seek to transform the capitalization-weighted or other specified composition of an index in order to accomplish certain goals. Such goals vary from client-initiated instructions to delete certain stocks to mathematical formulae designed to focus on certain investment criteria (e.g., price-earnings ratios) at certain times to achieve a rate of return for the portfolio that exceeds that of the index. Thus, some Model-Driven Funds merely appear to be a more sophisticated type of "enhanced" Index Fund.

There are also indications that, in many cross-trading programs for Index and Model-Driven Funds, the manager may retain a degree of discretion in selecting securities for the Funds' portfolios. Further, it appears that, in weighting a particular tracking factor for an index or model, the manager can produce desired cross-trade opportunities. For example, by factoring in the liquidity or the availability of a security within the control of the manager, the manager can produce more cross-trading opportunities for that particular security by the accounts within the control of the manager. Thus, the process of replicating an independently maintained index or model may not be as automatic as

previously described to the Department in the relevant exemption applications. At this point, the Department is uncertain as to the degree of discretion utilized in Index and Model-Driven Funds and believes it would be helpful to obtain further information on this matter.

A number of interested persons have suggested to the Department that, in developing standards and safeguards in individual exemptions involving cross-trade transactions, particularly those involving actively-managed accounts, the Department should adopt the methodology approved by the SEC for cross-trades of equity or debt securities by mutual funds. In this regard, the SEC permits cross-trading of securities if the transactions are accomplished in accordance with SEC Rule 17a–7 (Rule 17a–7 or the Rule).[9]

Rule 17a–7 is an exemption from the prohibited transaction provisions of section 17(a) of the Investment Company Act of 1940, which prohibit, among other things, transactions between an investment company and its investment adviser or affiliates of its investment adviser. Thus, Rule 17a–7 permits transactions between mutual funds and other accounts that use the same or affiliated investment advisers, subject to certain conditions that are designed to assure fair valuation of the assets involved in the transaction and fair treatment of both parties to the transaction.[10] Even so, the requirements of Rule 17a–7 are only applicable to transactions and entities regulated under the Investment Company Act of 1940, and such requirements are not otherwise applicable to other entities—such as employee benefit plans.[11]

An essential requirement of Rule 17a–7 is that the transaction be effected at the independent current market price for the security involved. In this regard, the "current market price" for specific types of securities is determined as follows:

(1) If the security is a "reported security" as that term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (17 CFR 240.11Aa3–1), the last sale price with respect to such security reported in the consolidated transaction reporting system ("consolidated system") or the average of the highest current independent bid and lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the Securities and Exchange Act of 1934 (17 CFR 240.11Ac1–1)) if there are no reported transactions in the consolidated system that day; or

(2) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or the average of the highest current independent bid and lowest current independent offer on such exchange if there are no reported transactions on such exchange that day; or

(3) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ; or

(4) For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry.[12]

It is our understanding that proponents advocating the adoption of a similar exemptive standard for cross-trading by plans argue that, by pricing a cross-trade pursuant to the procedures described in Rule 17a–7, employee benefit plans will be protected from the concerns embodied in ERISA because one plan cannot be favored over another by the common fiduciary determining the appropriate value of the cross-traded security. This argument assumes that if both sides of a cross-trade transaction receive a fair and objectively determined price for a security, there should not be any concern about potential fiduciary abuses under ERISA in connection with the transaction.

The Department believes that this assumption may reflect a misunderstanding of the purposes underlying ERISA. ERISA's fiduciary responsibility and prohibited transaction provisions are designed to help assure that the fiduciary's decisions are made in the best interest of the plan and not colored by self-interest. These provisions require that a plan fiduciary act with an "eye single" to the interests of the plan involved in the transaction.[13] Therefore, the Department is not convinced that reliance upon an objective fair price alone will ameliorate the conflicts described above, such as the potential for "cherry picking" or "dumping" of securities or allocating investment opportunities among client accounts in a manner designed to favor one account over the other.

Further, the Department notes that, even where cross-trades take place at an appropriate market price or, when no market price is available, at a price set through use of the methodology described in Rule 17a–7, a per se violation of section 406(b)(2) of ERISA may occur even if the result is favorable to the plans involved.[14] Moreover, the mechanism employed under Rule 17a–7 to set the price of a security for a cross-trade may not take into account the transacting plan's specific interest in using its position to affect the transaction price in its favor on the open market. Setting a transaction price pursuant to this rule appears to presume that the trade itself cannot impact the market price and, therefore, that neither party has an interest in performing the trade on (or off) the market. More likely, however, a potential purchaser of securities would find lower prices in the marketplace if there were more sellers than purchasers in the marketplace at the time of the cross-trade. Similarly, a seller would find higher prices in a marketplace populated by more purchasers at the time of the cross-trade. When an investment manager decides to engage in an off-market transaction, particularly with thinly-traded securities, the result is that the effect of the transaction itself on the marketplace may be removed.

The Department notes further that Rule 17a–7 allows certain securities to be priced based on the last sale price for such securities on the exchange.[15] If a manager anticipates a drop in stock prices, such manager could decide to favor a buying client by waiting during the day for the stock price to drop before engaging in a cross-trade where the seller could be an ERISA account. The ability of the Department to address these issues would be lacking under any approach which focuses primarily upon ensuring that there is a fair and objective price for a cross-traded security under the requirements of Rule 17a–7.

Therefore, the Department has thus far been unable to conclude that

[9] 17 CFR 270.17a–7.

[10] Among the conditions of Rule 17a–7 are the following requirements: (a) The transaction must be consistent with the investment objectives and policies of the mutual fund, as described in its registration statement; (b) the security that is the subject of the transaction must be one for which market quotations are readily available; (c) no brokerage commissions or other remuneration (other than customary transfer fees) may be paid in connection with the transaction; and (d) the mutual fund's board of directors (i.e., those directors who are independent of the fund's investment adviser) must adopt procedures to ensure that the requirements of Rule 17a–7 are followed, and determine no less frequently than quarterly that the transactions during the preceding quarter were in compliance with such procedures.

[11] 17 CFR 270.17a–7.

[12] 17 CFR 270.17a–7(b)(1)–(4).

[13] See "*Donovan* v. *Bierwirth*", 680 F.2d 263, 271 (2d. Cir.), *cert. denied* 104 S.Ct. 488 (1982).

[14] See, *Cutaiar*, supra.

[15] 17 CFR 270.17a–7(b)(1) and (2).

reliance solely on Rule 17a–7 would adequately protect employee benefit plans in situations where an investment manager exercises discretion for both sides of a cross-trade.[16] However, in recognition of the interest in the approach under Rule 17a–7, the Department specifically invites responses from interested persons on the protections afforded to plans by this Rule.

B. Issues Under Consideration

The Department is issuing this notice to provide interested persons with an opportunity to submit information and responses which will be considered by the Department in developing exemptions for transactions involving cross-trades of securities by investment managers.

In order to assist interested parties in responding, this notice contains a list of specific questions designed to elicit information that the Department believes would be especially helpful in developing additional exemptions. The following questions may not address all issues relevant to the development of standards and safeguards for cross-trades. Therefore, the Department further invites interested persons to submit responses on other issues that they believe are pertinent to the Department's consideration of this matter.

Specific Questions

1. Would the development of a class exemption which covers all types, or any type, of cross-trading programs be in the interests and protective of employee benefit plan investors?

2. Should the Department develop separate class exemptions for cross-trades of securities by (i) actively-managed accounts, and (ii) "process-driven" accounts?

3. Should the Department develop consistent conditions in individual exemptions which would then facilitate the use of PTE 96–62?[17]

4. What effect, if any, will each of the following have on cross-trading programs?

a. The move to decimalization of stock quote spreads,

b. The emergence of electronic proprietary trading systems (e.g., Reuters' Instinet, London's Seaq International, Investment Technology Group's Posit, and AZX's Arizona Stock Exchange),

c. The growth of block trading in the so-called "upstairs market" on the NYSE or other national securities exchanges, and

d. Other market developments.

5. Will the development of proprietary trading systems impact on the requirements for an exemption permitting cross-trading of securities by plans with the same investment manager?

6. Are there real savings to plans from cross-trading when other market options are available?

7. What are the "costs" associated with doing a transaction off-market?

8. Will trading by other investors on securities exchanges be affected by the widespread use of cross-trading programs for securities transactions by employee benefit plans?

9. Are cross-trades beneficial only when the securities involved represent a significant percentage of the average daily trading volume of such securities?

10. How does an investment manager who is a fiduciary of a plan with discretion in a cross-trade, who also has discretion for other accounts in the same cross-trade, act "solely in the interest of" the plan account?

11. Does a cross-trade which avoids "adverse market impact" for one side of a transaction truly benefit both sides of that transaction?

12. In order to act in an employee benefit plan's best interest, should an investment manager attempt to negotiate a better price for a security before engaging in a cross-trade?

13. Would it ever be in an employee benefit plan's best interest to purchase a security through a cross-trade that the plan would not have otherwise purchased?

14. Where an investment manager has performed an analysis of a range of securities, would it ever be in a plan's best interest to purchase a security through a cross-trade that was not otherwise the superior security as indicated by the investment manager's analytics?

15. If an employee benefit plan purchased a security through a cross-trade that was not the most appropriate security for the plan at the time of the transaction pursuant to an investment manager's model or index, could such a transaction be viewed as being in the plan's best interests if the plan was adequately compensated for providing an accommodation to the selling entity? If so, how could the market value of such an accommodation be determined by the investment manager?

16. Do cross-trade programs tend to benefit larger accounts over smaller ones?

17. What is the best way to establish a price for cross-traded securities? (e.g., the "current market price" under SEC Rule 17a–7, the closing price for stocks traded on a nationally recognized securities exchange, the "volume weighted average price" for equity securities traded on an exchange,[18] the average between the current "bid" and "ask" quotations from reputable independent dealers and market-makers—particularly for debt securities where no exchange prices are available, etc.)

18. Given the variety of methods for trading of equity securities and the fact that many trades are conducted after a particular exchange has closed for the day, what is the current understanding of the meaning of the term "closing price," as utilized as a condition in the Department's current individual exemptions?

19. Will volume restrictions on the number of shares of a particular security that can be cross-traded ameliorate the potential for abuse that may occur? If so:

a. What should the volume restrictions be?

b. If particular cross-trades would exceed these limits, should the manager be able to engage in the transaction if certain disclosures are made to an independent plan fiduciary?

20. Are the computer models which "drive" portfolio selections made by a manager for an index or model-driven fund capable of being manipulated by such managers in order to produce more cross-trade opportunities for a particular fund?

21. What degree of discretion is provided to investment managers of index or model-driven funds to affect more or less cross-trade opportunities? To the extent that investment managers have such discretion:

a. Could the exercise of such discretion only become apparent upon a detailed examination of the mathematical assumptions used in each computer model and, if not, how else could such actions be discovered?

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[16] See also PTE 86–128, 51 FR 41686, 41692 (Nov. 18, 1986).

[17] PTE 96–62 (61 FR 39988, July 31, 1996) is a class exemption granted by the Department which permits certain authorized transactions between plans and parties in interest. The class exemption applies to prospective transactions between employee benefit plans and parties in interest where such transactions are specifically authorized by the Department as having terms, conditions and representations which are substantially similar to two or more individual exemptions previously granted by the Department within the 60-month period prior to the written submission filed in accordance with such class exemption.

[18] The "volume weighted average price" calculates the average price, weighted by the volume of each trade during the course of the day and, according to some market analysts, provides a more refined view of the market behavior of a specific security, with time, size and exchange filters.

b. Could the exercise of such discretion create "false liquidity" or "false price stability" for a particular security and, if so, would that create future problems for the portfolio when large amounts of such security must be sold in the open market?

22. Could exemptions for cross-trading programs involving employee benefit plans provide a commercial advantage to investment managers with larger amounts of assets under management and, if so, to what extent?

23. Could an efficient cross-trading program provide an investment manager with commercial advantages over competitors who do not choose to have, or are unable to implement, such programs and, if so, to what extent?

24. Where an investment manager has discretion on both sides of a transaction, can cross-trading of securities be utilized to:

a. "Dump" particular securities on less favored accounts to promote the interests of more favored accounts,

b. "Cherry-pick" particular securities from less favored accounts to promote the interests of more favored accounts,

c. Promote "front-running",

d. Allocate favorable cross-trade opportunities to certain client accounts to benefit the manager's ultimate compensation, and

e. Otherwise provide a benefit to the investment manager, another client of the investment manager or any other person or entity at an employee benefit plan's expense?

25. What new terms or conditions could the Department impose in an exemption to protect any plans involved in cross-trading from potential abuses, such as those listed in question 24?

All submitted responses will be made a part of the record of the proceeding referred to herein and will be available for public disclosure.

Signed at Washington, D.C., this 16th day of March, 1998.

Alan D. Lebowitz,

Deputy Assistant Secretary of Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–7271 Filed 3–19–98; 8:45 am]

BILLING CODE 7708–01–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) is requesting a second one-year extension of approval of its optional appeal form, Optional Form 283 (Rev. 10/94) from the Office of Management and Budget (OMB) under section 3506 of the Paperwork Reduction Act of 1995. The appeal form is currently displayed in 5 CFR Part 1201, Appendix 1, and on the MSPB Web Site at http://www.mspb.gov/merit009.html. In this regard, we are soliciting comments on the public reporting burden. The reporting burden for the collection of information on this form is estimated to vary from 20 minutes to one hour per response, with an average of 30 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR section	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201 and 1209	9,000	1	9,000	.5	4,500

In addition, the MSPB invited comments on (1) whether the proposed collection of information is necessary for the proper performance of MSPB's functions, including whether the information will have practical utility; (2) the accuracy of MSPB's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate and other forms of information technology.

DATES: Comments must be received on or before May 19, 1998.

ADDRESSES: Copies of the appeal form may be downloaded from the MSPB Web Site at http://www.mspb.gov/merit009.html, or by writing the Office of the Clerk, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419, or by calling the Clerk's office at (202) 653–7200. Comments concerning the paperwork burden should be addressed to the Office of the Clerk, attention Mr. Arlin Winefordner, at the above address. The fax number is (202) 652–7130, and the E-mail is Winefordner@MSPB.gov.

Dated: March 17, 1998.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 98–7340 Filed 3–19–98; 8:45 am]

BILLING CODE 7406–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (BIO) (1110).

Date and Time: April 6, 1998; 8:45 a.m.–5:00 p.m., April 7, 1998; 8:45 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Tel. No.: (703) 306–1400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: FY 1999 Budget and Science Opportunities Discussion.

Dated: March 16, 1998.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 98–7237 Filed 3–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the month of April 1998, the Special Emphasis Panel will be holding a Professional Opportunities for Women in Research and Education (POWRE) Panel Meeting to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows:

Name: Special Emphasis Panel in Chemical and Transport Systems.

Date and Time: April 6, 1998, 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1371.

Type of Meeting: Closed.

Contact: Dr. Ashley F. Emery, Program Director, Thermal Transport & Thermal Processing, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division of Thermal Transport & Thermal Processing as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–7239 Filed 3–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cognitive, Psychological and Language Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Cognitive, Psychological and Language Sciences (#1757).

Date & Time: April 15–17, 1998; 9:00 a.m.–6:00 p.m. (PST)

Place: University of California, UCLA Guest House, 330 Circle Dr. East, Los Angeles, CA 90095.

Contact Person: Dr. Paul G. Chapin, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1731.

Agenda: To review and evaluate linguistics proposals as part of the selection process for awards.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–7241 Filed 3–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Geosciences (1756).

Date & Time: April 6–8, 1998; 8:30 AM–5:00 PM.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Reeve, Section Head, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Global Ocean Ecosystems Dynamics Program (Globec) proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: March 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–7238 Filed 3–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Graduate Education; Notice of Meeting

Name: Special Emphasis Panel in Graduate Education (57).

Date: April 9–10, 1998; 8:00 a.m. to 5:00 p.m.

Place: NSF, Room 320, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Sonia Ortega, Program Director, PFSMETE, Room 907N, National Science Foundation, 4201 Wilson Blvd., Arlington, VA. 22230, telephone (703) 306–1697.

Purpose of Meeting: To provide advice and recommendations concerning Postdoctoral Fellowships in Science, Mathematics, Engineering and Technology Education (PFSMETE) proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSF Postdoctoral Fellowships in Science, Mathematics, Engineering and Technology Education program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c)(4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–7252 Filed 3–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following 4 meetings.

1. Name: Special Emphasis Panel for Social, Behavior & Economic Sciences (#1766).

Date & Time: April 8–9–10, 1998; 8:30 a.m.–5 p.m.

Room: 340.

Contact Person: Bonney Sheahan, Program Director for Cross Disciplinary Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1733.

Agenda: To review and evaluate Professional Opportunities for Women in Research & Education (POWRE) proposals as part of the selection process for awards.

2. Name: Advisory Panel for Infrastructure, Methods & Science Studies (#1760).

Date & Time: April 30–May 1, 1998; 8:30 a.m.–5 p.m.

Room: 330.

Contact Person: Dr. Rachelle Hollander, Program Director for SDEST, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Arlington, VA 22230. Telephone: (703) 306–1743.

Agenda: To review and evaluate Societal Dimensions of Engineering, Science & Technology proposals as part of the education process for awards.

3. Name: Advisory Panel for Infrastructure, Methods & Science Studies (#1760.

Date & Time: May 1–2, 1998; 8:30 a.m.–5 p.m.

Room: 365.

Contact Person: Dr. Edward J. Hackett, Program Director for Science & Technology Studies, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1742.

Agenda: To review and evaluate Science & Technology Studies proposals as part of the selection process for awards.

4. Name: Advisory Panel for Infrastructure, Methods & Science Studies (#1760).

Date & Time: May 4–5, 1998; 8:30 a.m.–5 p.m.

Room: 320.

Contact Person: Dr. Cheryl L. Eavey, Program Director for Methods, Measurement & Statistics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1729.

Agenda: To review and evaluate Methodology, Measurement & Statistics proposal as part of the selection process for awards.

Place: National Science Foundation, Stafford Place, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–7242 Filed 3–19–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 21, "Reporting of Defects and Noncompliance.

2. *Current OMB approval number:* 3150–0035.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* All directors and responsible officers of firms and organizations building, operating, or owning NRC licensed facilities as well as directors and responsible officers of firms and organizations supplying basic components and safety related design, analysis, testing, inspection, and consulting services to NRC licensed facilities or activities.

5. *The number of annual respondents:* 100 annually.

6. *The number of hours needed annually to complete the requirement or request:* 17,093 (13,480 reporting hours and 3,613 recordkeeping hours).

7. *Abstract:* 10 CFR Part 21 implements Section 206 of the Energy Reorganization Act of 1974, as amended. It requires directors and responsible officers of firms and organizations building, operating, owning, or supplying basic components to NRC licensed facilities or activities to report defects and noncompliances that could create a substantial safety hazard at NRC licensed facilities or activities. Organizations subject to 10 CFR Part 21 are also required to maintain such records as may be required to assure compliance with this regulation.

The NRC staff reviews 10 CFR Part 21 reports to determine whether the reported defects in basic components and related services and failures to comply at NRC licensed facilities or activities are potentially generic safety problems.

Submit, by May 19, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 13th day of March, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–7277 Filed 3–19–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its December 14, 1994, application for proposed amendment to Facility Operating License No. 49 for the Millstone Nuclear Power Station, Unit 3, located in New London County, Connecticut.

The proposed amendment would have (1) increased the upper bound of the overall containment integrated leakage rate required by Technical Specification (TS) 3.6.1.2.a from 0.3 wt.% per day to 0.65 wt.% per day of the containment air per 24 hours at design basis pressure, (2) revised TS 4.6.6.1.d.3 by providing more margin with respect to the drawdown time for secondary containment vacuum, and (3) revised the applicable Bases section.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in

the Federal Register on February 15, 1995 (60 FR 8750). However, by letter dated February 26, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 14, 1994, and the licensee's letter dated February 26, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 11th day of March 1998.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7278 Filed 3–19–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Northern States Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License No. DPR–22 Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket No. 50–263]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22 issued to Northern States Power Company (the licensee) for operation of the Monticello Nuclear Generating Plant, Unit 1, located in Wright County, Minnesota.

The proposed amendment would revise Section 2.1.A of the Technical Specifications (TS), Appendix A of the Operating License for the Monticello Nuclear Generating Plant, to change the safety limit minimum critical power ratio (SLMCPR) values from 1.08 to 1.10 for two recirculation pump operation, and from 1.09 to 1.11 for single loop operation. The amendment would also revise pages 6 and 249b of the TS to indicate that the revised SLMCPR values are applicable only to operating cycle 19.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed 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. 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 amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

SLMCPR [safety limit minimum critical power ratio] calculations are based on ensuring that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. Proposed SLMCPRs preserve existing margin to transition boiling and fuel damage in the event of a postulated transient. Fuel licensing acceptance criteria for SLMCPR calculations apply to Monticello Cycle 19 in the same manner as previously applied. The probability of fuel damage is not increased.

Therefore, the proposed TS [technical specification] changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

SLMCPR is a TS numerical value designed to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core during the limiting postulated transient. A change in SLMCPR cannot create the possibility of any new type of accident. SLMCPR values for the new fuel cycle are calculated using previously transmitted methodology. Additionally, the Operating Limit MCPR [minimum critical power ratio] value for the QFAs [qualification fuel assemblies] in the core monitoring computer databank will be increased by 0.02 to ensure that the prior SPC [Siemens Power Corporation] review results are bounded.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

Fuel licensing acceptance criteria for SLMCPR calculations apply to Monticello Cycle 19 in the same manner as previously applied. SLMCPRs prepared by GE [General Electric] using methodology previously transmitted to the NRC ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving fuel cladding integrity.

Therefore, the proposed TS changes do not involve a 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.

The Commission is seeking public comments on this proposed determination. Any comments received by close of business 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. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 20, 1998, 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, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the 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: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by close of business on 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 Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 13, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 18th day of March 1998.

For the Nuclear Regulatory Commission

Tae Kim,

Senior Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7424 Filed 3–19–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336, 50–423]

Northwest Utilities Millstone Nuclear Power Station, Units 1, 2, and 3 Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that on February 2, 1998, Ms. Deborah Katz, Ms. Rosemary Bassilakis, and Mr. Paul Gunter (Petitioners) filed a Petition, pursuant to 10 CFR 2.206, on behalf of the Citizens Awareness Network and the Nuclear Information and Resources Service. The Petition requests immediate action to:

1. Revoke Northeast Utilities' (NU's, the licensee's) license to operate Millstone Units 1, 2, and 3 as the result of ongoing intimidation and harassment of its workforce by NU management.

2. Revoke NU's license to operate Millstone Units 1, 2, and 3 as the result of persistent licensee defiance to adherence of NRC regulations and

directives to create a "questioning attitude" for its workers to challenge management on nuclear safety issues without fear of harassment, intimidation, or reprisals by NU.

3. Refer the Nuclear Oversight Focus 98 List and the reported NU management attempt to destroy the list to the Department of Justice for investigation of a potential coverup.

As a basis for the Petitioners' request to revoke the Millstone licenses, the Petition states that an NU document (Nuclear Oversight's Focus 98 List dated January 11, 1998) directs the group to address areas needing improvement by focusing on the "inability to isolate cynics from the group culture" and "pockets of negativism." The Petition further states that the list demonstrates the sustained and unrelenting policy of NU's senior management to undermine a safety-conscious workplace at Millstone and that despite 2 years of increased regulatory scrutiny of the managerial mistreatment of its workers and the corporation's mismanagement of its employees' safety concerns program, a "chilled atmosphere" remains intact and entrenched.

As a basis for the Petitioners' request for a Department of Justice investigation, the Petition makes the following statement: "Since it has been reported that NU management employees attempted to destroy the list, NRC has a duty to refer this apparent deliberate attempt to evade the otherwise lawful exercise of authority by NRC to the Department of Justice for complete investigation. This alleged attempt to cover up wrong doing by NRC's licensee is a potential obstruction of justice that should be fully and fairly investigated."

The NRC staff is also concerned about the issues the Petitioners raised in their Petition. As a result, the staff issued a letter dated February 10, 1998, to the licensee requesting more information on this issue. The NRC staff will consider the licensee's response to the staff's request for additional information before the Commission allows restart of any Millstone unit. To this extent, the Petitioners' request for immediate action is partially granted. The Petitioners' specific requests to immediately revoke the operating licenses and refer the incident to the Department of Justice are denied because immediate action is not required to protect public health and safety while additional information is obtained from the licensee.

The issues in the Petition are being treated pursuant to 10 CFR 2.206 of the Commission's regulations and have been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action with regard to these issues will be taken in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the temporary local public document room located at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 11th day of March 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7276 Filed 3–19–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection: Form RI 25–37

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an information collection. Form RI 25–37, Evidence to Prove Dependency of a Child, is designed to collect sufficient information for the OPM to be able to determine whether the surviving child of a deceased Federal employee is eligible to receive benefits as a dependent child.

Approximately 250 forms are completed annually. We estimate it takes approximately 60 minutes to assemble the needed documentation. The annual burden is 250 hours.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before May 19, 1998.

ADDRESS: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–7207 Filed 3–19–98; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on November 24, 1997 (62 FR 62648). Individual authorities established or revoked under Schedules A and B and established under Schedule C between October 1, 1997, and January 31, 1998, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established during October 1997.

One Schedule A authority was established during November 1997:

Department of Agriculture

Alternative Agricultural Research and Commercialization Corporation. Executive Director. Effective November 19, 1997.

The following Schedule A Authority was established during December 1997:

Chemical Safety and Hazard Investigation Board

Up to 30 positions established to create the Chemical Safety and Hazard Investigation Board. No new appointments may be made under this authority after December 31, 1998. Effective December 3, 1997.

No Schedule A Authorities were established during January 1998.

No Schedule A authorities were revoked during October or November 1997.

The following single-agency Schedule A exceptions were revoked effective December 31, 1997, because the positions are now covered under Governmentwide Schedule A authorities:

Department of the Army

Five hundred Medical and Dental Intern, Resident and Fellow positions whose incumbents are paid stipends, not to exceed 4 years.

Department of Defense

Positions at GS–3/12 when filled by National Security Education Program scholarship or fellowship recipients, not to exceed 4 years.

Defense Contract Audit Agency

Two positions of Auditor, GS–511–14, under an Accounting Fellowship Program, not to exceed 2 years.

General Services Administration

Twenty-five positions at grades GS–14/15 in order to bring current industry experience into the agency, not to exceed 2 years.

Law Clerk positions in the Board of Contract Appeals' Law Clerk Fellows Program, not to exceed 2 years.

Department of Health and Human Services

Ten positions, GS–9/14, under the Policy Research Associate Program, not to exceed 2 years.

Public Health Service

Five positions of Medical Technologist Resident, GS–644–7, in the National Institutes of Health, not to exceed 1 year.

Medical and dental interns, externs, residents, and student nurses.

Positions of a scientific, professional or technical nature filled by students who are paid stipends, when the work performed is used as a basis for completing academic requirements.

Twelve positions of Therapeutic Radiologic Technician Trainee in the National Cancer Institute filled by individuals who are paid stipends.

Pharmacy Resident positions, GS–7/9, in the National Institutes of Health, not to exceed 12 months pending licensure.

Hospital Administration Resident positions, GS–9, in the National Institutes of Health, not to exceed 1 year.

Thirty positions, GS–11/13, associated with the postdoctoral training program for interdisciplinary toxicologists, National Institutes of Health, Research Triangle Park, North Carolina.

Health Care Financing Administration

Ten professional positions, GS–9/15, filled under a Professional Exchange Program, not to exceed 1 year.

Department of the Navy

Positions of Student Pharmacist whose incumbents are paid stipends.

Fifty positions of resident-in-training whose incumbents are paid stipends.

Student Operating Room Technician positions whose incumbents are paid stipends.

Student Social Worker positions whose incumbents are paid stipends.

Student Practical Nurse positions filled by trainees enrolled in a non-Federal institution who are paid stipends.

Medical Technology Intern positions filled by students enrolled in non-Federal training programs who are paid stipends.

Medical Intern positions filled by persons serving in non-Federal hospitals who are paid stipends.

Student Speech Pathologist positions filled by persons enrolled in non-Federal institutions who are paid stipends.

Student Dental Assistant positions filled by persons enrolled in non-Federal institutions who are paid stipends.

Securities and Exchange Commission

Seven positions of Accountant and Auditor, GS–13/15, filled under the Accounting Fellow Program, not to exceed 2 years.

Two positions of Accountant and Auditor, GS–13/15, to provide a period of transition between Accounting Fellow Program fellowships.

Positions of Economist, GS–13/15, under the Economic Fellow Program, not to exceed 2 years.

Ten positions, GS–12/15, of Accounting Fellows for the Full Disclosure Program, not to exceed 2 years.

Four positions, GS–14/15, of Accounting Fellows for the Capital Markets Risk Assessment Program, not to exceed 2 years.

Department of the Treasury

Office of the Comptroller of the Currency

Positions under the Professional Accounting Fellow Program, not to exceed 2 years.

No Schedule A authorities were revoked during January 1998.

Schedule B

No Schedule B authorities were established during October, November and December 1997 or during January 1998.

No Schedule B authorities were revoked during October 1997.

The following Schedule B authority was revoked during November 1997:

U.S. Information Agency

Positions of English Language Radio Broadcast Intern, GS–1001–5/7/9. Employment is not to exceed 2 years for any intern. Effective November 28, 1997.

The following single-agency Schedule B exceptions were revoked effective December 31, 1997 because the positions are now covered under a Governmentwide Schedule A authority:

Department of the Army

Four Medical Officer (Surgery) positions at the Brooke Army Medical Center, Fort Sam Houston, Texas.

Department of Defense

Positions at GS–11/15 under Defense Policy Science and Engineering Fellowship Program, not to exceed 2 years.

Department of Energy

Three Exceptions and Appeals Analyst positions under a fellowship program in the Office of Hearings and Appeals, not to exceed 3 years.

Department of Health and Human Services

Ten positions of Librarian, GS–9, under a Library Associate Training Program in the National Library of Medicine, not to exceed 1 year.

Department of State

Four Physical Science Administration Officer positions at GS–11/13 under a Science, Engineering and Diplomacy Fellowship Program, not to exceed 2½ years.

No Schedule B exceptions were revoked during January 1998.

Schedule C

The following Schedule C authorities were established during October, November, December 1997 and January 1998:

Agency for International Development

Congressional Liaison Officer to the Chief of Legislative and Public Affairs, Congressional Liaison Division. Effective October 31, 1997.

Legislative Affairs Specialist to the Deputy Assistant Administrator. Effective November 14, 1997.

Public Affairs Specialist to the Chief, Legislative and Public Affairs, Public Liaison Division. Effective November 14, 1997.

Commission on Civil Rights

Special Assistant to the Commissioner. Effective October 30, 1997.

Special Assistant to the Staff Director, Office of the Staff Director. Effective January 28, 1998.

Department of Agriculture

Confidential Assistant to the Administrator, Food and Consumer Service. Effective October 9, 1997.

Confidential Assistant to the Director, Office of Communications. Effective October 9, 1997.

Special Assistant for Nutrition Education to the Administrator, Food and Consumer Service. Effective October 21, 1997.

Special Assistant to the Administrator, Agricultural Marketing Service. Effective October 21, 1997.

Speech Writer to the Director, Office of Communications. Effective October 21, 1997.

Special Assistant to the Administrator for Food and Consumer Service. Effective October 30, 1997.

Confidential Assistant to the Administrator, Agricultural Research Service. Effective October 30, 1997.

Staff Assistant to the Administrator, Foreign Agricultural Service. Effective October 30, 1997.

Director, Intergovernmental Affairs to the Assistant Secretary for Congressional Relations. Effective November 12, 1997.

Confidential Assistant to the Administrator, Risk Management Agency. Effective November 12, 1997.

Special Assistant to the Administrator, Foreign Agricultural Service. Effective November 19, 1997.

Confidential Assistant to the Director, Tobacco and Peanuts Division, Farm Service Agency. Effective November 19, 1997.

Special Assistant to the Administrator, Foreign Agricultural Service. Effective November 20, 1997.

Confidential Assistant to the Deputy Administrator, Rural Business Service. Effective November 20, 1997.

Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective November 21, 1997.

Special Assistant to the Administrator, Risk Management Agency. Effective December 2, 1997.

Director, Community Outreach Division to the Deputy Administrator, Community Development. Effective December 3, 1997.

Special Assistant to the Associate Administrator, Rural Business Service. Effective December 4, 1997.

Special Assistant to the Administrator, Cooperative State Research, Education and Extension Service. Effective December 4, 1997.

Confidential Assistant to the Administrator, Animal and Plant Inspection Service. Effective December 8, 1997.

Staff Assistant to the Deputy Administrator, Community Development. Effective December 11, 1997.

Director, Legislative Affairs Staff to the Administrator, Foreign Agricultural Service. Effective January 8, 1998.

Confidential Assistant to the Administrator, Rural Utilities Service. Effective January 28, 1998.

Confidential Assistant to the Special Assistant to the Secretary. Effective January 30, 1998.

Department of Commerce

Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs, Office of Legislative and Intergovernmental Affairs. Effective October 9, 1997.

Special Assistant to the Director, Office of Public Affairs. Effective October 17, 1997.

Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 17, 1997.

Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 17, 1997.

Special Assistant to the Under Secretary for Export Administration, Bureau of Export Administration. Effective October 17, 1997.

Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 17, 1997.

Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 17, 1997.

Special Assistant to the Under Secretary for International Trade. Effective October 21, 1997.

Director of Advance to the Director, Office of External Affairs. Effective October 21, 1997.

Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective October 30, 1997.

Deputy Director of Advance to the Director, Office of External Affairs. Effective October 30, 1997.

Director of Congressional Affairs to the Assistant Secretary and Commissioner of Patent and Trademarks. Effective October 31, 1997.

Confidential Assistant to the Director, Office of External Affairs. Effective November 6, 1997.

Confidential Assistant to the Director, Office of External Affairs. Effective November 21, 1997.

Special Assistant to the Chief of Staff. Effective November 21, 1997.

Special Assistant to the Deputy Secretary of Commerce. Effective November 21, 1997.

Special Assistant to the Director of Public Affairs. Effective December 3, 1997.

Special Assistant to the Director, Office of Business Liaison. Effective December 16, 1997.

Special Assistant to the Deputy Secretary. Effective December 23, 1997.

Department of Defense

Personal and Confidential Assistant to the Under Secretary of Defense for Personnel and Readiness. Effective October 1, 1997.

Confidential Assistant to the Deputy Secretary of Defense. Effective October 1, 1997.

Confidential Assistant to the Under Secretary (Acquisition and Technology). Effective October 7, 1997.

Director for Community Relations and Communications Strategy to the Assistant Secretary for Public Relations. Effective October 24, 1997.

Staff Specialist to the Assistant Secretary of Defense for Public Affairs. Effective October 24, 1997.

Special Assistant to the Assistant Secretary of Defense for Legislative Affairs. Effective October 27, 1997.

Staff Specialist to the Director, NATO Policy. Effective October 30, 1997.

Director of Public Services to the Assistant Secretary of Defense (Reserve Affairs). Effective November 19, 1997.

Civilian Executive Assistant to the Chairman, Joint Chiefs of Staff. Effective November 21, 1997.

Personal and Confidential Assistant to the Director, Operational Test and Evaluation. Effective December 8, 1997.

Director of Protocol to the Chief of Staff. Effective December 11, 1997.

Personal and Confidential Assistant to the Under Secretary of Defense (Comptroller). Effective December 11, 1997.

Special Assistant for Health Affairs to the Assistant Secretary for Legislative Affairs. Effective January 7, 1998.

Department of Education

Press Assistant to the Director, Office of Public Affairs. Effective October 9, 1997.

Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services. Effective October 16, 1997.

Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education. Effective October 16, 1997.

Special Assistant to the Assistant Secretary for Postsecondary Education. Effective October 24, 1997.

Special Assistant to the Assistant Secretary of Special Education and Rehabilitative Services. Effective November 20, 1997.

Special Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective November 21, 1997.

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective January 5, 1998.

Confidential Assistant to the Advisor to the Secretary (Director, America Reads Challenge). Effective January 5, 1998.

Director, White House Initiatives on Tribal Colleges and Universities to the Assistant Secretary, Office of Vocational and Adult Education. Effective January 21, 1998.

Special Assistant to the Deputy Secretary. Effective January 23, 1998.

Confidential Assistant to the Special Assistant to the Secretary. Effective January 30, 1998.

Department of Energy

Staff Assistant to the Director, Scheduling and Advance. Effective November 14, 1997.

Staff Assistant to the Director, Office of Scheduling and Advance. Effective November 21, 1997.

Confidential Assistant to the Director, Office of Economic Impact and Diversity. Effective December 11, 1997.

Special Assistant to the Secretary of Energy. Effective December 11, 1997.

White House Liaison to the Secretary of Energy. Effective December 11, 1997.

Special Assistant for Management Reform to the Secretary of Energy. Effective December 19, 1997.

Senior Program Advisor to the Associate Deputy Secretary for Field Management. Effective January 5, 1998.

Confidential Assistant to the Director of Energy Research. Effective January 7, 1998.

Department of Health and Human Services

Confidential Assistant to the Assistant Secretary for Public Affairs. Effective October 3, 1997.

Senior Advisor to the Director, Indian Health Service. Effective October 24, 1997.

Director, Division of Intergovernmental Affairs to the Assistant Secretary for the Administration for Children and Families. Effective October 24, 1997.

Confidential Assistant (Scheduling) to the Director of Scheduling. Effective November 21, 1997.

Confidential Assistant (Scheduling) to the Director of Scheduling. Effective November 21, 1997.

Confidential Assistant to the Executive Secretary. Effective December 31, 1997.

Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media). Effective January 13, 1998.

Department of Housing and Urban Development

Senior Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective October 3, 1997.

Staff Assistant to the Director of Special Actions. Effective October 3, 1997.

Special Assistant to the Director, Office of the Executive Secretariat. Effective October 27, 1997.

Director of Executive Secretariat (DAS for Administrative Services) to the Chief of Staff for Operations. Effective October 29, 1997.

Staff Assistant to the Director, Office of Executive Scheduling. Effective November 4, 1997.

Special Assistant to the Assistant Secretary for Administration. Effective November 6, 1997.

Special Assistant to the Assistant Secretary for Federal Housing and Equal Opportunity. Effective November 24, 1997.

Special Assistant to the Deputy Assistant Secretary for Community Empowerment. Effective November 24, 1997.

Briefing Coordinator to the Director, Executive Scheduling. Effective December 2, 1997.

General Deputy Assistant Secretary to the Assistant Secretary for Public and Indian Housing. Effective December 2, 1997.

Counselor to the Assistant Secretary for Housing. Effective December 3, 1997.

Special Assistant to the Assistant Secretary for Administration. Effective December 22, 1997.

Deputy Assistant Secretary for Legislation to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective December 23, 1997.

Intergovernmental Relations Specialist to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective December 23, 1997.

Special Assistant to the Deputy Assistant Secretary for Public Affairs. Effective January 5, 1998.

Scheduling Assistant to the Director of Executive Scheduling. Effective January 21, 1998.

Deputy Assistant Secretary for Research to the Deputy Assistant Secretary for Policy Development. Effective January 27, 1998.

Department of the Interior

Special Assistant to the Chief Biologist. Effective October 21, 1997.

Communications Director to the Deputy Secretary of Interior. Effective October 24, 1997.

Special Assistant to the Deputy Director, Bureau of Land Management. Effective November 7, 1997.

Special Assistant to the Assistant Director for External Affairs, U.S. Fish and Wildlife Service. Effective November 26, 1997.

Deputy Scheduler to the Deputy Chief of Staff, Office of the Secretary. Effective January 7, 1998.

Special Assistant and Counselor to the Assistant Secretary for Indian Affairs. Effective January 26, 1998.

Special Assistant to the Assistant Secretary for Land and Minerals Management. Effective January 29, 1998.

Department of Justice

Special Assistant to the Director, Violence Against Women Program Officer. Effective October 10, 1997.

Assistant to the Attorney General. Effective November 21, 1997.

Special Assistant to the Assistant Attorney General. Effective January 8, 1998.

Special Assistant to the Deputy Attorney General. Effective January 14, 1998.

Department of Labor

Secretary's Representative to the Associate Director, Congressional and Intergovernmental Affairs. Effective October 1, 1997.

Special Assistant to the Chief of Staff. Effective October 9, 1997.

Special Assistant to the Assistant Secretary, Employment Standards Administration. Effective October 21, 1997.

Senior Public Affairs Advisor to the Assistant Secretary for Public Affairs. Effective October 21, 1997.

Staff Assistant (Scheduling) to the Director, Scheduling and Advance. Effective October 30, 1997.

Special Assistant to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective November 21, 1997.

Attorney-Advisor (Labor) (Counsel to the Solicitor) to the Solicitor of Labor. Effective December 2, 1997.

Speech Writer to the Assistant Secretary for Public Affairs. Effective December 8, 1997.

Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 17, 1997.

Special Assistant to the Secretary to the Deputy Chief of Staff. Effective December 18, 1997.

Senior Advisor to the Secretary of Labor. Effective December 23, 1997.

Director of Public Liaison to the Secretary of Labor. Effective December 23, 1997.

Deputy Counselor to the Secretary of Labor. Effective December 23, 1997.

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective January 8, 1998.

Special Assistant to the Director of Scheduling and Advance. Effective January 8, 1998.

Legislative Assistant to the Assistant Secretary for Employment and Training. Effective January 21, 1998.

Special Assistant to the Chief of Staff. Effective January 26, 1998.

Executive Assistant to the Assistant Secretary, Veterans Employment and Training. Effective January 28, 1998.

Department of State

Staff Assistant to the Under Secretary for Global Affairs. Effective October 3, 1997.

Foreign Affairs Officer to the Deputy Director. Effective October 3, 1997.

Special Assistant to the Under Secretary for Economics, Business and Agricultural Affairs. Effective October 3, 1997.

Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective November 25, 1997.

Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective November 25, 1997.

Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective November 25, 1997.

Special Assistant to the Assistant Secretary, Bureau of Public Affairs. Effective December 4, 1997.

Staff Assistant to the Deputy Assistant Secretary, Bureau of Legislative Affairs. Effective December 4, 1997.

Staff Assistant to the Director of White House Liaison Staff, Office of the Under Secretary for Management. Effective December 4, 1997.

Staff Assistant to the Chief of Staff, Office of the Secretary. Effective December 4, 1997.

Special Assistant to the Assistant Secretary, Bureau of African Affairs. Effective January 22, 1998.

Public Affairs Specialist to the Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor. Effective January 22, 1998.

Department of Transportation

Special Assistant to the Director, Office of Scheduling and Advance. Effective October 17, 1997.

Scheduling/Advance Assistant to the Director for Scheduling and Advance, Office of the Secretary. Effective October 30, 1997.

Director, Office of Public and Consumer Affairs to the Deputy Administrator, National Highway Traffic Safety Administration. Effective November 20, 1997.

Special Projects Director to the Administrator, Research and Special Programs Administration. Effective December 16, 1997.

Senior Advisor to the Administrator, Federal Railroad Administration. Effective December 17, 1997.

Special Assistant to the Associate Deputy Secretary. Effective January 5, 1998.

Special Assistant to the Secretary of Transportation. Effective January 26, 1998.

Department of the Treasury

Deputy Director for Advance to the Director of Scheduling and Advance. Effective October 3, 1997.

Attorney-Advisor to the General Counsel. Effective October 23, 1997.

Executive Secretary to the Chief of Staff. Effective November 5, 1997.

Deputy Executive Secretary for Policy Analysis to the Executive Secretary. Effective November 28, 1997.

Staff Assistant to the Under Secretary (Enforcement). Effective November 28, 1997.

Deputy Executive Secretary for Policy Coordination to the Executive Secretary. Effective December 9, 1997.

Director, Office of Public and Business Liaison to the Deputy Assistant Secretary (Public Liaison). Effective December 11, 1997.

Director, Public and Business Liaison to the Deputy Assistant Secretary for Public Liaison. Effective December 18, 1997.

Senior Deputy to the Assistant Secretary, Legislative Affairs and Public Liaison. Effective January 8, 1998.

Department of Veterans Affairs

Executive Assistant to the Deputy Assistant Secretary for Veterans Affairs. Effective December 17, 1997.

Special Assistant to the Secretary of Veterans Affairs. Effective January 16, 1998.

Environmental Protection Agency

Congressional Liaison Specialist to the Director, Office of Congressional Affairs. Effective October 3, 1997.

Attorney-Advisor to the Associate General Counsel. Effective October 9, 1997.

Special Assistant to the Administrator, Office of the Administrator. Effective October 16, 1997.

Deputy Associate Administrator to the Associate Administrator, Congressional and Intergovernmental Relations. Effective December 17, 1997.

Federal Emergency Management Agency

Assistant to the Director for Special Events to the Director, Federal Emergency Management Agency. Effective December 19, 1997.

Federal Energy Regulatory Commission

Attorney-Advisor (Public Utilities) to the General Counsel. Effective November 28, 1997.

Confidential Assistant to a Member. Effective December 17, 1997.

Technical Advisor to a Member of the Commission. Effective January 21, 1998.

Confidential Assistant to a Member of the Commission. Effective January 21, 1998.

Federal Maritime Commission

Executive Assistant to the Chairman. Effective October 30, 1997.

Federal Trade Commission

Special Assistant to a Commissioner. Effective January 5, 1998.

General Services Administration

Supervisory External Affairs Specialist to the Commissioner, Public Buildings Service. Effective January 26, 1998.

National Aeronautics and Space Administration

State, Local and Intergovernmental Affairs Specialist to the Associate Administrator for Policy and Plans. Effective October 3, 1997.

Staff Assistant to the White House Liaison Officer. Effective October 29, 1997.

National Credit Union Administration

Executive Assistant to the Board Member. Effective November 17, 1997.

Office of National Drug Control Policy

Staff Assistant to the Director, Office of National Drug Control Policy. Effective December 2, 1997.

Office of Personnel Management

Special Assistant to the Senior Advisor to the Director. Effective January 16, 1998.

Overseas Private Investment Corporation

Confidential Assistant to the President and Chief Executive Officer. Effective October 9, 1997.

Special Assistant for Congressional and Intergovernmental Affairs to the Managing Director, Congressional and Intergovernmental Affairs. Effective October 16, 1997.

Director, Protocol and Special Initiatives to the Vice President, Investment Development Department. Effective November 3, 1997.

Securities and Exchange Commission

Writer-Editor to the Chairman. Effective October 10, 1997.

Confidential Assistant to a Commissioner. Effective November 21, 1997.

Selective Service System

Confidential Assistant to the Director of Selective Service. Effective January 5, 1998.

Small Business Administration

Special Assistant to the Chief of Staff. Effective October 21, 1997.

Director of External Affairs to the Associate Administrator for Communications and Public Liaison. Effective November 5, 1997.

Special Assistant to the Senior Advisor to the Administrator. Effective November 21, 1997.

Special Assistant to the Associate Administrator for Communications and Public Liaison. Effective December 18, 1997.

Deputy Scheduler to the Chief of Staff. Effective January 5, 1998.

U.S. Arms Control and Disarmament Agency

Congressional Affairs Specialist to the Director of Congressional Affairs. Effective December 8, 1997.

United States Information Agency

Media Relations Advisor to the Director, Office of Public Liaison. Effective November 12, 1997.

Special Assistant to the Director, Office of Congressional and Intergovernmental Affairs. Effective December 3, 1997.

Public Affairs Specialist to the Director, New York Foreign Press Center, New York, NY. Effective December 18, 1997.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–7189 Filed 3–19–98; 8:45 am]

BILLING CODE 6325–01–U

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 10:00 a.m. every weekday beginning April 13, 1998, through May 8, 1998.

PLACE: Commission Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. R97–1.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, (202) 789–6820.

Dated: March 18, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–7477 Filed 3–18–98; 2:03 pm]

BILLING CODE 7710–FW–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Certification Regarding Rights to Unemployment Benefits; OMB 3220–0079.

Under Section 4 of the Railroad Unemployment Insurance Act (RUIA), an employee who leaves work voluntarily is disqualified for unemployment benefits unless the employee left work for good cause and is not qualified for unemployment benefits under any other law. RRB Form UI–45, Claimant's Statement—Voluntary Leaving of Work, is used by the RRB to obtain additional information needed to investigate a claim for unemployment benefits when the claimant indicates on RRB Form UI–1, Application for Unemployment Benefits and Employment Service (OMB 3220–0022) that he has voluntarily left work. Completion of Form UI–45 is required to obtain or retain benefits. One response is received from each respondent.

RRB Form UI–45 is being revised to include language required by the Paperwork Reduction Act of 1995. Non burden-impacting reformatting and editorial changes are also being proposed. The completion time for the UI–45 is estimated at 15 minutes per response. The RRB estimates that approximately 2,900 responses are received annually.

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–7197 Filed 3–19–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26842]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 13, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 6, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corporation, et al. (70–9091)

Central and South West Corporation ("CSW"), a registered holding company, its nonutility subsidiary companies CSW Energy, Inc. ("Energy"), and CSW International, Inc. ("CSWI") (collectively, "Applicants"), all located at 1616 Woodall Rodgers Freeway, P.O. Box 660789, Dallas,Texas 75202, have filed a declaration under section 13(b) of the Act, and rules 83, 87(b)(1), 90 and 91 under the Act.

By orders dated September 28, 1990, November 22, 1991, December 31, 1992 and November 28, 1995 (HCAR Nos. 25162, 25414, 25728 and 26417, respectively) and certain other orders, the Commission authorized CSW, directly or through Energy, to engage in development activities to conduct preliminary studies of, to investigate, research, develop, consult with respect to, and to agree to construct (the construction subject to further Commission authorization), qualifying facilities ("QF"), as defined under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), and independent power facilities, including exempt wholesale generators, as defined in section 32 of the Act ("EWG").

By additional orders dated November 3, 1994, September 27, 1995 and January 24, 1997 (HCAR Nos. 26156, 26383 and 26531, respectively), the Commission authorized CSW, directly or through CSWI, to engage in development and investment activities in EWGs and foreign utility companies, as defined in section 33 of the Act ("FUCO") (collectively, EWGs and FUCOs "Exempt Projects"), and is authorized to provide design, construction, engineering, operation, maintenance, management, administration, employment, tax, accounting, economic, financial, fuel, environmental communications, energy conservation, demand side management, overhead efficiency, utility performance and electronic data processing services and software development and support services in connection therewith to Exempt Projects and (except for operation services) to foreign electric utility enterprises that are not Exempt Projects.

The Applicants and any of their subsidiaries other than CSW's domestic operating utility subsidiaries (collectively, the "Operating Companies"), now request authorization to enter into agreements to provide energy-related services to associate companies at fair market prices. The Applicants request an exemption pursuant to section 13(b) from the requirements of rules 90 and 91 as applicable to transactions in any case in which any one or more of the following circumstances will exist: (1) An associate company is a FUCO, or is an EWG, that derives no part of its income, directly or indirectly, from the generation, transmission or distribution of electric energy for sale within the United States; (2) an associate company is an EWG that sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC") or the appropriate state public utility commission, provided that the purchaser of energy produced by such associate company is not an Operating Company; (3) services rendered to an associate company in respect of a QF that sells electricity exclusively at rate negotiated at arm's length to one or more industrial or commercial customers purchasing the electricity for their use not for resale, or to an electric utility company, other than an Operating Company, at the purchaser's "avoided cost" determined in accordance with the regulations promulgated by FERC under PURPA or at such other rates negotiated at arm's length with such electric utility company; and (4) an associate company is an EWG or a QF that sells electricity at rates approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of such electricity produced by such associate company is not an Operating Company.

The Applicants also request an exemption from section 13(b) of the Act if: (i) An associate company is a subsidiary of an Applicant, the sole business of which is developing, owning and/or operating Exempt Projects or QFs described in clauses (1), (2), (3) or (4) above; or (ii) an associate company is a subsidiary of an applicant, which subsidiary does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States. None of the associate companies specified in clauses (i) or (ii) above that acquire services at market-based rates under the authority sought in this declaration will sell, or offer to sell, services to any Operating Company without additional Commission authority.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7283 Filed 3–19–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39747; File No. SR–MBSCC–97–10]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change Relating to Modifications to MBSCC's Liquidation Rules

March 13, 1998.

On November 13, 1997, the MFS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MBSCC–97–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On January 30, 1998,

[1] 15 U.S.C. 78s(b)(1).

MBSCC filed an amendment to its proposed rule change. Notice of the proposal was published in the **Federal Register** on February 17, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change modifies MBSCC's rules governing the liquidation of open trades when MBSCC ceases to act for a participant. The modifications to Section 5 of Rule 3 of Article III of MBSCC's rules, which governs the disposition of a former participant's open commitments, are as follows.

MBSCC's rules now provide that participants authorize MBSCC to obtain, if necessary, immediate disclosure of the settlement status of any trade from depository institutions or clearing banks. Any liquidation of a former participant's open trades will occur on a net basis as determined by MBSCC and as reflected on the open commitment report.[3] However, transactions will be liquidated on a net basis only if the contraside participants and trade terms are eligible for netting. Any open trade of the former participant that contains a specified pool will be disposed of as if it did not contain such specified pool (*i.e.*, the trade is disposed of based on its generic trade terms such as agency, product, coupon rate, and maturity) unless otherwise determined by MBSCC.

MBSCC's rules now provide that in a liquidation situation MBSCC may temporarily delay settlement balance order market differential ("SBOMD") credits due to original contrasides (*i.e.*, the participants with whom the former participant contracted) until the completion of the liquidation of the former participant's open trades.[4] In addition, MBSCC is able to apply SBOMD credits due to original contrasides of the former participant to offset any assessment against such original contrasides pursuant to MBSCC's liquidation rules.

The proposed rule change makes explicit that MBSCC does not allow claims for variance pursuant to The Bond Market Association's guidelines relating to a former participant's open trades that have not completed SBO netting or that have a trade-for-trade status.[5] Claims will be allowed for cash adjustments relating to a former participant's open trades that have completed SBO netting if such claims are reasonable as determined solely by MBSCC. In addition, the proposed rule change clarifies that original contrasides are reasonable for prorated cash adjustments of the former participant if the amount available from the former participant is insufficient to cover its obligations.

MBSCC generally gives priority to claims by contrasides that were matched with the former participant through MBSCC's netting process provided that the contraside was not the original contraside to the trade ("SBO contrasides") before claims by original contrasides in the event that the amount available from the former participant is insufficient to cover its obligations. The proposed rule change creates an additional priority that gives claims for losses by original contrasides relating to unmargined trades a lesser priority than claims for losses by original contrasides relating to previously margined trades if the amount available from the former participant is insufficient to cover its obligations. As a result of this modification, MBSCC's priority structure is (1) SBO contrasides, (2) original contrasides for previously margined trades,[6] and (3) original contrasides for unmargined trades.

II. Discussion

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of MBSCC or for which it is responsible. The Commission believes that MBSCC's proposed rule change is consistent with its obligation under the Act because the proposal should enhance MBSCC's ability to provide appropriate risk protection to its members in the case of a liquidation situation.

Many of the modifications are designed to reduce the amount of time needed for liquidation. For example, immediate disclosure of the settlement status of any trade from depository institutions or clearing banks reduces MBSCC's reliance on independent contraside verification and, therefore, the time required to identify and to liquidate a former participant's open trades. Liquidation of trades on a net basis should reduce the number of trades requiring liquidation. Similarly, disposition of trades without regard to whether they contain specified pools should simplify and expedite the liquidation process. By shortening the time required to liquidate a former member's positions, these changes reduce the risk that a participant's open positions will decrease in value and thus reduces the potential liability to which MBSCC is subject.

Other amendments will enhance MBSCC's liquidity and reduce its risk of loss. For example, the delay in payment of SBOMD credits to original contrasides and the ability to apply such payments against amounts owed may strengthen MBSCC's cash flow position. The limitation on claims for variances and cash adjustments may reduce the amount of claims that could be made against MBSCC in a liquidation. Therefore, the Commission believes that the proposed rule change is consistent with MBSCC's obligation to safeguard funds and securities in its custody or control.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–97–10) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7204 Filed 3–19–98; 8:45 am]

BILLING CODE 8010–01–M

[2] Securities Exchange Act Release No. 39633 (February 9, 1998), 63 FR 7844.

[3] MBSCC's open commitment report is a daily report that shows a participant's open compared trades and is used to identify a former participant's open commitments in a liquidation situation.

[4] SBOMD represents the cash difference between the contract price of a transaction and the settlement price as a result of SBO netting. MBSCC typically pays SBOMD credits to participants on settlement date.

[5] Sellers in the mortgage-backed securities market are typically permitted to deliver securities that vary by a certain percentage from the originally traded face value pursuant to The Bond Market Association's guidelines for mortgage-backed securities (*i.e.*, a variance). MBSCC calculates a cash adjustment for its participants that includes variance only for trades that have gone through the netting process.

[6] In this instance, original contrasides could include an original party to the trade which was again matched against the former participant through the netting process or an original contraside to a trade that has been margined but has not yet been through the netting process.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before April 20, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Request for Counseling.

Form No's: 641, 641A.

Frequency: Monthly.

Description of Respondents: Individuals requesting management counseling from SBA.

Annual Responses: 600,000.

Annual Burden: 150,000.

Dated: March 13, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–7314 Filed 3–19–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before April 20, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3RD Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Client's Report of 7(J)Task Order Service Received.

Form No: 1540.

Frequency: On Occasion.

Description of Respondents: 7(J) Participants.

Annual Responses: 1,000.

Annual Burden: 100.

Dated: March 16, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–7315 Filed 3–19–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0233]

SBC Equity Partners, Inc.; Notice of Issuance of a Small Business Investment Company License

On September 24, 1997, an application was filed by SBC Equity Partners, Inc., at One South Wacker Drive, 14th Floor, Chicago, Illinois 60606, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0233 on February 26, 1998, to SBC Equity Partners, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 10, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–7286 Filed 3–19–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Western States Regional Fairness Board; Public Hearing

The Western States Regional Fairness Board Public Hearing, to be held on April 6, 1998, starting 10:00 am at the San Jose Silicon Valley Chamber of Commerce, located at 180 S. Market Street, 2nd Floor, San Jose, California, in cooperation with the Hispanic Chamber of Commerce, to receive comments from small businesses concerning regulatory enforcement or compliance taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information contact Gary P. Peele on (312) 353–0880.

Shirl Thomas,

Director, National Advisory Council.

[FR Doc. 98–7316 Filed 3–19–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Rocky Mountain States Regional Fairness Board; Public Meeting

The Rocky Mountain States Regional Fairness Board hearing, to be held on April 20, 1998, starting at 10:00am at the Salt Lake Area Chamber of Commerce, 175 East 400 South, Suite 600, Salt Lake City, Utah, to receive comments from small businesses concerning regulatory enforcement or compliance taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information contact Gary P. Peele, telephone (312) 353–0880.

Shirl Thomas,

Director, National Advisory Council.

[FR Doc. 98–7317 Filed 3–19–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Southern States Regional Fairness Board; Public Hearing

The Southern States Regional Fairness Board hearing, to be held on May 1, 1998, starting at 10:00am at the Rogers University Auditorium, 700 N. Greenwood Avenue, Tulsa, Oklahoma, in space being provided by Rogers University in cooperation with the Tulsa Chamber of Commerce, to receive comments from small businesses concerning regulatory enforcement or compliance taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information contact Gary P. Peele, telephone (312) 353–0880.

Shirl Thomas,

Director, National Advisory Council.

[FR Doc. 98–7318 Filed 3–19–98; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Vendor List

AGENCY: Social Security Administration.

ACTION: Notice of intent.

SUMMARY: The Social Security Administration (SSA) is developing for publication a list of vendors who prepare magnetic media or electronic filing of Annual Wage Reports (forms W–3/W–2) for submission to SSA.

DATES: The vendor list will be updated annually and all additions/changes should be submitted by July 1 of each year.

ADDRESSES: Vendors can mail their information to SSA at the following address: Social Security Administration, Office of Senior Financial Executive, attn: Vendor List, Room 451 Altmeyer Building, 6401 Security Blvd., Baltimore, MD. 21235; or information can be faxed to SSA at the following number: (410) 966–8753, attn: Vendor List.

FOR FURTHER INFORMATION CONTACT: Norman Goldstein, Social Security Administration, Office of Senior Financial Executive, 451 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Phone (410) 965–1970.

SUPPLEMENTARY INFORMATION: The vendor list which SSA plans to compile and publish annually will contain the names of: (1) Service bureaus that can produce annual wage reports on prescribed types of magnetic media or can electronically file annual wage reports, and (2) vendors that provide software packages for employers or third-party practitioners who wish to produce annual wage reports on magnetic tapes, cartridges, diskettes or electronic files for transmission to SSA. The Agency will provide this listing as a courtesy to employers. The listing in no way implies SSA approval or endorsement of the listed service bureaus or vendors.

To obtain a copy of the vendor listing, an employer may contact SSA via telephone at 1–800–772–1213 or by mail to the following address: Social Security Administration, Office of Senior Financial Executive, Attention: Vendor List, Room 451 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. This vendor listing will also be available from the SSA Employer Information Bulletin Board Service at (410) 965–1133 or the SSA Internet home page at WWW.SSA.GOV. Vendor names will not be provided over the telephone.

A service bureau or vendor, which would like to be included on the list, must submit a written request to SSA. Requests should be submitted by July 1 of each year, and must include the following:

a. Company name

b. Address (include city, state, and ZIP Code)

c. Telephone number (include area code)

d. Contact person

e. Type(s) of service provided (e.g., service bureau and/or software)

f. Type(s) of media offered (e.g., magnetic tape or tape cartridge, 5¼- or 3½-inch diskettes, or electronic filing)

g. Signature by Principal of company

Dated: March 10, 1998.

Norm Goldstein,

Senior Financial Executive.

[FR Doc. 98–7279 Filed 3–19–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice #2770]

Extension of the Restriction on the Use of United States Passports for Travel to, in or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(2) and (a)(3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or through Iraq unless specifically validated for such travel. The restriction was originally imposed because armed hostilities then were taking place in Iraq and Kuwait, and because there was an imminent danger to the safety of United States travelers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restriction on the ground that such exemptions were in the national interest. The restriction has been extended for additional one year periods since then, and was last extended on March 20, 1997.

Conditions in Iraq remain unsettled and hazardous. Despite the recently concluded U.N. Memorandum of Understanding with Iraq, tensions remain high. The government of Iraq continues to mount a virulent public campaign in which the United States is blamed for maintenance of U.N. sanctions. In southern Iraq, military repression of the Shia communities is severe, rendering conditions unsafe. There is a risk of conflict between Kurdish groups. Iraq's economy was severely damaged during the Gulf War and continues to be affected by the U.N. economic sanctions and the Government of Iraq's refusal to fully implement the U.N.'s Oil for Food program. Basic modern medical care and medicines may not be available to our citizens in case of emergency. U.S. citizens and other foreigners working inside Kuwait near the Iraqi borders have been detained by Iraqi authorities in the past and sentenced to lengthy jail terms for alleged illegal entry into the country. Although our interests are represented by the Embassy of Poland in Bagdad, its ability to obtain consular access to detained U.S. citizens and to perform emergency services is constrained by Iraqi unwillingness to cooperate. In light of these circumstances, I have determined that Iraq continues to be a country " * * * where there is imminent danger to the public health or physical safety of United States travelers".

Accordingly, United States passports shall continue to be invalid for use in travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. The restriction shall not apply to American citizens residing in Iraq on February 1, 1991 who continue to reside there, or to American professional reporters or journalists on assignment there.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of

one year unless sooner extended or revoked by Public Notice.

Dated: March 16, 1998.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 98–7297 Filed 3–19–98; 8:45 am]

BILLING CODE 4710–10–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as amended by Public Law 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Acting Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Acting Agency Clearance Officer no later than May 19, 1998.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to extend without revision a currently approved collection of information (OMB control number 3316–0019).

Title of Information Collection: Customer Input Card for TVA Recreation Areas.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Business or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 1,000.

Estimated Total Annual Burden Hours: 50.

Estimated Average Burden Hours Per Response: .05.

Need For and Use of Information: This information collection asks visitors to selected TVA public use areas to provide feedback on the condition of the facilities they used and the services they received. The information collected will be used to evaluate current maintenance, facility, and service practices and policies and to identify new opportunities for improvements.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 98–7348 Filed 3–19–98; 8:45 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1502).

TIME AND DATE: 9:30 a.m. (CST), March 24, 1998.

PLACE: Arab High School Auditorium, 511 Arabian Drive, Arab, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meeting held on February 20, 1998.

New Business

C—Energy

C1. Delegation of authority to the Vice President, Fuel Supply and Engineering, to award 11 coal contracts with varying terms under Requisition 36 and to supplement an existing rail transportation coal contract.

B—Purchase Award

B1. Supplement to Contract No. TV–92582V with Fitzgerald & Company for the continuation of advertising support.

B. Contract with Chattanooga Printing and Engraving for offset printing services to supplement TVA's in-house print shop.

B3. Contract with BOC Gases for industrial gases and cylinder, tube trailer, and bulk storage management for all TVA locations.

E—Real Property Transactions

E1. Public auction sale of approximately 2.52 acres of land on the Ocoee No. 1

Reservation in Polk County, Tennessee (Tract Nos. XOCR–11 and –12).

E2. Sale of a permanent easement to the State of Tennessee for a highway improvement project affecting 0.22 acre of the Lonsdale substation property in Knox County, Tennessee (Tract No. XLONSS–6H, Parcels 1, 2, 3, and 4).

E3. Sale of two noncommercial, nonexclusive permanent recreation easements affecting 0.77 acre of Tellico Lake shoreline in Loudon and Monroe Counties, Tennessee (Tract Nos. XTELR–203RE and XTELR–196RE).

E4. Approval of a sale by the U.S. Department of Agriculture, Forest Service, of 0.36 acre of former TVA land on Fontana Lake in Graham County, North Carolina (Tract No. XTFR–2).

E5. Public auction sale of approximately 5.66 acres of land on Pickwick Lake for Industrial development purposes in Tishomingo County, Mississippi (Tract No. XYECR–12).

E6. Modifications of a grant of easement affecting approximately 0.07 acre of former TVA land on Chickamauga Lake in Meigs County, Tennessee (Tract No. XCR–221).

E7. Sale of a nonexclusive permanent easement to Red Creek Ranch, Inc., for an access road affecting approximately 0.11 acre of land on Cherokee Lake in Hawkins County, Tennessee (Tract No. XCK–578AR).

E8. Modification of deed restrictions in two deeds affecting approximately 4.2 acres of former TVA land (portions of Tract Nos. XWBR–446 and –447), and sale of a permanent commercial recreation easement affecting approximately 22.2 acres of TVA land (Tract No. XWBR–709RE) on Watts Bar Lake in Roane County, Tennessee.

Unclassified

F1. Approval to file condemnation cases in connection with permanent easements and rights-of-way for a natural gas pipeline to the Gallatin Fossil Plant, easements and rights-of-way for an electric power transmission line, and the right to remove and dispose of danger trees along a transmission line. The gas line easement is in Wilson County, Tennessee, and the affected transmission lines are Wolf Creek-Summer Shade Tap to West Tompkinsville, Monroe County, Kentucky; and Portland-Westmoreland, Sumner County, Tennessee.

Information Items

1. Termination of the Bulk Power Sales Incentive Compensation Plan.

2. Approval to file condemnation cases for the following transmission lines: New Albany-Holly Springs Tap to Martintown, Union County, Mississippi; Portland-Westmoreland, Summer County, Tennessee; and Carriage House-Madison West Section, Madison County, Tennessee.

3. Amendments to the Rules and Regulations of the TVA Retirement System and the provisions of the TVA Savings and Deferral Retirement Plan. For Fiscal Year 1998, many employees

received lump-sum payments but no salary increase in base salary. The Retirement System Board has responded favorably to requests from its members and from TVA in finding a way that credit for TVA Retirement System purposes can be given for these specific lump-sum payments of up to 3 percent of regular salary or wages made in fiscal year 1998.

4. Approval of an agreement between TVA and Entergy Mississippi, Inc., for TVA's Freeport-Miller 161-kV Transmission Line Project which includes shared use by each party of land and easements and rights-of-way held by the other and delegation of authority to the Executive Vice President, Transmission/Power Supply Group, or a designated representative, to conclude final contract negotiations with Entergy and to enter into, execute, deliver, and accept on TVA's behalf the agreement and the documents providing for the shared use of land and easements and rights-of-way.

5. Approval for the sale of Tennessee Valley Authority Power Bonds.

6. Abandonment of easement rights over portions of the Bull Run-Solway and the Bull Run-Solway No. 2 transmission lines in Know County, Tennessee (Tract Nos. BRSW–36, –37, –38, and –39 and BAST–27, –28, –29, and –30.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: March 17, 1998.

William L. Osteen,

Associate General Counsel and Assistant Secretary.

[FR Doc. 98–7412 Filed 3–18–98; 11:52 am]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Allocation of the 200,000 Metric Ton Increase in the Amount Available Under the Raw Cane Sugar Tariff-Rate Quota

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the allocation among supplying countries and customs areas for the 200,000 metric ton increase in the amount available under the current raw cane sugar tariff-rate quota triggered by the fact that the stocks-to-use ratio for sugar reported in the U.S. Department of Agriculture's World Agricultural Supply and Demand Estimates on March 12, 1998, was 14.5 percent.

EFFECTIVE DATE: March 20, 1998.

ADDRESSES: Inquiries may be mailed or delivered to Audrae Erickson, Senior Economist, Office of Agricultural Affairs (Room 421), Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Audrae Erickson, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains a tariff-rate quota for imports of raw cane sugar. On September 17, 1997, the Secretary of Agriculture announced the in-quota quantity for the tariff-rate quota for raw cane sugar for the period October 1, 1997—September 30, 1998, and announced an administrative plan under which the quantity available would be increased by 200,000 metric tons, raw value, if the stocks-to-use ratio reported in the March 1998 U.S. Department of Agriculture's World Agricultural Supply and Demand Estimates (WASDE) is less than or equal to 15.5 percent. On March 12, 1998, the WASDE reported a stocks-to-use ratio of 14.5 percent, thereby triggering a 200,000 metric ton increase in the quantity available under the tariff-rate quota.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under paragraph (3) of Presidential Proclamation No. 6763 (60 FR 1007). Additional U.S. Note 5(b)(i) to chapter 17 of the HTS also provides that the quota amounts established under that note may be allocated among supplying countries and areas by the United States Trade Representative.

Raw Cane Sugar Allocation

Accordingly, USTR is allocating the 200,000 metric ton increase in the amount available under the raw cane sugar tariff-rate quota to the following countries or areas in metric tons, raw value. This allocation is based on the countries' historical trade to the United States:

Country	Current FY 1998 allocation	Additional allocation	New FY 1998 allocation
Agentina	48,101	8,731	56,832
Australia	92,846	16,853	109,699
Barbados	7,830	0	7,830
Belize	12,305	2,234	14,538
Bolivia	8,949	1,624	10,573
Brazil	162,201	29,442	191,642
Colombia	26,847	4,873	31,720
Congo	7,258	0	7,258
Cote d'Ivoire	7,258	0	7,258
Costa Rica	16,779	3,046	19,825
Dominican Republic	196,878	35,736	232,614
Ecuador	12,305	2,234	14,538
El Salvador	29,084	5,279	34,363
Fiji	10,068	1,827	11,895
Gabon	7,258	0	7,258
Guatemala	53,694	9,746	63,440
Guyana	13,424	2,437	15,860
Haiti	7,258	0	7,258
Honduras	11,186	2,030	13,217
India	8,949	1,624	10,573

Country	Current FY 1998 allocation	Additional allocation	New FY 1998 allocation
Jamaica	12,305	2,234	14,538
Madagascar	7,258	0	7,258
Malawi	11,186	2,030	13,217
Mauritius	13,424	2,437	15,860
Mexico	25,000	0	25,000
Mozambique	14,542	2,640	17,182
Nicaragua	23,491	4,264	27,755
Panama	32,440	5,888	38,328
Papua New Guinea	7,258	0	7,258
Paraguay	7,258	0	7,258
Peru	45,864	8,325	54,189
Philippines	151,015	27,411	178,426
South Africa	25,728	4,670	30,398
St. Kitts & Nevis	7,258	0	7,258
Swaziland	17,898	3,249	21,147
Taiwan	13,424	2,437	15,860
Thailand	15,661	2,843	18,503
Trinidad-Tobago	7,830	1,421	9,252
Uruguay	7,258	0	7,258
Zimbabwe	13,424	2,437	15,860
Total	1,200,000	200,000	1,400,000

Each allocation to a country that is a net importer of sugar is conditioned on compliance with the requirements of section 902(c)(1) of the Food Security Act of 1985 (7 U.S.C. 1446g note).

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 98–7266 Filed 3–19–98; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–110]

Termination of Section 302 Investigation: Practices of the Government of Brazil Regarding Trade and Investment in the Auto Sector

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination and monitoring.

SUMMARY: On October 11, 1996, the Acting United States Trade Representative (USTR) initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended (the Trade Act), with respect to certain acts, policies and practices of the Government of Brazil concerning the grant of tariff-reduction benefits contingent on satisfying certain export performance and domestic content requirements. Following consultations with the United States under the auspices of the World Trade Organization (WTO), Brazil has agreed that it will not extend its automotive trade-related investment measures beyond December 31, 1999. Having reached a satisfactory resolution of the issues under investigation, the USTR has determined to terminate this section 302 investigation and monitor implementation of the agreement under section 306 of the Trade Act.

DATES: This investigation was terminated on March 16, 1998.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Bennett Harman, Deputy Assistant U.S. Trade Representative for the Western Hemisphere, (202) 395–5190, or Amelia Porges, Senior Counsel for Dispute Settlement, (202) 395–7305.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the USTR initiated an investigation under Section 302(b)(1) of the Trade Act (19 U.S.C. 2412(b)(1)) with respect to whether certain acts, policies or practices of Brazil concerning trade and investment in the auto sector are inconsistent with certain provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994), the Agreement on Trade-Related Investment Measures (TRIMS Agreement), and the Agreement on Subsidies and Countervailing Measures (SCM Agreement), each administered by the World Trade Organization (WTO) (61 FR 54485 of October 11, 1996). In particular, Brazil has adopted since December 1995 a series of decrees, including Law 9449, that provide that manufacturers of automobiles may get reductions in duties on imports of inputs and assembled vehicles if they maintain a specified level of local content, export an offsetting amount of finished vehicles and parts, and maintain specified ratios of imported to domestic capital goods and imported to domestic inputs. As Brazil agreed to enter into intensive talks with the United States, the USTR pursuant to section 303(b)(1)(A) of the Trade Act decided, pending the outcome of these talks, to delay for up to 90 days requesting the consultations required under section 303(a) of the Trade Act for the purpose of ensuring an adequate basis for such consultations. Pursuant to section 303(b)(1)(B) of the Trade Act the time limitations for making the determinations required by section 304 of the Trade Act were extended for the period of the delay. When the talks were not successful, pursuant to section 303(a) of the Trade Act, the USTR requested on January 10, 1997 consultations with the Government of Brazil under the procedures of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

Resolution of Dispute

Following extensive consultations, the Government of Brazil and the Government of the United States reached an agreement on March 16, 1998, concerning trade measures in the automotive sector. In that agreement the Government of Brazil committed not to extend its automotive trade-related investment measures beyond December 31, 1999—the date by which all notified performance requirements were to be eliminated under the WTO Agreement on Trade Related Investment Measures. In addition, in order to further limit the impact of the measures, the Government

of Brazil agreed to accelerate the deadline for the filing of new applications under the regime, moving up the deadline for auto assemblers by eighteen months and for parts manufacturers by one year. It also agreed to make adjustments to certain of the calculations made under the regime.

On the basis of the agreement Brazil has agreed to enter into in order to provide a satisfactory resolution to the matter under investigation, the USTR has decided to terminate this section 302 investigation. Pursuant to section 306 of the Trade Act, the USTR will monitor Brazil's implementation of the agreement concerning trade measures in the automotive sector.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 98–7357 Filed 3–19–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection(ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 30, 1997, (62 FR 51175).

DATES: Comments must be submitted on or before April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification and Operations, 14 CFR part 125.

OMB Control Number: 2120–0085.

Type of Request: Extension of currently approved collection.

Affected Public: Business or other for profit organizations.

Form(s): N/A.

Abstract: The FAA is authorized to issue Air Carrier Operation Certificates. 14 CFR part 125 prescribes requirements for leased aircraft, Aviation Service Firms and Air Travel Clubs.

Information collected shows compliance and applicant's eligibility.

Annual Estimated Burden Hours: The current burden is estimated at 29,445 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are Invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it on or before April 20, 1998.

Issued in Washington, D.C. on March 16, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–7206 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending March 16, 1998

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 of date of filing.

Docket Number: OST–98–3594
Date Filed: March 9, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 Telex Mail Vote 912
Amend fares from Thailand to Middle East
Telexes—Amending Mail Vote/ Declaring Mail Vote Adopted
r1–045m r2–055m r3–065m r4–084k r5–070q
Intended effective date: amended to April 1, 1998.

Docket Number: OST–98–3596
Date Filed: March 10, 1998
Parties: Members of the International Air Transport Association
Subject: Request of the International Air Transport Association, pursuant to 49 U.S.C. Sections 41308 and 41309, and Parts 303.03, 303.05 and 303.30, on behalf of member airlines of the International Air Transport Association (IATA) that the Department approve and confer antitrust immunity on IATA's revised Articles of Association, as shown in attachment A.

Docket Number: OST–98–3620
Date Filed: March 13, 1998
Parties: Members of the International Air Transport Association
Subject: PTC12 Telex Mail Vote 916 South Atlantic-Sarajevo Reso 010s Intended effective date: March 29, 1998.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–7337 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending March 16, 1998

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–98–3601
Date Filed: March 11, 1998
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 8, 1998
Description: Application of Transair International Linhas Aereas Ltda., pursuant to 49 U.S.C. 40109 and Subpart Q of the Regulations, requests a foreign air carrier permit authorizing Transair to perform passenger charter service between Brazil and the United States, and Fifth Freedom passenger charters as specifically authorized by

the Department in accordance with it's Rules and Regulations.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–7338 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of location and change in time of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a change in time for a special meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee (63 FR 8315, February 19, 1998).

DATES: The meeting to be held on April 9, 1998, will begin at 10 a.m.

ADDRESS: The meeting will be held at the U.S. Department of Transportation, 400 Seventh Street, SW., Room 3200–3204, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.dot.gov.

Issued in Washington, DC, on March 14, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–7327 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA) / Joint Planning Advisory Group (JPAG) (63 FR 4687)

AGENCY: Maritime Administration, DOT.

ACTION: Synopsis of February 10–12, 1998 Meeting with VISA Participants.

On February 10–12, 1998, the Maritime Administration (MARAD) and the United States Transportation Command (USTRANSCOM) co-hosted a meeting of the Voluntary Intermodal Sealift Agreement (VISA) Joint Planning Advisory Group (JPAG) at the MARAD Emergency Operations Center, U.S. Department of Transportation, Washington, D.C.

Meeting attendance was by invitation only, due to the nature of the information discussed and the need for a government-issued security clearance. Of the 23 U.S.-flag carrier corporate participants enrolled in VISA at the time of the meeting, 18 were represented, as well as representatives from the Department of Defense (DoD) and the Department of Transportation (DOT).

Following opening remarks by Mr. John E. Graykowski, Acting Maritime Administrator, Government representatives provided briefings to VISA participants on military operation plans and VISA activation procedures. VISA carriers then convened in separate work groups with Government analysts to discuss the strategic lift requirements and to review draft VISA concepts of operations (CONOPS) for future refinement and validation. These VISA CONOPS will be used to model intermodal sealift capacity planning for the upcoming TURBO CHALLENGE 98 VISA JPAG exercise scheduled for April 1998.

Only one stated goal of the February 1998 VISA JPAG was not accomplished. This was the development of VISA carrier draft capacity commitment levels for VISA Stages I & II. However, VISA Stage III capacity commitments of 50% of each participant's militarily useful U.S.-flag capacity (100% of capacity for Maritime Security Program [MSP] ships) has been adopted. VISA Stage I & II commitment levels as a percentage of each VISA participant's militarily useful U.S.-flag fleet total capacity will be determined following the successful completion of the VISA Rate Methodology Working Group (RMWG) analysis.

The full text of the VISA program is published in 62 FR 6837–6845, dated February 13, 1997. One of the program requirements is that MARAD periodically publish a list of VISA participants in the **Federal Register**. As of March 10, 1998, the following commercial U.S.-flag vessel operators are enrolled in VISA with MARAD: Alaska Cargo Transport, Inc., American Auto Carriers, Inc., American Automar, Inc., American President Lines, Ltd., American Ship Management, LLC, Central Gulf Lines, Inc., Crowley Maritime Corporation, Falgout Brothers, Inc., Farrell Lines Incorporated, First American Bulk Carrier Corp., Lykes Lines Limited, L.L.C., Maersk Line Limited, Matson Navigation Company, Inc., Moby Marine Corporation, NPR, Inc., OSG Car Carriers, Inc., RR & VO L.L.C., Sealift, Inc., Sea-Land Service, Inc., Smith Maritime, Totem Ocean Trailer Express, Inc., Trailer Bridge, Inc., Van Ommeren Shipping (USA) LLC, and Waterman Steamship Corporation.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Raymond R. Barberesi, Director, Office of Sealift Support, (202) 366–2323.

Dated: March 17, 1998.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 98–7333 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33563]

Texas Rock Crusher Railway Company, Acquisition and Operation Exemption, The Burlington Northern and Santa Fe Railway Company

Texas Rock Crusher Railway Company (TXRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from The Burlington Northern and Santa Fe Railway Company (BNSF) and to operate two disconnected lines of railroad (subject lines).[1] The first of these lines, known as the Camp Bowie Industrial Spur, extends between mainline milepost 349.01, on BNSF's Clovis, NM, to Houston, TX, mainline, and the end of track (no milepost), at the Camp Bowie Industrial Park in Brownwood, TX, a distance of 4.4 miles. The second of these lines, known as the Rock Crusher Spur, extends from mainline milepost 349.3 on BNSF's above-described mainline to end of line (no milepost), in Brownwood, TX, a distance of 1.25 miles. In addition, BNSF will grant TXRC incidental overhead freight trackage rights for ten 99-year terms between milepost 348.6 and milepost 349.4, near Brownwood, TX, including the use of the wye, to allow traffic originating on the Rock Crusher Spur to have access to BNSF's Brownwood Yard for interchange. BNSF will also grant TXRC incidental trackage rights over BNSF's Brownwood Yard trackage between milepost 345.5 and milepost 349.4 for switching and interchange and to allow movement to

[1] The parties state that TNW Corporation (TNW), TXRC's corporate parent, entered into an agreement on February 11, 1998, with BNSF for the purchase of the subject lines. TNW subsequently assigned that agreement to TXRC.

and from the Camp Bowie Industrial Spur and the Rock Crusher Spur.

The earliest the transaction could be consummated was March 6, 1998, the effective date of the exemption (7 days after the notice of exemption was filed).

This transaction is related to STB Finance Docket No. 33564, *TNW Corporation—Continuance in Control Exemption—Texas Rock Crusher Railway Company*, wherein TNW has concurrently filed a verified notice to continue in control of TXRC upon its becoming a Class III rail carrier.

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. 33563, 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 John D. Heffner, Esq., Rea, Cross & Auchincloss, 1707 L Street, N.W., Suite 570, Washington, DC 20036.

Decided: March 12, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–7119 Filed 3–19–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33564]

TNW Corporation—Continuance in Control Exemption—Texas Rock Crusher Railway Company

TNW Corporation (TNW), a noncarrier shortline railroad holding company, has filed a notice of exemption to continue in control of Texas Rock Crusher Railway Company (TXRC), upon TXRC's becoming a carrier. TNW owns all of the outstanding stock of TXRC.

The earliest the transaction could be consummated was March 6, 1998, the effective date of the exemption (7 days after the notice of exemption was filed).

This transaction is related to STB Finance Docket No. 33563, *Texas Rock Crusher Railway Company—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein TXRC seeks to acquire and operate two adjacent but disconnected lines from The Burlington Northern and Santa Fe Railway Company.

TNW owns and controls three existing Class III rail carriers: Texas North Western Railway Company, operating in the State of Texas; Texas, Gonzales & Northern Railway Company, operating in the State of Texas; and Nebraska Northeastern Railway Company, operating in the State of Nebraska.

TNW states that: (i) the railroads will not connect with each other or any railroad in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the four railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33564, 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 John D. Heffner, Esq., Rea, Cross & Auchincloss, 1707 L Street, N.W., Suite 570, Washington, DC 20036.

Decided: March 12, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–7120 Filed 3–19–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 559X)]

CSX Transportation, Inc.—Abandonment Exemption—in Atlanta, Fulton County, GA

On March 2, 1998, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of its Atlanta Service Lane, Atlanta Terminal Subdivision, extending from milepost 4.87 at Memorial Drive, to milepost 5.22 at Wylie Street, a distance of 0.35 miles, in Atlanta, Fulton County, GA. The line traverses U.S. Postal Service ZIP Code 30318. CSXT indicates that there are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.— Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 19, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which is set at $1,000, as of March 20, 1998. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 9, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 559X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Charles M. Rosenberger, 500 Water Street—J150, Jacksonville, FL 32202.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public

Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: March 13, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–7285 Filed 3–19–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

March 16, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1219.

Form Number: IRS Form 8038–T.

Type of Review: Extension.

Title: Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

Description: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issuers include state and local governments.

Respondents: State, Local or Tribal Governments.

Estimated Number of Respondents/Recordkeepers: 2,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—11 hours, 0 minutes
Learning about the law or the form—6 hours, 34 minutes
Preparing, copying, assembling, and sending the form to the IRS–7 hours, 1 minute

Frequency of Response: Other (at least once every five years).

Estimated Total Reporting/Recordkeeping Burden: 61,450 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–7193 Filed 3–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

March 12, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1579.

Notice Number: Notice 98–1.

Type of Review: Extension.

Title: Nondiscrimination Testing.

Description: This notice provides guidance for discrimination testing under section 401(k) and (m) of the Internal Revenue Code as amended by section 1433(c) and (d) of the Small Business Job Protection Act of 1996. The guidance is directed to employers maintaining retirement plans subject to these Code sections.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Recordkeepers: 147,000.

Estimated Burden Hours Per Recordkeeper: 20 minutes.

Estimated Total Recordkeeping Burden: 49,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–7194 Filed 3–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 12, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

Departmental Offices/Community Development Institutions (CDFI) Fund

OMB Number: 1505–0154.

Form Number: Forms CDFI–0001, CDFI–0005 and CDFI–0006.

Type of Review: Extension.

Title: Community Development Financial Institutions Program:

1. Application Form (CDFI–0001);
2. Application for Certification (CDFI–0005); and
3. Technical Assistant Component Application Form (CDFI–0006)

Description: The purpose of the Community Development Banking and Financial Institutions Act of 1994 (Act) is to create the Fund to promote economic revitalization and community development through investment in and

assistance to Community Development Financial Institutions (CDFIs). The investment by the Program is intended to facilitate the creation of a national network of financial institutions that is dedicated to community development.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 450.

Estimated Burden Hours Per Respondent/Recordkeepers:

Form/application	Response time
Application Form (CDFI–0001)	100
Application for Certification (CDFI–0005)	15
Technical Assistance Component Application Form (CDFI–0006)	50

Frequency of Response: Quarterly.

Estimated Total Reporting/ Recordkeeping Burden: 43,100 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–7195 Filed 3–19–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 11, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0525.

Form Number: ATF F 5300.38.

Type of Review: Extension.

Title: Application for an Amended Federal Firearms License.

Description: This form is used when a Federal firearms licensee makes application to change the location of the firearms business premises. The applicant must certify that the proposed new business premises will be in compliance with State and local law for that location, and forward a copy of the application to the chief law enforcement officer having jurisdiction over the new premises.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 18,000.

Estimated Burden Hours Per Respondent: 1 hour, 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 22,500 hours.

OMB Number: 1512–0526.

Form Number: None.

Type of Review: Extension.

Title: Implementation of Pub. L. 103–322, The Violent Crime Control and Law Enforcement Act of 1994.

Description: These regulations implement the provisions of Pub. L. 103–322 by restricting the manufacture, transfer, and possession of certain semiautomatic assault weapons and large capacity ammunition feeding devices. The collections of information in this temporary rule are in 27 CFR 178.40(c), 178.40a(c), 178.129(e), 178.132, and 178.133.

Respondents: Business or other for-profit, Business of other for-profit.

Estimated Number of Respondents/ Recordkeepers: 2,107,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Reporting—6 minutes.

Recordkeeping—2 hours, 25 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 458,942 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–7196 Filed 3–19–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Customer Satisfaction Survey.

DATES: Written comments should be received on or before May 19, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Customer Satisfaction Survey to Implement Executive Order 12862.

OMB Number: 1535–0122.

Abstract: The information from the survey will be used to improve customer service.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 7,000.

Estimated Total Annual Burden Hours: 876.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 16, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–7267 Filed 3–19–98; 8:45 am]

BILLING CODE 4810–39–P

Corrections

Federal Register
Vol. 63, No. 54
Friday, March 20, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of March 6, 1998

Correction

In notice document 98–6703, appearing on page 12855, in the issue of Monday, March 16, 1998, the heading should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending March 6, 1998

Correction

In notice document 98–6704, beginning on page 12855, in the issue of Monday, March 16, 1998, the heading should appear as set forth above.

BILLING CODE 1505-01-D

federal register

Friday
March 20, 1998

Part II

Department of the Treasury

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Core and Technical Assistance Components; Notices

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

[No. 981–0154]

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Core Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.) (hereafter referred to as the "Act") authorizes the Community Development Financial Institutions Fund (hereafter referred to as "the Fund") of the U.S. Department of the Treasury to select and provide financial and technical assistance to eligible applicants under the Community Development Financial Institutions ("CDFI") Program. The interim rule (12 CFR part 1805), which was published in the **Federal Register** on April 4, 1997 (62 FR 16444), provides guidance on the contents of the necessary application materials and program requirements. Subject to funding availability, the Fund intends to award up to $40 million in appropriated funds pursuant to this NOFA and expects to issue approximately 50 to 60 awards. The Fund reserves the right to award in excess of $40 million in appropriated funds pursuant to this NOFA provided that the funds are available and the Fund deems it appropriate. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this notice.

This NOFA is in connection with the core component of the CDFI Program. The core component provides direct assistance to CDFIs that serve their target markets through loans, investments and other activities. (These primary activities do not include the financing of other CDFIs. In the previous round of the CDFI Program a separate NOFA was published in the **Federal Register** (62 FR 16461) in connection with the intermediary component of the CDFI Program. The intermediary component provides financial assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs. At this time the Fund is only making funds available for the core component; however, the Fund may issue a NOFA for the intermediary component at a later date.)

DATES: Applications may be submitted at any time following March 20, 1998. The deadline for receipt of an application is 6 p.m. EDT on June 12, 1998. Applications received after that date and time will not be accepted and will be returned to the sender. Applications sent electronically or by facsimile will not be accepted.

ADDRESSES: Applications shall be sent to: Awards Manager, the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program contact the CDFI Program Manager. Should you wish to request an application package or have questions regarding application procedures contact the CDFI Awards Manager. They may be reached by phone on (202) 622–8662, by facsimile on (202) 622–7754 or by mail at CDFI, 601 13th Street, NW., Suite 200 South, Washington, D.C. 20005. Allow at least one to two weeks for the receipt of the application package.

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients in creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the CDFI Program is fostering the creation of a national network of financial institutions that are specifically dedicated to funding and to supporting community development. This strategy will build strong institutions that make loans and investments and provide services to economically distressed investment areas and disadvantaged targeted populations. The Act, which implements this vision authorizes the Fund to select entities to receive financial and technical assistance. Institutions in operation at the time of application are eligible to receive assistance to expand their activities. New institutions are eligible to receive start-up assistance. This NOFA invites applications from eligible organizations for financial assistance, technical assistance, or both, for the purpose of promoting community development activities and revitalization.

The Program connected with this NOFA constitutes the core component of the CDFI Program, involving direct financial and technical assistance to CDFIs that serve their target markets through loans, investments and other activities. This NOFA will not support CDFIs that primarily are funding other CDFIs. Under this core component NOFA, the Fund has an anticipated maximum award of $2 million per applicant. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate.

Elsewhere in this issue of the **Federal Register**, the Fund is publishing a separate NOFA for the first round of the technical assistance (TA) component of the CDFI Program. The TA component NOFA is specially tailored to award TA grants to eligible applicants demonstrating unmet capacity needs, that if addressed would potentially generate significant community development impact. Under the TA component NOFA, applicants may only apply for TA, and the anticipated maximum TA award per applicant is $50,000. All applications for TA under the TA component NOFA will be evaluated separate and apart from the applications for TA, financial assistance or both under this core component NOFA, because the application requirements and the selection criteria in the TA component NOFA differ from those contained herein. However, eligible applicants may apply for TA under both the TA component NOFA and this core component NOFA. It is unlikely that an organization will receive support under both NOFAs.

II. Eligibility

The Act and the interim rule specify the eligibility requirements that each applicant must meet in order to be eligible to apply for financial assistance, TA, or both under this core component NOFA. Specifically, an entity must meet, or propose to meet, the CDFI certification requirements. In general, a CDFI must have a primary mission of promoting community development, provide lending or investments, serve an investment area or a targeted population, provide development services, maintain community accountability, and be a non-government entity. At the time an entity submits its application, the entity must be duly organized and validly existing under the laws of the jurisdiction in which it is incorporated or otherwise established, and is (or within 30 days of the Fund's receipt of their application will be) authorized to do business in any jurisdiction in which it proposes to undertake the activities specified in its application. The details regarding these

requirements and other program requirements are described in the application packet and the interim rule.

III. Types of Assistance

An applicant may submit an application for financial assistance, TA, or both under this core component NOFA. Financial assistance may be provided through an equity investment, a grant, a loan, deposits, credit union shares, or any combination thereof. Applicants for financial assistance shall indicate the dollar amount, form, terms, and conditions of assistance requested. Applicants for TA under this NOFA shall describe the types of TA requested, the provider(s) of the TA, the cost of the TA, and a narrative justification of its needs for the TA.

IV. Application Packet

Except as described hereafter, an applicant under this NOFA, whether applying for financial assistance, TA, or both, shall submit the materials described in § 1805.701 and the application packet.

If an applicant is currently certified as a CDFI by the Fund, it may submit a copy of the Fund's letter of certification and the Certification of Material Changes form, a copy of which is contained in the application packet, in lieu of the information described in §§ 1805.701(b)(1)–(8). However, an applicant should include information in its application that it believes is relevant to the Fund's substantive review of the application under § 1805.802(b).

V. Matching Funds

Applicants responding to this NOFA must provide matching funds from sources other than the Federal Government on the basis of not less than one dollar for each dollar provided by the Fund. Such matching funds shall be at least comparable in form and value to assistance provided by the Fund. Non-Federal funds obtained or legally committed on or after January 1, 1997, may be considered when determining matching funds availability. Applicants selected to receive assistance under this NOFA must have firm commitments for the matching funds required pursuant to § 1805.600 by no later than August 31, 1998. The Fund may recapture and reprogram funds if an applicant fails to raise the required match by such date. The Fund reserves the right to grant an extension of such matching funds deadline for specific applicants selected for assistance if the Fund deems it appropriate. Funds used by an applicant as matching funds for a previous award under the CDFI Program cannot be used to satisfy the § 1805.600 matching funds requirement.

VI. Evaluation Factors

Applications will be evaluated on a competitive basis in accordance with criteria described in § 1805.802. Special emphasis is expected to be placed on:

(1) The applicant's track record, financial strength, and current operations;

(2) The capacity, skills, and experience of the management team;

(3) The quality of the applicant's comprehensive business plan;

(4) The extent and nature of the potential community development impact that would be catalyzed by the Fund's assistance, relative to the amount of such assistance to be provided; and

(5) The likelihood that the applicant will be able to raise the required matching funds.

The applicant's track record, financial strength and current operations are important to the extent they may be suggestive about the prospects for success in the future. In the case of a young or start-up institution with no, or a limited, track record, extra emphasis will be placed on the capacity, skills, and experience of the applicant's management team and the quality of its comprehensive business plan.

While previous awardees are eligible to apply pursuant to this NOFA, such applicants should be aware that success in a previous round should not be considered indicative of the likelihood of success under this NOFA. At the same time, organizations will not be penalized for having received awards in previous rounds.

The anticipated maximum award per applicant under this NOFA is $2 million. However, the Fund, in its sole discretion, reserves the right to make individual award amounts in excess of $2 million if it deems it appropriate. The Fund reserves that right to award, in whole or in part, any, all, or none of the applications submitted in response to this notice.

VII. Workshops

The Fund expects to host workshops to disseminate information to organizations interested in applying for assistance pursuant to this NOFA. If you wish to be on a mailing list to receive information about such workshops, please fax your request to the Fund.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, and 4717; 12 CFR part 1805.

Dated: March 16, 1998.

Ellen Lazar,

Director, Community Development Financial Institutions Fund.

[FR Doc. 98–7152 Filed 3–19–98; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

[No. 982–0154]

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Technical Assistance Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.) (hereafter referred to as the "Act") authorizes the Community Development Financial Institutions Fund (hereafter referred to as "the Fund") to select and provide assistance to eligible applicants under the Community Development Financial Institutions ("CDFI") Program. Such assistance may include financial assistance and technical assistance. Technical assistance ("TA") may be used for activities that enhance the capacity of both CDFIs and entities proposing to become CDFIs, such as the training of management and other personnel, the development of programs, loan or investment products, improving financial management and internal operations, enhancing a CDFI's community impact, or other activities deemed appropriate by the Fund. Since the advent of the CDFI Program, the Fund has issued NOFAs inviting applications for both TA and financial assistance. However, the Fund recognizes that a key ingredient to enhancing the CDFI industry is the provision of TA, and the Fund has decided to expand the tools that it utilizes to increase the availability of TA to CDFIs. Specifically, the Fund is issuing this NOFA for a TA only component of the CDFI Program to better address the unmet capacity needs of CDFIs and entities proposing to become CDFIs. This NOFA is intended to award grants to eligible applicants that have demonstrated capacity needs and have significant potential for increasing their community development impact relative to the

amount of TA provided. This NOFA provides guidance on the contents of the necessary application materials and program requirements. Subject to funding availability, the Fund intends to award up to $5 million in appropriated funds pursuant to this NOFA. The Fund reserves the right to award in excess of $5 million in appropriated funds pursuant to this NOFA provided that the funds are available and the Fund deems it appropriate.

DATES: The original and three copies of the application may be submitted at any time following March 20, 1998. The deadline for receipt of the original and three copies of an application is 6 p.m. EDT on May 29, 1998. Applications received after that date and time will not be accepted and will be returned to the sender. Applications sent electronically or by facsimile will not be accepted.

ADDRESSES: Applications shall be sent to: Awards Manager, the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th St. NW., Suite 200 South, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: The Technical Assistance Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th St. NW., Suite 200 South, Washington, D.C. 20005, (202) 622–8662. (This is not a toll-free number.) If you have any questions about this NOFA or the application packet, you may call or write to the Technical Assistance Program Manager at the above telephone number or address, or you may send questions by facsimile to (202) 622–7754. To request an application packet, please send by facsimile to (202) 622–7754 a written request which includes the name of the requester, organization, mailing address, telephone number, facsimile number, and name of the program for which an application is being requested.

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients in creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the Fund's CDFI Program facilitates the creation of a national network of financial institutions that are specifically dedicated to community development. CDFIs make loans, investments and provide development services to economically distressed investment areas and disadvantaged targeted populations. In order to facilitate the development of a national network of CDFIs, the Fund is seeking to support the efforts of such entities to build their organizational capacity to make loans and investments and provide development services. In order to use the TA funds strategically, it is the Fund's intention to target such funds to CDFIs and entities proposing to become CDFIs that have demonstrated capacity needs and possess significant potential for increasing their community development impact with the assistance of a limited amount of TA. The anticipated maximum award per applicant under this NOFA is $50,000. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of $50,000 if an applicant demonstrates to the satisfaction of the Fund the need for such additional amounts and the added potential community development impact resulting from such additional amounts.

Elsewhere in this issue of the **Federal Register**, the Fund is publishing an NOFA for financial assistance and TA under the CDFI Program core component. That separate NOFA is a continuation of the approach used in the first two rounds of the CDFI Program. In the separate core component NOFA, the Fund is making available up to $40 million in appropriated funds. Applicants under that core component NOFA may apply for both financial assistance and TA, and such applicants for TA are not limited to $50,000 in TA funds. However, all applications for financial assistance, TA or both under the core component will be evaluated separate and apart from the applications under this TA component. Moreover, the application requirements and the selection criteria under the core component NOFA differ from those contained in this TA component NOFA, because the TA component NOFA is singularly focused on providing TA to enhance the capacity of CDFIs and entities proposing to become CDFIs. Interested applicants are encouraged to apply for TA under one NOFA or the other; however, applicants are not prohibited from applying for TA under both NOFAs.

II. Eligibility

The Act and the interim rule governing the CDFI Program (12 CFR part 1805), which was published in the **Federal Register** on April 4, 1997 (62 FR 16444), specify the requirements that each applicant must meet to be eligible to apply for TA. Specifically, an entity at the time it submits its application must meet or propose to meet the CDFI certification requirements under § 1805.200. In general, a CDFI must have a primary mission of promoting community development, provide lending or investments, serve an investment area or a targeted population, provide development services, maintain community accountability, and be a nongovernment entity. At the time an entity submits its application, the entity must be duly organized and validly existing under the laws of the jurisdiction in which it is incorporated or otherwise established, and is (or within 30 days will be) authorized to do business in any jurisdiction in which it proposes to undertake activities specified in its application. The details regarding these requirements and other program requirements are described in the interim rule and the application packet.

III. Form of Assistance

An applicant under this NOFA may only submit an application for a TA grant.

IV. Application Packet

Section 1805.701 provides that unless otherwise specified in an applicable NOFA, each application must contain the information specified in the application packet, including the items described in §§ 1805.701(a)–(j). For purposes of this NOFA, the Fund is specially tailoring the collection of information requirements. Specifically, applicants are only required to submit the information required by the TA component application packet. The TA component application packet requires the submission of the following information:

(a) *Applicant Information.* The applicant's name, address and name and telephone number of the applicant's authorized representative and contact person.

(b) *Award Request.* The dollar amount of the TA grant requested by the applicant.

(c) *Eligibility Verification.* If the Fund has not certified an applicant as a CDFI and an applicant does not have an application for certification pending with the Fund, the applicant shall provide information necessary to establish that it is, or will be, a CDFI. An applicant shall demonstrate whether it meets the CDFI eligibility requirements by providing the information described in §§ 1805.701(b)(1)–(8). If an applicant is currently certified by the Fund as a CDFI, it may submit a copy of the Fund's letter of certification and the Certification of Material Changes form

contained within the application in lieu of the information described in §§ 1805.701(b)(1)–(8). However, an applicant should include in its application for a TA grant information that it believes is otherwise relevant to the Fund's evaluation of the application under the criteria set forth in this NOFA. An entity that proposes to become a CDFI is eligible to apply for a TA grant if the Fund determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in §§ 1805.200(b)–(h) within two years of entering into an Assistance Agreement with the Fund.

(d) *Comprehensive Business Plan.* An applicant shall submit an abbreviated five-year Comprehensive Business Plan that addresses the items described in this paragraph (d). The Comprehensive Business Plan should, to the maximum extent practicable, be limited to ten pages or less (applicants may provide attachments, including supplemental documents, as appropriate, on items referenced in the Comprehensive Business Plan).

(1) *Management capacity.* An applicant shall provide a narrative description of its current management capacity, including detailed information on the background and capacity of the applicant's management team, key personnel and governing board members as appropriate.

(2) *Track Record and Historical Financial Performance.* An applicant shall provide information on its historical and current financial condition, including a copy of audited financial statements, financial statements that have been reviewed by a certified public accountant, or financial statements that have been reviewed by the applicant's Appropriate Federal Banking Agency for the last three completed fiscal years, and the most recent internal financial statements since the beginning of the applicant's current fiscal year. The applicant shall also provide information on its loans and Development Investments for the three most recent fiscal years, including information on the total number and dollar amount of such loans and Development Investments during each fiscal year during this time frame. If an applicant has been in operation for less than three years, the applicant shall describe such activities for each fiscal year since inception. The applicant shall provide information necessary to assess trends in its financial and operating performance (e.g., portfolio delinquencies, defaults and charge-offs).

(3) *Market Analysis and Strategy.* An applicant shall provide an analysis of its target markets, including a description of the needs of the Investment Area(s) and Targeted Population(s), as applicable. An applicant shall also describe its five-year strategy for meeting the demand for loans or Development Investments generated by the needs of its target market(s) through its products and services. The strategy description may include plans for growth of lending volume and lending products, expansion of Development Services, staffing and management appropriate to meet such growth and growth of the operating budget. Projected changes in overall capital structure (asset and liability composition) may also be described. The narrative discussion may be supplemented with quantitative projections.

(4) *Coordination Strategy.* An applicant shall describe:

(i) Its plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs and private sector resources;

(ii) How its proposed activities are consistent with existing economic, community, and housing development plans adopted for an Investment Area(s) or Targeted Population(s); and

(iii) How it will coordinate with community organizations, financial institutions, and Community Partners (if applicable) which will provide loans, equity investments, secondary markets, or other services to an Investment Area(s) or a Targeted Population(s).

(5) *Funding Sources.* An applicant shall provide information:

(i) On its current and projected sources of capital and other financial support. Such projections should relate to and be consistent with the strategy description provided under paragraph (3); and

(ii) To demonstrate that it has a plan for achieving or maintaining financial viability within the five-year period. Such information shall demonstrate that the applicant will not be dependent upon future awards of assistance from the Fund for its continued viability.

(6) *Community Partnership.* In the case of an applicant submitting an application with a Community Partner, the applicant shall include in its application the information described in § 1805.701(d)(12).

(e) *Technical Assistance Proposal.* An applicant shall provide a Technical Assistance Proposal ("TAP") that includes information on the TA needed to enhance the capacity of the organization to carry out its Comprehensive Business Plan. Such information shall include the items described in this paragraph (e). The TAP should, to the maximum extent practicable, be limited to ten pages or less (applicants may provide attachments, including supplemental documents, as appropriate, on items referenced in the TAP). An applicant shall provide:

(1) An evaluation of its capacity needs (this may be a self-evaluation);

(2) A detailed description of the type(s) of TA needed to meet the identified capacity needs;

(3) A detailed description of the strategy for obtaining such TA, including its proposed providers of TA and their qualifications. If an applicant cannot identify specific providers of TA in its application, it shall identify the requisite qualifications that it will seek for such TA providers;

(4) An estimate of the cost to obtain the TA for each year that will include use of TA funds. This cost estimate shall include expense projections for each of the specific activities to be funded with TA funds; and

(5) A projection of the benefits expected to be created within its Investment Area(s) or Targeted Population(s) with the enhanced capacity resulting from the TA.

(f) *Conflict of Interest.* An applicant shall submit a copy of its conflict of interest policies that are consistent with the requirements of § 1805.906.

(g) *Lobbying Disclosure Act of 1995.* An applicant shall identify whether or not the Internal Revenue Service (IRS) has recognized it as exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code.

(h) *Miscellaneous.* An applicant shall indicate and describe the circumstances underlying any back taxes due to the IRS, any delinquent debts owed to Federal, State or local governments, and whether it has ever filed for bankruptcy.

(i) *Environmental Information.* An applicant shall review and complete the Environmental Review Form contained within the application.

(j) *Applicant Certification.* An applicant and Community Partner (if applicable) shall review and complete the assurances and certifications form contained in Appendix A of the application.

(k) *Previous Awardees.* In the case of an applicant that has previously received assistance under the CDFI Program, the applicant shall demonstrate that it:

(1) Has substantially met its performance goals and other requirements described in its previous Assistance Agreement(s); and

(2) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(l) *Previous History.* In the case of an applicant with a prior history of serving Investment Area(s) or Targeted Population(s), the applicant shall demonstrate that it:

(1) Has a record of success in serving Investment Area(s) or Targeted Population(s); and

(2) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

V. Evaluation and Selection

In evaluating and selecting applicants, the Fund will utilize the evaluation criteria found in § 1805.802(b), except that the Fund will not consider the evaluation criteria relating to matching funds in §§ 1805.802(b)(2)(i), (ii), and (iv). Under the Act, the Fund has express authority to consider evaluation criteria in addition to those set forth in 12 U.S.C. § 4706 and § 1805.802(b). The Fund also has broad discretion in evaluating the relative importance of each such criterion. For purposes of this TA component NOFA, the Fund is adding as a new evaluation criterion the extent of the applicant's demonstrated capacity needs. In selecting applicants for TA grant awards, the Fund will accord predominant weight to the following two evaluation criteria:

(a) The extent of the applicant's demonstrated capacity needs; and

(b) The extent and nature of the potential community development impact that will be achieved by the Fund's TA, relative to the amount of the TA to be provided.

The Fund will continue to evaluate applications using the remaining applicable criteria set forth in § 1805.802(b); however, such evaluation criteria will be of secondary importance to the two criteria set forth above.

In assessing the extent of a demonstrated capacity need, the Fund will consider the extent of funding previously awarded by the Fund to the applicant. While previous awardees are eligible to apply pursuant to this NOFA, given the focus on applicants with demonstrated unmet capacity building needs, it is the current expectation of the Fund that a substantial majority of the funds awarded pursuant to this NOFA will be to applicants that are not previous awardees. On the other hand, success in a previous funding round will not prevent an applicant from receiving a TA grant under this NOFA provided that such a grant is consistent with the Act and the interim rule governing the CDFI Program (12 CFR part 1805).

The Fund has sole discretion in the selection of applications for assistance. The anticipated maximum award per applicant under this NOFA is $50,000. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of $50,000 if appropriate.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717, 4718; 12 CFR part 1805.

Dated: March 16, 1998.

Ellen Lazar,

Director, Community Development Financial Institutions Fund.

[FR Doc. 98–7153 Filed 3–19–98; 8:45 am]

BILLING CODE 4810–70–P

federal register

Friday
March 20, 1998

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 198
Aviation Insurance; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 198

[Docket No. 28893; Amdt. No. 198–4]

RIN 2120–AF23

Aviation Insurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document revises Title 14, Code of Federal Regulations (CFR), part 198, to reflect statutory authority to issue non-premium insurance for certain types of flight operations and ground support activities essential to such flights; explain when insurance policies are in force and when they are in standby status; revise the process for amending insurance policies; increase the amount of the binder for non-premium insurance coverage; clarify that consistent with commercial aviation insurance practice, not only aircraft, but other insurable items may be insured; and clarify that the Presidential approval required for the issuance of non-premium insurance is demonstrated by the standing Presidential approval of the interagency indemnification agreement.

The intent of this final rule is to improve the efficiency of FAA's Aviation Insurance Program (Program); explain Program procedures; conform certain Program procedures to commercial aviation insurance industry practice; and offset incurred administration costs resulting from the increased frequency of utilization of the Program. The changes allow the Program to be more responsive to the aviation industry when commercial coverage cannot be obtained on reasonable terms, and the insurance coverage may be provided by the Program.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Eleanor Eilenberg, Office of Aviation Policy and Plans, APO–3, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3090.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–FAA–ARAC).

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

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 1–800–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

In 1951, Congress amended the Civil Aeronautics Act of 1938 by adding a new Title XIII which authorized the Secretary of Commerce, with the approval of the President, to provide aviation war risk insurance adequate to meet the needs of U.S. air commerce and the federal government. This insurance could only be issued when the Secretary of Commerce found that war risk insurance was commercially unavailable on reasonable terms and conditions.

The war risk insurance program was established to provide the insurance necessary to enable air commerce to continue in the event of war. This was needed because of several factors: commercial war risk insurance policies contained automatic cancellation clauses in the even of major war; the geographical coverage of commercial war risk insurance could be restricted upon reasonable notice to air carriers; and rates for commercial war risk insurance could be raised without limit upon reasonable notice to air carriers.

The Aviation Insurance Program was incorporated into Title XIII of the Federal Aviation Act of 1958. Statutory responsibility for the Program was subsequently transferred to the Department of Transportation (DOT), at the time of its creation in 1967. The Secretary of Transportation (Secretary) later delegated this authority to the Administrator of the FAA (49 CFR 1.47(b)).

The definition of war risk in Title XIII was that traditionally employed by commercial underwriters and, as a matter of policy, the FAA had always conservatively interpreted the definition. In the early 1970's, this definition led to uncertainty about the extent of the Administrator's statutory authority to provide insurance against loss or damage arising from, for example, undeclared wars, hijackings, and terrorist acts. Because of a combination of the progressive exclusion of these new risks from commercial all risk policies, and the failure of the traditional definition of war risk to cover these risks, a potential gap in insurance coverage occurred, with the possibility of abrupt termination of important air services in emergency situations.

In recognition of the fact that the Administrator needed broad insurance authority in extraordinary circumstances to insure air services determined to be in the national interest, Congress amended Title XIII on November 9, 1997. These amendments, included in Public Law (Pub. L.) 95–163, removed from Title XIII all references to risk categories. They authorized the Administrator to provide insurance against loss or damage due to any risk arising from operations of aircraft in foreign air commerce or between two points outside the United States deemed by the President to be in the foreign policy interests of the United States. However, such insurance could only be issued if commercial insurance for those operations was not available on reasonable terms and conditions. The January 15, 1986 amendment to part 198

reflected the 1997 amendments to Title XIII.

Between 1975 and 1990 there was little use of the insurance authority. In 1983 and 1984, the FAA insured, without premium, about 50 military charter flights from the United States to Central America. Otherwise, commercial insurance for flights to most areas of the world was available. Since 1990, the Aviation Insurance Program has been used much more than in the 1975–1990 period, but air carriers can usually still obtain commercial insurance.

Since 1990, the Aviation Insurance Program has been mostly used to provide insurance for civil aircraft chartered by the military. The Department of Defense (DOD) under the National Airlift Policy relies on civil air carriers to meet its airlift requirements. Under the Civil Reserve Air Fleet (CRAF) program, the DOD contractually obligates airlines to provide aircraft and flight crews to meet mobilization transport requirements in exchange for shares of peacetime DOD transport business. This saves the DOD the expense of purchasing, operating, and maintaining a large standby transport aircraft fleet. Although the CRAF program is available, the DOD usually can meet its transport requirements with aircraft and crews volunteered by the CRAF airlines, without formal activation of the program; and, in fact, the CRAF has been activated only once in its history—the partial CRAF activation of 1990–91, during Operation Desert Shield/Storm.

Gaps between the FAA and commercial insurance coverage were highlighted during Operation Desert Shield/Storm as a result of the CRAF activation and the long post-Vietnam hiatus in Aviation Insurance Program activity. Two such gaps could not be closed without new legislation. The more significant was the inability to cover domestic CRAF flight segments. Most of the airlines' commercial hull or liability war risk insurance policies excluded coverage of all CRAF flights; while, by law, FAA-issued, non-premium insurance could cover only international flight segments. Thus, the airlines had to rely on direct indemnification from the DOD for coverage of CRAF domestic flight segments (e.g., ferry flights to a military base to pick up troops and supplies destined for the theater of operations). In addition, flights transporting armed forces and military materiel on behalf of, and pursuant to an agreement between, the U.S. Government and a foreign government, but not operated under a U.S. Government contract, could not be covered by non-premium insurance. Title IV of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, Pub. L. 102–581, gave the FAA the authority to provide non-premium insurance coverage for these two previously uncoverable categories of flights, as well as for goods and services (e.g., spares support, refueling) in direct support of such flights. The FAA filled other coverage gaps by adopting new procedures and policies involving the revision of its insurance policies to cover, e.g., the costs of search and rescue attempts for an aircraft; and the development of endorsements to these policies to meet the specific needs of DOD contract carriers.

In 1994, Congress recodified the Federal Aviation Act, including the Aviation Insurance Program's provisions, without substantive change, into Title 49, United States Code. The Program's provisions were incorporated into Chapter 443 of that Title.

In 1997, Congress reauthorized the Aviation Insurance Program and amended Chapter 443. The insurance amendments, included in the Aviation Insurance Reauthorization Act of 1997, Pub. L. 105–137, stated that aircraft hull may be insured for reasonable value as determined by the Secretary in accordance with reasonable commercial aviation insurance business practice. They also stated that the Presidential approval of the standing interagency indemnification agreement between the DOT and other U.S. Government agencies, constitutes the necessary determination, for non-premium insurance, that continuation of the aircraft operation is necessary to carry out U.S. foreign policy. The amendments also authorized the Secretary to use binding arbitration of claims, and pay awards under such arbitration; and extended the Program's authorization until December 31, 1998.

Aviation Insurance Program

Chapter 443 authorizes the Secretary of Transportation, subject to approval by the President, to provide aviation insurance coverage for American aircraft or foreign-flag aircraft operations, deemed necessary to carry out the foreign policy of the United States, for which commercial insurance is unavailable on reasonable terms. This is a discretionary program. Insurance may be issued in two forms—non-premium and premium.

Non-premium insurance has been issued for American aircraft under contract to any U.S. Government department or agency which has an indemnity agreement with the DOT. Applicants currently pay a one-time binder fee of $200 per aircraft for non-premium insurance. This fee has not been adjusted since 1975.

The FAA's historical interpretation of Chapter 443, confirmed by the 1997 legislative authority, has been that the Presidential approval required for the issuance of non-premium insurance is demonstrated by the standing Presidential approval of the indemnity agreement between the DOT and the other U.S. Government agencies.

In order to minimize the time needed to provide non-premium insurance coverage, upon receipt of the application from the carrier, the FAA issues the carrier a standby non-premium policy which lists that carrier's registered aircraft. Actual coverage for operations of these aircraft commences upon formal activation notice from the FAA which details the conditions and limits of the activated policy.

Premium insuance has been issued for American aircraft or foreign-flag aircraft for regular commercial scheduled or charter service. The U.S. Government assumes the financial liability for claims in exchange for a premium. The Presidential approval required for premium insurance must be separately obtained for a period of not more than 60 days. The Presidential approval may be renewed for additional 60 days periods if so approved before each additional period. Under certain circumstances, this renewal authority has been and may be delegated to the Secretary. As a general policy, premium insurance will not be issued for a U.S. Government department or agency; whereas such a department or agency may request non-premium insurance.

Non-premium insurance and premium insurance do not necessarily differ in risks covered for any given flight. The differences are in the categories of flights which may be covered and in the approval process. As noted earlier in this document, wholly domestic flights may be covered byr non-premium insurance, whereas premium insurance may cover only flights between a U.S. point and a foreign point or between two foreign points. Presidential approval is specific to flights within the scope of each request for premium insurance; it is generic to all non-premium flights for agencies which have completed an indemnification agreement with the DOT.

Two basic types of coverage are offered under the FAA's Aviation Insurance Program—hull and liability.

Hull insurance covers the loss of or damage to an aircraft hull. Under the 1997 legislative authority, coverage may not exceed the reasonable value of the aircraft as determined by the Secretary in accordance with reasonable commercial aviation insurance business practice.

Liability insurance covers bodily injury or death; personal injury; damage to or loss of property, including cargo, baggage, and personal effects. Coverage may not exceed the registered limits of liability on file with the FAA or the corresponding commercial coverage in effect on the date of loss.

The NPRM

The FAA published Notice No. 97–5, on April 17, 1997 (62 FR 19008) and a correction notice on April 22, 1997 (62 FR 19530) requesting comments. The NPRM contained an overview of the recent experience of the FAA's Aviation Insurance Program. In sum, during Operation Desert Shield/Storm, the FAA issued non-premium war risk insurance for over 5,000 flights, and premium war risk insurance for 36 flights. The FAA has also issued non-premium insurance for flights supporting recent humanitarian and peacekeeping operations, including 1992–94 flights to and from Somalia, 1994 flights into Haiti, and, starting in April 1996, troop rotation flights between Tuzla, Bosnia, and Germany.

Coverage gaps and the air carriers' dependence on FAA-issued insurance caused Congress, the air carrier industry, and the FAA to review the Program's statutory authority, in 1992. Title IV of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, Pub. L. 102–581, gave the FAA the expanded authority to issue non-premium insurance for two previously uncoverable categories of flights, as well as for goods and services in direct support of such flights.

The FAA has addressed other coverage gaps by adopting new procedures and policies, including revising the FAA insurance policies and developing new endorsements for those policies.

As more fully described later in this document, this final rule improves the Program's efficiency, explains Program procedures, reflects the expanded statutory authority to insure certain flights, increases the amount of the binder fee to offset incurred administration costs resulting from increased frequency of utilization of the Program in the last five years, and conforms Program practice to the commercial practice of insuring other insurable items. This final rule does not compromise the basic premise that the FAA has broad discretion and judgment to determine the acceptable level of risk to be insured against under a given set of circumstances, and the policies and procedures to be followed in the administration of the Aviation Insurance Program.

Discussion of Comments

On April 17, 1997 the FAA published an NPRM. Two commenters responded to the NPRM—the National Air Carrier Association (NACA) and American Airlines, Inc. (American).

NACA concurred with all the changes that the FAA proposed to part 198. However, NACA suggested that the rulemaking be delayed until Congress reauthorizes chapter 443, on the theory that potential amendments to Chapter 443 would require additional changes to part 198. Because a related suggesion was among the comments made by American, the FAA addresses the NACA suggestion in the response to American's comments, below.

American's first comment is a suggestion that section 198.3 should contain clarifying language indicating that Chapter 443 coverage is effective for the entire period of activation. This suggestion is related to subsequent comments that the section's deactivation provisions are overbroad, and should be deleted or modified according to language that American proposes. The FAA addresses these comments together.

American proposes that section 198.3, paragraph (b), should be revised to reflect the language "have been [met] at the time of issuance," so that it is clear that the conditions listed in (b)(1) through (3) for issuance of a non-premium standby policy are conditions precedent to issuance, not ongoing conditions. Thus, American asserts, a change in any of such conditions would not invalidate insurance coverage-especially in mid-flight-until formal deactivation procedures have been followed or the carrier completes the flight or series of flights to which the activated coverage applies. American has also proposed detailed, modifying language for paragraphs (c) through a new (e), to limit the alleged overbroadness of the deactivation provisions; alternately, it suggests that paragraphs (b) through (d) should be deleted and included in the FAA policies.

The FAA does not agree with the majority of these comments. If the Administrator were to find, subsequent to activation, that commercial insurance had become available on reasonable terms, activated insurance coverage would not be in compliance with a statutory condition. However, the FAA would not deactivate such coverage without written notice to the operator. It should be noted that the regulation provides, in paragraph (d), for written deactivation notification by the FAA to the aircraft operator; and that the details of such notice of deactivation/termination are articulated in the FAA policies. In addition, to address the concern that coverage not be invalidated in mid-flight, the FAA is willing to add an appropriate provision in the policies. That provision will state that coverage will remain in force until the insured aircraft has completed the contracted flight by making a safe return at an airfield not excluded by the geographical limits of the operator's commercial policy. The FAA believes that such specific language belongs in the FAA policies, not in the regulations.

In light of the foregoing, this final rule does not adopt the above-described proposed addition to section 198.3(b), nor the additional modifying details relating to paragraphs (c) through proposed new (e). The FAA also does not adopt the alternate suggestion to delete paragraphs (b) through (d) from the regulation; nor does the FAA adopt, in full, in the FAA policies, American's modifying language for these paragraphs.

However, the FAA agrees with comments that paragraphs (a) and (b) of section 198.3 should refer to an insurance policy's being "issued," not its being "made available"; and that paragraph (a) should be modified to clarify, with regard to premium insurance, which of the requirements of section 198.1 must be met. This final rule reflects these changes. In addition to changes recommended by American, the FAA has added conforming language to section 198.3(c)(2).

American's second comment is that the FAA should withdraw the clarifying language in section 198.3(b)(2), regarding the Presidential approval required for issuance of non-premium insurance, because the GAO has disagreed with the FAA's interpretation in a recent reauthorization hearing, and recent history shows a Presidential determination was made for 1994 humanitarian relief air services to Haiti. American acknowledges that Congress may ratify the FAA's interpretation by amending Chapter 443 in accordance with the FAA's approach.

The FAA does not accept American's suggestion to withdraw the referenced language because Congress has confirmed the FAA's historical interpretation that the Presidential

approval required for the issuance of non-premium insurance is demonstrated by the standing approval of the interagency indemnification agreement.

American's third comment is threefold. First, American suggests that the FAA should delete the section 198.3 (b)(3) requirement for carriers to submit current and updated commercial policies, because the requirement implies an ongoing condition which could invalidate activated insurance. Next, American suggests that the requirement is unnecessary, all the FAA needs is the amount of a carriers's commercial insurance, and the fact that the requirement does not apply to premium insurance highlights the FAA's lack of need for the actual policies. Third, American questions the regulations' lack of an assurance of confidentiality to protect a carrier's proprietary or competitive interests; and suggests that the FAA only require the carrier to provide confidentially the amount of its commercial insurance.

It is not the FAA's intent that the requirement to submit commercial policies and endorsements to the FAA constitute a continuing condition that could invalidate activated coverage. It should be noted that section 198.3 (c)(2) does not reference submission of the commercial policies and endorsements.

The FAA disagrees with the comment that submission of the commercial policies and endorsements is unnecessary. The FAA needs such documents in order to verify the commercial coverages that an air carrier had in place prior to insurance becoming unavailable. It should also be noted that the CRAF or Airlift Services Contract between the DOD and each air carrier requires the carrier to supply the FAA with a complete copy of its current hull and comprehensive liability commercial insurance policies. In addition, one of the GAO's recommendations to the Secretary of Transportation, in the 1994 Report to Congress, "Aviation Insurance: Federal Insurance Program Needs Improvements to Ensure Success," was that the FAA should require airlines to submit copies of their current commercial war-risk policies and any subsequent revisions, as a condition for obtaining non-premium (and premium) insurance; and periodically verify the information submitted by the airlines. Finally, as to the requirement's applicability to premium insurance, the FAA notes that when a request for premium insurance is made, the FAA requires very specific information from the operator, which would normally include submission of the commercial policy. However, because of the unique nature of premium requests, the FAA's specific information needs cannot be catalogued, in advance in this rulemaking.

In light of the foregoing, the FAA does not adopt the suggestion to only require submission of the amount of a carrier's commercial insurance. However, the FAA notes that 5 U.S.C. 552(b)(4) allows an agency to not release to the public matters obtained from a person that are confidential commercial or financial information. To the extent that the commercial policies and endorsements qualify for such protection, the FAA will protect them to the fullest extent of the law.

American's fourth comment is a suggested revision of paragraph (c) of section 198.9, limiting the evidence carriers are required to submit to the FAA that commercial insurance is not available on reasonable terms, only to evidence requested by the FAA. The FAA does not believe that the revision would hinder the FAA's ability to obtain the need information, and therefore adopts the suggestion. This final rule incorporates language similar to American's suggested language, but does not adopt the word "reasonable" (as in "upon reasonable request by the FAA"). By statute and delegation, the FAA has both the authority and responsibility to administer the Aviation Insurance Program. The FAA has the discretion to determine the pertinent information required in the particular circumstances presented. The FAA is also concerned that a debate over the "reasonableness" of the request would delay the issuance or activation of insurance.

American's fifth comment is a suggested revision that the FAA also accepts, to replace the ten-day notice requirement in section 198.11 with language which better reflects business needs and practices. This final rule incorporates this change.

American's sixth and final comment is twofold. First, American suggests that it is advisable for the FAA to postpone adopting a final regulation until Congress has reauthorized Chapter 443, as the reauthorization legislation may warrant further changes to the regulation. Second, the FAA should also revise the proposed rule based on the comments on Notice No. 97–5, and issue a new notice of proposed rulemaking for further comment. NACA has made a similar suggestion to American's point on delaying until the reauthorization of Chapter 443 is finalized. These comments are addressed together, below.

The FAA does not agree that the proposed regulation needs further changes based on the reauthorization legislation. As previously noted in this document, that legislation contains four amendments to Chapter 443: (1) Authority that aircraft hull may be insured for reasonable value as determined by the Secretary in accordance with reasonable commercial aviation insurance business practice; (2) authority that Presidential approval of the standing interagency indemnification agreement constitutes the necessary Presidential determination for non-premium insurance; (3) authorization for the Secretary to use binding arbitration of claims, and pay awards under such arbitration; and (4) an extension of the Program until December 31, 1998.

These provisions do not conflict, nor are they inconsistent, with this final rule. First, the FAA notes that binding arbitration is not a subject of this rulemaking. Second, the Presidential determination authority, as discussed above, confirms the FAA's historical interpretation. Third, the FAA does not believe that section 198.7 conflicts, or is inconsistent, with the legislative authority on insuring aircraft hull. This is so because section 198.7 permits the FAA to determine that an aircraft is insured at its reasonable value in accordance with reasonable commercial aviation insurance business practice, which is the legislative authority.

The FAA also does not agree that it needs to issue a new notice of proposed rulemaking for further comment. The FAA has revised the regulation in response to the comments on Notice No. 97–5.

Analysis of the Rule as Adopted

Section 198.1

Section 198.1 sets forth editorial changes reflecting language used in the 1994 recodification of the Federal Aviation Act.

Section 198.1(b) is amended to reflect the expanded operations covered under the Aviation Insurance Program. This amendment includes, as eligible operations, those in domestic air commerce, if non-premium insurance is sought.

Section 198.3

Section 198.3(b) is amended to reflect the expanded authority to cover flights operated pursuant to an agreement between the United States and a foreign government. The section also reflects the FAA's historical interpretation of Chapter 443 that the Presidential approval required for the issuance of non-premium insurance is demonstrated by the standing

Presidential approval of the indemnity agreement between DOT and another U.S. Government department or agency. In addition, the section contains a requirement for that aircraft operator to place on file with the FAA a current copy of its commercial insurance policy or policies as well as policy endorsements. This section also explains when FAA policies are in standby status and when they are in force.

Section 198.5

Section 198.5 sets forth editorial changes reflecting language used in the 1994 recodification of the Federal Aviation Act, and also clarifies that any other insurable item may be insured if eligible for insurance under Section 198.1.

Section 198.7

Section 198.7 sets forth editorial changes reflecting language used in the 1994 recodification of the Federal Aviation Act; and deletes previous language requiring the agency on whose behalf contract air services are to be performed to approve revisions of the non-premium policy.

Section 198.9

Section 198.9 is revised in order to provide flexibility to applicants for insurance. It provides for the FAA office administering the Aviation Insurance Program to give guidance and necessary forms to applicants for insurance, and removes Appendix A from the regulations. It also adds a requirement that an applicant for premium or non-premium insurance must, upon request by the FAA, provide evidence to the FAA of the unavailability of commercial insurance, as well as contains a provision specifying that the standby non-premium policy only provides actual coverage when formally activated by the FAA.

Section 198.11

Section 198.11 reflects editorial changes, the inclusion of language relating to other insurable items, and the replacement of the 10-day notice requirement with language reflecting commercial business needs and practices.

Section 198.13

Section 198.13 is revised to reflect the FAA's current administrative payment procedures, and reflects generic instructions that add greater flexibility to this section.

Section 198.15

Section 198.15 revises the current $200 binder for non-premium insurance, established in 1975, and updates it for the effects of inflation by using the annual cumulative Consumer Price Index (CPI) rounded to the nearest $25. For example, using the latest annual cumulative CPI available (2.851 for 1996), the binder would be $575 (calculation: $200 × 2.851, rounded to the nearest $25) per aircraft or other insurable item. In the future, the binder amount will be adjusted annually for newly registered aircraft and other insurable items, to reflect future increases in the CPI, rounded to the nearest $25. The binder will continue to be a one-time charge, so that once an aircraft operator registers an aircraft or other insurable item no additional binder charge will be due while the operator continues to operate that aircraft or other insurable item. After publication of the final rule, the binder set forth in the final rule will be adjusted not more frequently than annually, based on changes in the Consumer Price Index of All Urban Consumers (CPI) published by the Secretary of Labor. The adjusted binders will also be published in the "Notice" section of the **Federal Register**. This procedure will permit binder adjustments in a timely manner. However, in no event will an adjusted binder exceed the FAA's cost for providing a service. The adjusted binders will become effective in accordance with the notice which sets forth the adjusted binders. The increased binder will apply only to each insured carrier's aircraft and other insurable items registered after the effective date of this final rule.

Section 198.15(d) has been added to state the FAA's longstanding policy that when an operator acquires an aircraft previously covered under another operator's policy, the new operator must register it in the same manner as an aircraft not previously covered. The insurance registrations are not transferable.

Section 198.17

Section 198.17 is added to reflect the expanded authority to cover goods and services provided in direct support of aircraft operations.

Appendix A to Part 198—Form of Application Named in Section 198.9

Appendix A is removed in order to simplify the administration of the Aviation Insurance Program. The FAA office administering the Program will provide forms upon request.

Paperwork Reduction Act

Information collection requirements in this final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0514.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations (JAR)

The FAA has determined that a review of the ICAO Standards and Recommended Practices and JAR's is not warranted because there are no existing comparable rules.

Regulatory Evaluation Summary

Executive Order 12866 (issued October 4, 1993) established the requirement that each agency shall assess both the costs and benefits of every regulation and propose or adjust a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. In addition to a summary of the regulatory evaluation, this section also contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act, an international trade impact assessment, and an unfunded mandates determination. (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this rule.)

The final rule will not impose significant additional costs on affected air carriers. Through the changes, the FAA will attempt to recover from the beneficiaries some of the costs of providing the current services. The total cost of administering the program amounted to about $375,000 for the 1997 fiscal year (FY97) ending September 1997. Updating the $200 1975 binder by the latest annual CPI increases for 1996 and adjusted to the nearest $25 results in a binder of $575. This $575 multiplied by the number of aircraft newly registered per annum (estimated at 80), will yield $46,000 after the rule is amended. This amounts to 12.3% of FY97 administrative costs.

Principal benefits of the rule are clarifications of the existing program authorities to issue aviation insurance as restated in the recodification of the Federal Aviation Act, P.L. 103–272, the expansion of the program to include

provisions of nonpremium insurance to certain domestic segments, and to cover operations involving international agreements between the U.S. Government and foreign countries or organizations. The expansions in program scope reflect new authority created by Congress based on requirements identified during the Gulf War. The purpose of this legislative change embodied in the current rule is to increase the efficiency and flexibility of the program to respond to Defense Department requirements for air transportation between points within the United States and foreign countries.

The increase in the binder fee being instituted by the rule reflects the real cost of administration as adjusted for inflation. In the absence of this change, these administrative costs would be derived from the existing Aviation Insurance Revolving Fund to the ultimate detriment of current program participants as a whole. The FAA believes that the non-premium binder is equitable and justified in that it charges individual program participants for administrative costs associated with enrolling their aircraft in the program.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to consider the impact of rules on small entities, that is, small businesses, nonprofit organizations, and local governments. If there is a significant impact on a substantial number of small entities, the Agency must prepare a Regulatory Flexibility Analysis.

This proposal will affect Part 121 scheduled operators as well as unscheduled operators. Applying the 1996 CPI to the $200 1975 binder, the extent of the costs imposed by this rule is a one time cost of $575 per aircraft for registration. There are 23 small air carriers affected by this program with fewer than 1,500 employees. The FAA has determined that this binder, to utilize Chapter 443 insurance, will not have a substantial adverse economic impact on these entities. Rather, the binder costs facilitate program efficiency in general to the benefit of participating airlines, including airlines considered small entities. All of these air carriers need some form of insurance, because of the terms of their contracts with commercial lenders and lessors, to participate in the Chapter 443 Aviation Insurance Program and conduct certain DOD and DOS contract flights. Without the insurance availability, they could not benefit from the DOD and DOS business they otherwise obtain.

International Trade Impact

The Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. The rule will not have any impact on international trade as the registration fee will be the same for all carriers, foreign as well as domestic.

Unfunded Mandates Determination

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

This rule does not contain any Federal intergovernmental mandates or private sector mandates.

Significance

The FAA has determined that this regulation will not be significant under Executive Order 12866, Regulatory Planning and Review, issued October 4, 1993. This rule is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 16, 1979) and DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations, May 22, 1980. A regulatory evaluation of this rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket.

List of Subjects in 14 CFR Part 198

Aircraft, Freight, Reporting and recordkeeping requirements, War risk insurance.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration revises 14 CFR part 198 as set forth below:

PART 198—AVIATION INSURANCE

Sec.

Authority: 49 U.S.C. 106(g), 40113, 44301–44310; 49 CFR 1.47(b).

§ 198.1 Eligibility of aircraft operation for insurance.

An aircraft operation is eligible for insurance if—

(a) The President of the United States has determined that the continuation of that aircraft operation is necessary to carry out the foreign policy of the United States;

(b) The aircraft operation is—

(1) In foreign air commerce or between two or more places all of which are outside the United States if insurance with premium is south; or

(2) In domestic or foreign air commerce, or between two or more places all of which are outside the United States if insurance without premium is sought; and

(c) The Administrator finds that commercial insurance against loss or damage arising out of any risk from the aircraft operation cannot be obtained on reasonable terms from an insurance carrier.

§ 198.3 Basis of insurance.

(a) Premium insurance may be issued by the FAA is the requirements of § 198.1(a), (b)(1) and (c) are met.

(b) Subject to § 198.9(c), standby insurance without premium may be issued by the FAA if all of the following conditions have been met:

(1) A department, agency, or instrumentality of the U.S. Government seeks performance of air services

operations, pursuant to a contract of the department, agency, or instrumentality; or transportation of military forces or materiel on behalf of the United States, pursuant to an agreement between the United States and a foreign government.

(2) Such department, agency, or instrumentality of the U.S. Government has agreed in writing to indemnify the Secretary of Transportation against all losses covered by such insurance. Such an agreement, when countersigned by the President, constitutes a determination that the continuation of that aircraft operation is necessary to carry out the foreign policy of the United States.

(3) A current copy of the aircraft operator's applicable commercial insurance policy or policies is on file with the FAA, including every endorsement making a material change to the policy. Updated copies of these policies must be provided upon each renewal of the commercial policy. Every subsequent material change by endorsement must be promptly provided to the FAA.

(c) Insurance is activated, placing the insurance in full force, as specified by the FAA's written notification to the operator and remains in force until such time as either of the following occurs:

(1) The requirements in § 198.1 are no longer met; or

(2) In the case of non-premium insurance, an aircraft operation is no longer performed under contract to a department, agency, or instrumentality of the U.S. Government; or pursuant to an agreement between the United States and a foreign government; or the Administrator finds that commercial insurance can now be obtained on reasonable terms.

(d) Insurance policies revert to standby status upon written notification by the FAA to the aircraft operator. A policy will remain in standby status until either—

(1) The insurance is activated by written notice; or

(2) The policy is canceled.

§ 198.5 Types of insurance coverage available.

Application may be made for insurance against loss or damage to the following persons, property, or interests:

(a) Aircraft, or insurable items of an aircraft, engaged in eligible operations under § 198.1.

(b) Any individual employed or transported on the aircraft referred to in paragraph (a) of this section.

(c) The baggage of persons referred to in paragraph (b) of this section.

(d) Property transported, or to be transported, on the aircraft referred to in paragraph (a) of this section.

(e) Statutory or contractual obligations, or any other liability, of the aircraft referred to in paragraph (a) of this section or of its owner or operator, of the nature customarily covered by insurance.

§ 198.7 Amount of insurance coverage available.

(a) For each aircraft or insurable item, the amount insured may not exceed the amount for which the applicant has otherwise insured or self-insured the aircraft or insurable item against damage or liability arising from any risk. In the case of hull insurance, the amount insured may not exceed the reasonable value of the aircraft as determined by the FAA or its designated agent.

(b) Policies issued without premium may be revised from time to time by the FAA with notice to the insured, to add aircraft or insurable items or to amend amounts of coverage if the insured has changed the amount by which it has otherwise insured or self-insured the aircraft or itself.

§ 198.9 Applicant for insurance.

(a) Application for premium or non-premium insurance must be made in accordance with the applicable form supplied by the FAA.

(b) Each applicant for insurance with the premium under this part must submit to the FAA with its application a letter describing in detail the operations in which the aircraft is or will be engaged and stating the type of insurance coverage being sought and the reason it is being sought. The applicant must also submit any other information deemed pertinent by the FAA.

(c) Each applicant for premium or non-premium insurance must, upon request by the FAA, submit to the FAA evidence that commercial insurance is not available on reasonable terms for each flight or ground operation for which insurance is sought. Each aircraft operator who has a standby non-premium insurance policy must, upon request by the FAA, submit evidence to the FAA that commercial insurance is not available on reasonable terms before the FAA activates that policy. The adequacy of the evidence submitted is determined solely by the FAA.

(d) The standby non-premium policy issued to the aircraft operator does not provide actual coverage until formally activated by the FAA.

§ 198.11 Change in status of aircraft.

In the event of sale, lease, confiscation, requisition, total loss, or other change in the status of an aircraft or insurable items covered by insurance under this part, the insured party must notify the office administering the Aviation Insurance Program before, or as soon as practicable after, the change in status.

§ 198.13 Premium insurance—payment of premiums.

The insured must pay the premium for insurance issued under this part within the stated period after receipt of notice that premium payment is due and in accordance with the provisions of the applicable FAA insurance policy. Premiums must be sent to the FAA, and made payable to the FAA.

§ 198.15 Non-premium insurance—payment of registration binders.

(a) The binder for initial registration is $575 for each aircraft or insurable item. This binder is adjusted not more frequently than annually based on changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor.

(b) An application for non-premium insurance must be accompanied by the proper binder, payable to the FAA. A binder is not returnable unless the application is rejected.

(c) Requests made after issuance of a non-premium policy for the addition of an aircraft or insurable item must be accompanied by the binder for each aircraft and insurable item.

(d) When an operator acquires an aircraft or insurable item that was previously covered under an active or standby policy, the new operator must register that aircraft or item on its policy and pay the binder for each aircraft and insurable item.

§ 198.17 Ground support and other coverage.

An aircraft operator may apply for insurance to cover any risks arising from the provision of goods or services directly supporting the operation of an aircraft that meets the requirements of § 198.3(b).

Issued in Washington, DC, March 13, 1998.

Jane F. Garvey.

[FR Doc. 98–7275 Filed 3–19–98; 8:45 am]

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federal register

Friday
March 20, 1998

Part IV

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51880; FRL–5768–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from October 20, 1997 to October 24, 1997.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51880]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51880]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51880]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 8 Premanufacture Notices Received From: 10/20/97 to 10/24/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0048	10/20/97	01/18/98	CBI	(G) Processing aid	(G) Polyglycerol ester of a fatty acid
P–98–0051	10/21/97	01/19/98	Unichema North America	(S) Reactive raw material for production of prolyurethanes	(G) Polyester diol
P–98–0052	10/20/97	01/18/98	CBI	(G) Petroleum	(G) Metal phenate-sulfonate complex
P–98–0054	10/21/97	01/19/98	CBI	(G) Ink component	(G) Cycloakdienes polymer with substituted phenol, formaldehyde, alkyldioic acid and alkenedioic acid
P–98–0055	10/21/97	01/19/98	CBI	(G) Ink component	(G) Cycloakdienes polymer with substituted phenol, formaldehyde, alkyldioic acid and alkenedioic acid
P–98–0056	10/21/97	01/19/98	CBI	(G) Ink component	(G) Cycloakdienes polymer with substituted phenol, formaldehyde, alkyldioic acid and alkenedioic acid
P–98–0057	10/21/97	01/19/98	CBI	(G) Ink component	(G) Cycloakdienes polymer with substituted phenol, formaldehyde, alkyldioic acid and alkenedioic acid
P–98–0058	10/21/97	01/19/98	CBI	(G) Ink component	(G) Cycloakdienes polymer with substituted phenol, formaldehyde, alkyldioic acid and alkenedioic acid

II. 7 Notices of Commencement Received From: 10/20/97 to 10/24/97

Case No.	Received Date	Commencement/Import Date	Chemical
P–96–0331	10/22/97	05/22/97	(G) Alkanoic acid salt
P–97–0676	10/24/97	10/09/97	(G) Oxidizing alkyd resin
P–97–0712	10/24/97	09/25/97	(G) Acrylic acid containing polyester resin
P–97–0800	10/24/97	10/13/97	(G) Polyolefin derivative
P–98–0801	10/24/97	10/13/97	(G) Polyolefin derivative
P–97–0807	10/20/97	10/20/97	(G) Terpolymer of substituted aromatic olefin and aliphatic ester
P–97–0861	10/21/97	10/15/97	(G) Polyester urethane aqueous dispersion

List of Subjects

Environmental protection, Premanufacture notices.

Dated: March 6, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–7298 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51881; FRL–5771–7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from October 27, 1997 to October 31, 1997.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51881]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51881]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51881]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 27 Premanufacture Notices Received From: 10/27/97 to 10/31/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0062	10/27/97	01/25/98	Condea Vista Company	(S) Surfactants for household laundry detergents (pmn substances a&b); surfactants for wash deinking of recycled paper (pmn substances c&d)	(S) Poly(oxy-1,2-(ethanediyl), alpha-hydro-omega-hydroxy, monoethers with lauryl alc. distn. lights
P–98–0063	10/27/97	01/25/98	Condea Vista Company	(S) Surfactants for household laundry detergents (pmn substances a&b); surfactants for wash deinking of recycled paper (pmn substances c&d)	(S) Poly(oxy-1,2-(ethanediyl), alpha-hydro-omega-hydroxy, monoethers with myristyl alc. distn. lights
P–98–0064	10/27/97	01/25/98	Condea Vista Company	(S) Surfactants for household laundry detergents (pmn substances a&b); surfactants for wash deinking of recycled paper (pmn substances c&d)	(S) Poly(oxy-1,2-(ethanediyl), alpha-hydro-omega-hydroxy, monoethers with cetyl alc. distn. lights
P–98–0065	10/27/97	01/25/98	Condea Vista Company	(S) Surfactants for household laundry detergents (pmn substances a&b); surfactants for wash deinking of recycled paper (pmn substances c&d)	(S) Poly(oxy-1,2-(ethanediyl), alpha-hydro-omega-hydroxy, monoethers with stearyl alc. distn. lights
P–98–0066	10/27/97	01/25/98	Condea Vista Company	(G) Intermediates for the production of ethoxylates and polymer esterification	(S) 1-Dodecanol, manufacture of, distn. lights
P–98–0067	10/27/97	01/25/98	Condea Vista Company	(G) Intermediates for the production of ethoxylates and polymer esterification	(S) 1-Tetradecanol, manufacture of distn. lights
P–98–0068	10/27/97	01/25/98	Condea Vista Company	(G) Intermediates for the production of ethoxylates and polymer esterification	(S) 1-Hexadecanol, manufacture of, distn. lights
P–98–0069	10/27/97	01/25/98	Condea Vista Company	(G) Intermediates for the production of ethoxylates and polymer esterification	(S) 1-Ooctadecanol, manufacture of, distn. lights
P–98–0082	10/27/97	01/25/98	CBI	(S) Binder for uv or electron beam curable coatings for wood, paper and plastics	(G) Reactive acrylate
P–98–0083	10/27/97	01/25/98	CBI	(S) Binder for uv or electron beam curable coatings for wood, paper and plastics	(G) Reactive acrylate
P–98–0084	10/27/97	01/25/98	CBI	(S) Binder for uv or electron beam curable coatings for wood, paper and plastics	(G) Reactive acrylate
P–98–0085	10/28/97	01/26/98	CBI	(G) Coatings binder component	(G) Urethane oligomer
P–98–0091	10/28/97	01/26/98	CBI	(G) Colorant for thermal printing	(G) Pyrazolone azomethine dye
P–98–0093	10/28/97	01/26/98	CBI	(G) Open, non-dispersive	(G) Polyester resin
P–98–0094	10/29/97	01/27/98	CBI	(G) Coating component	(G) Poly (bisphenol acrylate ester/alicyclic ketone)
P–98–0095	10/29/97	01/27/98	CBI	(S) A polymeric retanning agent for leather	(G) Sodium salt of 2-butenedioic acid, polymer with alkenes
P–98–0097	10/27/97	01/25/98	CBI	(G) Oprn, non-dispersive use in a coating application	(G) Polymerized blocked aliphatic isocyanate
P–98–0098	10/27/97	01/25/98	CBI	(S) Adhesive promoter for polyvinyl chloride based plastisols	(G) Blocked urethane prepolymer
P–98–0103	10/29/97	01/27/98	CBI	(S) Binder for UV or electron beam curable coatings for wood, paper and plastics	(G) Polyether acrylate
P–98–0104	10/27/97	01/25/98	Engelhard Corporation	(G) Plastic & rubber additive	(G) Surface modified clay
P–98–0105	10/30/97	01/28/98	CBI	(G) Resin coating	(G) Cycloaliphatic epoxy resin
P–98–0106	10/30/97	01/28/98	CBI	(S) Urethane foam surfactant intermediate	(G) Allyl-polyalkylene oxide, acetal-capped
P–98–0107	10/30/97	01/28/98	CBI	(S) Urethane foam surfactant intermediate	(G) Allyl-polyalkylene oxide, acetal-capped

I. 27 Premanufacture Notices Received From: 10/27/97 to 10/31/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0108	10/30/97	01/28/98	3M Company	(G) Deck coating	(G) Polyurethane prepolymer
P–98–0109	10/30/97	01/28/98	CBI	(G) Urethane coating component	(G) Polymer of aliphatic diisocyanate with polyether triol
P–98–0110	10/30/97	01/28/98	CBI	(G) Open, non-dispesive use	(G) Acrylic resin

II. 7 Notice of Commencement/Import Received 10/27/97 to 10/31/97

Case No.	Received Date	Commencement/ Import	Chemical
P–96–1428	10/30/97	09/29/97	(G) Modified polyisocyanate
P–96–1687	10/27/97	10/08/97	(G) Epoxy functional alkylsiloxane
P–96–1690	10/27/97	10/01/97	(G) Alkoxylated substituted aromatic aldehyde
P–96–1691	10/27/97	10/03/97	(G) Chromophore substituted polyoxyalkylene
P–97–0205	10/31/97	10/03/97	(S) Polymer of: C_{9-11} alcohol ethoxylate; oxygen
P–97–0609	10/29/97	10/09/97	(G) Polycarboxylic acid ester A
P–97–0860	10/29/97	10/13/97	(G) Polyester urethane aqueous dispersion

List of Subjects

Environmental protection, Premanufacture notices.

Dated: March 3, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–7299 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–F

federal register

Friday
March 20, 1998

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 1998–1999 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Seasons; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE93

Migratory Bird Hunting; Proposed 1998–1999 Migratory Game Bird Hunting Regulations (Preliminary) with Requests for Indian Tribal Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish annual hunting regulations for certain migratory game birds. The Service also requests proposals from Indian tribes that wish to establish special migratory bird hunting regulations. The establishment of these regulations will permit the taking of the designated species during the 1998–99 hunting season. The Service annually prescribes outside limits (frameworks) within which States may select hunting seasons. The Service has also employed guidelines to establish special migratory bird hunting regulations on Federal Indian reservations and ceded lands. These seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and are designed to permit harvests at levels compatible with migratory bird population status and habitat conditions.

DATES: Tribes should submit proposals and related comments by June 2, 1998. The comment period for proposed early-season frameworks will end on July 27, 1998; and for proposed late-season frameworks on September 7, 1998. The Service will hold a public hearing for early-season frameworks on June 25, 1998, at 9 a.m. and late-season frameworks on August 6, 1998, at 9 a.m.

ADDRESSES: The Service will hold both public hearings in the Auditorium, Department of the Interior Building, 1849 C Street NW., Washington, DC. The public may submit written comments on the proposals and notice of intention to testify at either hearing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. The public may inspect comments received during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION: For administrative purposes, this document consolidates the notice of intent and request for tribal proposals with the preliminary proposals for the annual regulations-development process. The Service will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, please contact the following personnel.

—Region 1—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; (503) 231–6164.

—Region 2—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885.

—Region 3—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 725–3737.

—Region 4—Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679–4000.

—Region 5—George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; (413) 253–8576.

—Region 6—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236–8145.

—Region 7—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786–3423.

Notice of Intent to Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 1998–1999 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

"Migratory game birds" are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. All other birds designated as migratory (under 10.13 of Subpart B of 50 CFR Part 10) in the aforementioned conventions may not be hunted. For the 1998–99 hunting season, the Service will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). These proposals are described under Proposed 1998–99 Migratory Game Bird Hunting Regulations (Preliminary) in this document. Definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, were published in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 1998–1999

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. The Service will make proposals relating to the harvest of migratory game birds initiated after publication of this proposed rulemaking available for public review in supplemental proposed rulemakings published in the **Federal Register**. Also, the Service will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available.

Because of the late dates when certain portions of these data become available, the Service anticipates that comment periods on some proposals will be necessarily abbreviated. Special circumstances limit the amount of time which the Service can allow for public comment on these regulations. Specifically, two considerations compress the time for the rulemaking process: the need, on one hand, to establish final rules at a time early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the hunting seasons and, on the other hand, the lack of current data on the status of most migratory game birds until later in the summer.

Because the process is strongly influenced by the times when information is available for consideration, the overall regulations process is divided into two segments. Early seasons are those seasons that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Late seasons are those seasons opening in the remainder of the United States about

October 1 and later, and include most of the waterfowl seasons.

Major steps in the 1998–1999 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram. Dates shown relative to publication of **Federal Register** documents are target dates.

Sections of this and subsequent documents which outline hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring attention. Therefore, we will omit those items requiring no attention and remaining numbered items will be discontinuous and appear incomplete.

Public Hearings

Two public hearings pertaining to 1998–1999 migratory game bird hunting regulations are scheduled. The Service will conduct both hearings in accordance with 455 DM 1 of the Departmental Manual. On June 25, the Service will hold a public hearing at 9 a.m. in the Auditorium of the Department of the Interior Building, 1849 C Street NW., Washington, DC. This hearing will review the status of migratory shore and upland game birds and discuss proposed hunting regulations for these species plus regulations for migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; extended falconry seasons; and proposed regulatory alternatives for the 1998–99 duck hunting season. On August 6, the Service will hold a public hearing at 9 a.m. in the Auditorium of the Department of the Interior Building, address above. This hearing will review the status and proposed regulations for waterfowl not previously discussed at the June 25 public hearing. The public is invited to participate in both hearings. Persons wishing to make a statement at these hearings should write to the address indicated under the caption **ADDRESSES**.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, the Service has employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The Service developed these guidelines in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) on-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines would have to be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to the establishment of migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to put forward a request for consultation as a result of the proposal being published in the **Federal Register**. The Service will not presume to make a determination, without being advised by a tribe or a State, that any issue is/is not worthy of formal consultation.

One of the guidelines provides for the continuation of harvest of migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory bird resource. For several years, the Service has reached annual agreement with tribes for hunting by tribal members on their lands or on lands where they have reserved hunting rights. The Service will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

The guidelines should not be viewed as inflexible. Nevertheless, the Service believes that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 1998–99 hunting season must submit a proposal that includes:

(1) the requested hunting season dates and other details regarding regulations to be observed;

(2) harvest anticipated under the requested regulations;

(3) methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource; and

(5) tribal capabilities to establish and enforce migratory bird hunting regulations.

A tribe that desires the earliest possible opening of the waterfowl season should specify this in the proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

The Service will publish pertinent details in tribal proposals for public review in later **Federal Register** documents. Because of the time required for Service and public review, Indian tribes that desire special migratory bird hunting regulations for the 1998–99 hunting season should submit their proposals as soon as possible, but no later than June 2, 1998. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed under the caption **SUPPLEMENTARY INFORMATION.** Tribes that request special hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed regulations. Promulgation of final migratory game bird hunting regulations will take into consideration all comments received by the Service. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.**

The public may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, the Service will establish specific comment periods. The Service will consider, but possibly may not respond in detail to, each comment. As in the past, the Service will summarize all comments received during the comment period and respond to them after the closing date.

Flyway Council Meetings

Departmental representatives will be present at the following winter meetings of the various Flyway Councils:

DATE: March 19 and 20, 1998
—Central Flyway Council, 8:00 a.m.
DATE: March 19 and 23, 1998
—National Waterfowl Council, 1:00 p.m.
DATE: March 20, 1998
—Atlantic Flyway Council, 8:00 a.m.
—Mississippi Flyway Council, 10:30 a.m.
DATE: March 21 and 22, 1998
—Pacific Flyway Council, 3:00 p.m. and 9:30 a.m., respectively

The Council meetings will be held at the Omni Rosen Hotel, 9840 International Drive, Orlando, Florida 32819–8122.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with the Environmental Protection Agency on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

Prior to issuance of the 1998–99 migratory game bird hunting regulations, the Service will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause the Service to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The economic impacts of the annual hunting regulations on small business entities were analyzed in detail and a Small Entity Flexibility Analysis (Analysis) was issued by the Service in 1996. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1991 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $254 and $592 million at small businesses in 1996.

Copies of the Analysis are available upon request from the Office of Migratory Bird Management. The address is indicated under the caption **ADDRESSES.**

Paperwork Reduction Act

The Department examined these regulations under the Paperwork Reduction Act of 1995 and found no information collection requirements.

Unfunded Mandates

The Service has determined and certifies, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1998–99 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a—j.

Dated: March 4, 1998

Donald Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed 1998–1999 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, specific framework proposals (including opening and closing dates, seasons lengths, and bag limits) may be deferred. Unless otherwise specified, no change from the final 1997–98 frameworks of August 20 and September 26, 1997, (62 FR 44229 and 50660) is proposed. Specific preliminary proposals that vary from the 1997–98 frameworks and issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

A. Harvest Strategy Considerations

Adaptive harvest management (AHM) was introduced in 1995 to help managers better understand the impacts of regulations on waterfowl harvest and population levels. In addition, AHM is intended to provide: (1) a more objective, better informed, and less contentious decision-making process; (2) an explicitly defined role for monitoring programs in setting regulations; and (3) a formal and coherent framework for addressing controversial harvest-management issues.

Since 1995, the AHM process has focused primarily on midcontinent mallards. However, there continues to be considerable interest in accounting for mallards breeding eastward and westward of the midcontinent region. The ultimate goal is to develop Flyway-specific harvest strategies, which represent an average of optimal strategies for each mallard breeding stock, weighted by the relative contribution of each stock to the respective Flyways. The Service and States also have expressed interest in extending the AHM protocol to other important species such as pintails, teal, and black ducks.

Harvest strategies that account for important biological differences in duck stocks are expected to yield the highest management benefits, but also are characterized by relatively high monitoring and assessment costs. Thus, the Service believes objective assessments of the tradeoff in costs and benefits are necessary for deciding when the AHM protocol should be extended to various duck stocks. Preliminary investigations using the tools of decision-theory suggest that management benefits may be less sensitive to biological differences in duck stocks than commonly believed. If so, cost considerations will motivate managers to implement AHM strategies based explicitly on just a few stocks (e.g., western, midcontinent, and eastern mallards).

Determining the degree to which AHM strategies should account for important sources of biological variation is an incredibly difficult challenge, and one that will require considerable effort and focus by the AHM Working Group. The AHM Working Group is comprised of representatives from the U.S. Fish and Wildlife Service, the four Flyway Councils, and the Canadian Wildlife Service and was established in 1992 to assist with implementation of AHM. The working group continues to meet at least once a year to pursue AHM conceptual development and to consider technical and communication issues for the current regulatory cycle.

The Service believes requests for further changes to the set of regulatory alternatives established in 1997 likely would delay extension of AHM to stocks other than midcontinent mallards. Therefore, future proposals to change the regulatory alternatives will be viewed critically and reasons for change should be compelling. This means that proposals should enjoy broad-based support and should be accompanied by strong rationale, including a recognition of impacts on both harvest and learning rates, as well as on other AHM priorities.

B. Framework dates

During 1997 the Service attempted to address concerns about the set of regulatory alternatives that had been used for AHM since the 1995 hunting season. Based on extensive input from the Flyway Councils and others, the regulatory alternatives considered for the 1997 season were modified to include: (1) a "very restrictive" alternative; (2) additional days and a higher total-duck daily bag limit in the "moderate" and "liberal" alternatives; and (3) an increase in the bag limit of hen mallards in the "moderate" and "liberal" alternatives. No changes were made to the traditional framework dates of roughly October 1 to January 20.

The Service received extensive public comment both supporting and opposing extensions of traditional framework dates. By August of last year, the issue had became highly divisive and politically-charged. Ultimately, the Service was directed by the U.S. Congress to review existing information on framework extensions and to consult further with the States and International Association of Fish & Wildlife Agencies.

Following the guidance provided by Congress, the Service has prepared a summary of the effects of framework extensions in Mississippi and Iowa, and of predicted impacts of large-scale framework extensions on the regulation of mallard harvests. Available data generally reflect increases in the harvest of most duck species due to framework extensions in Mississippi and Iowa, although the magnitude of the increases could not be estimated precisely. Based on these results, large-scale extensions of framework dates could decrease the frequency of years with liberal regulations from 70 to 15 percent, while increasing the frequency of years with restrictive regulations from 11 to 42 percent. The Service's report is now available to the Flyway Councils, States, and public for further consultation.

G. Special Seasons/Species Management

i. Canvasbacks

The Service continues to support the canvasback harvest strategy adopted in 1994. Last year, the Service noted its intent to review recent data and assess how well observed harvests and population abundance were predicted by the strategy (62 FR 50662). The assessment is nearing completion, and will be available for review by the Flyway Technical Sections at their meetings during February and March, 1998.

ii. September Teal/Wood Duck Seasons

These experimental seasons have been held in Florida, Kentucky, and Tennessee since 1981. The Service has consistently stated that continuation of September wood duck seasons is contingent on the development of regional wood duck population monitoring programs, as well as evaluation and decision criteria for these seasons. The final report of the

"Wood Duck Population Monitoring Initiative" (Initiative) completed in July 1997 indicated that monitoring programs at geographic scales below the flyway level are not meeting requisite sample sizes. Therefore, harvest management strategies aimed at scales below the flyway level likely is not feasible.

An evaluation of September wood duck seasons was recently completed and a draft report will be made available to the Atlantic and Mississippi Flyway Councils for their review during February 1998. Results from the evaluation indicate that estimates of population parameters for individual states are usually imprecise, which often precludes drawing meaningful conclusions. In light of these results, as well as those from the Initiative, the Service may propose suspension of September wood duck seasons this year.

2. Sea Ducks

A. Special Sea Duck Seasons in the Atlantic Flyway

At the request of the Atlantic Flyway Council, the Service has investigated the effects of bag limit restrictions on scoters that were initiated in the Atlantic Flyway in 1993. In addition, the Service has reviewed other features of this special season and the biological status of sea ducks in eastern North America. A draft report, titled "Status of Sea Ducks in Eastern North America and a Review of the Special Sea Duck Season in the Atlantic Flyway" will be available from the Office of Migratory Bird Management by late-February, 1998. This report recommends consideration of several changes to sea duck hunting seasons in the Atlantic Flyway, including changes to sea duck hunting zones, bag limits, and season lengths. The Service seeks from the Atlantic Flyway Council and others comments on the draft report, consideration of changes to sea duck seasons in 1998 in the Atlantic Flyway, and progress toward development of management goals for sea ducks.

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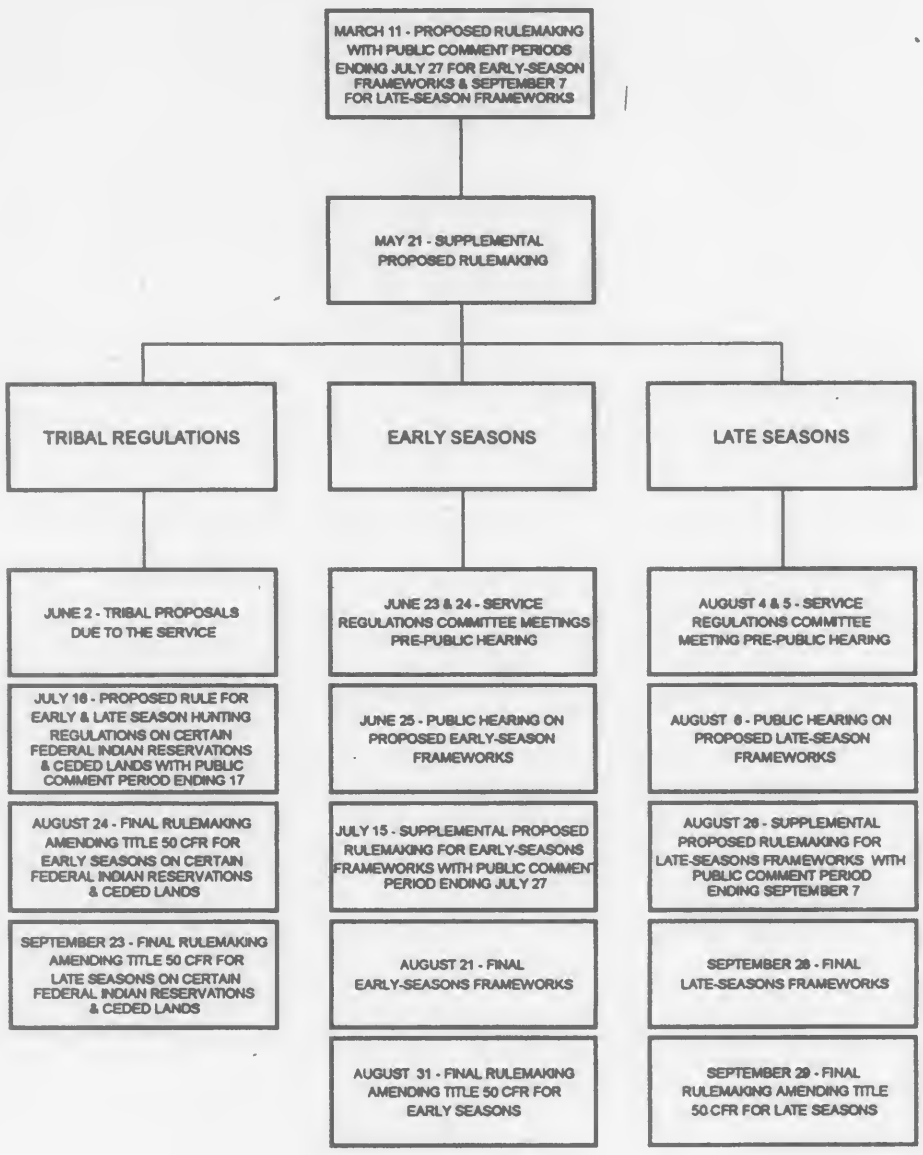
1998 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



DATES SHOWN RELATIVE TO PUBLICATION OF FEDERAL REGISTER DOCUMENTS ARE TARGET DATES

[FR Doc. 98–7382 Filed 3–19–98; 8:45 am]
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federal register

Friday
March 20, 1998

Part VI

Department of Labor

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens; Researchers Employed by Colleges and Universities, College and University Operated Federally Funded Research and Development Centers, and Certain Federal Agencies; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

RIN 1205–AB11

Labor Certification Process for the Permanent Employment of Aliens; Researchers Employed by Colleges and Universities, College and University Operated Federally Funded Research and Development Centers, and Certain Federal Agencies

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) is publishing a final rule relating to labor certification for permanent employment of immigrant aliens in the United States. The amendments change the way prevailing wage determinations are made for researchers employed by colleges and universities, Federally Funded Research and Development Centers (FFRDC's) operated by colleges and universities, and Federal research agencies. The final rule also changes the way prevailing wages are determined for colleges and universities, FFRDC's operated by colleges and universities, and Federal research agencies filing H–1B labor condition applications on behalf of researchers, since the regulations governing prevailing wage determinations for the permanent program are followed by State Employment Security Agencies (SESA's or State agencies) in determining prevailing wages for the H–1B program.

EFFECTIVE DATE: May 4, 1998.

FOR FURTHER INFORMATION: Contact Denis M. Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, Room N–4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 22, 1996, ETA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) proposing to amend ETA's regulations at 20 CFR part 656 to permit prevailing wage determinations for researchers employed by colleges and universities to be based solely on the wages paid by such institutions. 61 FR 17610. In addition to inviting comments on that proposal, commenters were invited to submit comments about extending the proposed rule to researchers in other employment, such as Federal nonprofit research agencies and their affiliated nonprofit research institutions. Comments were invited from interested persons through May 22, 1996. This document adopts final regulations based upon the April 22, 1996, NPRM and the comments received.

II. Permanent Alien Employment Certification Process

Before the Department of State (DOS) and the Immigration and Naturalization Service (INS) may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor (Secretary) first must certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of such aliens will not adversely affect the wages and working conditions of similarly employed United States workers. 8 U.S.C. 1182(a)(5)(A).

If the Secretary, through ETA, determines that there are no able, willing, qualified, and available U.S. workers, and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL so certifies to the INS and to the DOS by issuing a permanent alien labor certification.

If DOL cannot make either of the above findings, the application for permanent alien employment certification is denied. DOL may be unable to make either of the two required findings for one or more reasons, including, but not limited to:

(a) The employer has not adequately recruited U.S. workers for the job offered to the alien, or has not followed the proper procedural steps prescribed in 20 CFR part 656.

These recruitment requirements and procedural steps are designed to test the labor market for available U.S. workers. They include providing notice of the job opportunity to the bargaining representative (if any) or posting of the job opportunity on the employer's premises, placing an advertisement in an appropriate publication, and placing a job order for 30 days with the appropriate local public employment service office.

(b) The employer has not met its burden of proof under section 291 of the Immigration and Nationality Act (INA) (8 U.S.C. 1361), that is, the employer has not submitted sufficient evidence of attempts to obtain qualified, willing, able, and available U.S. workers and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers. With respect to the burden of proof, section 291 of the INA states, in pertinent part, that:

> Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible for such visa or such document, or is not subject to exclusion under any provision of (the INA) * * *.

III. Department of Labor Regulations

The Department has promulgated regulations, at 20 CFR part 656, governing the labor certification process described above for the permanent employment of immigrant aliens in the United States. Part 656 was promulgated pursuant to section 212(a)(14) of the INA (now at section 212(a)(5)(A)). 8 U.S.C. 1182(a)(5)(A).

These regulations set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. They describe the potential of the nationwide system of public employment service offices to assist employers in finding available U.S. workers and how the factfinding process is utilized by DOL as the primary basis of developing information for the certification determinations. See also 20 CFR parts 651–658; and the Wagner-Peyser Act (29 U.S.C. Chapter 4B).

Part 656 sets forth the responsibilities of employers who desire to employ immigrant aliens permanently in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal-State Employment Service System, and by other specified means. The purpose is to assure an adequate test of the availability of qualified, willing, and able U.S. workers to perform the work, and to ensure that aliens are not employed under conditions that would adversely affect the wages and working conditions of similarly employed U.S. workers.

IV. Prevailing Wages and Researchers

Employers seeking a permanent labor certification must recruit for U.S. workers at prevailing wages. The

SESA's survey prevailing wage rates on behalf of DOL. The permanent labor certification regulations at § 656.40 specify how State agencies are to calculate prevailing wages. The prevailing wage methodology set forth is used not only in determining prevailing wages for the permanent labor certification program, but is also followed in determining prevailing wages for the H–2B temporary nonagricultural certification program, the H–1B labor condition application (LCA) program, and the (expired) F–1 student off-campus employment program. See 20 CFR part 655, subparts A, H, and J, respectively. In each of these programs, the applicable legislative and/or regulatory history requires that prevailing wages be determined in accordance with the requirements of the permanent labor certification regulations at 20 CFR 656.40.

Section 656.40 of the permanent labor certification regulations requires that in the absence of a wage determination issued under the Davis-Bacon Act, the Service Contract Act, or a collective bargaining agreement, the prevailing wage shall be the weighted average rate of wages paid to workers similarly employed in the area of intended employment, *i.e.*, "the rate of wages [is] to be determined, to the extent feasible, by adding the wage paid to workers similarly employed in the area of intended employment and dividing the total by the number of such workers." Section 656.40(b) further provides that "similarly employed" is defined as having substantially comparable jobs in the occupational category in the area of intended employment.

The INA requires that the wages paid to an H–1B professional worker be the higher of the actual wage paid to workers in the occupation by the employer or the prevailing wage for the occupational classification in the area of employment. The H–1B regulations incorporate the language of 20 CFR 656.40 (as suggested by H.R. Conference Report, No. 101–955, October 26, 1990, page 122) and provide employers filing applications the option of obtaining a prevailing wage determination from the SESA, using an independent authoritative source or other legitimate source, as provided by § 655.731(a)(2)(iii)(B) and (C) of the H–1B regulations. Thus, this final rule applies to the H–1B program as well.

V. Effects of Hathaway Children's Services on Prevailing Wages

In accordance with the *en banc* decision of the Board of Alien Labor Certification Appeals (BALCA or Board) in *Hathaway Children's Services* (91–INA–388, February 4, 1994), prevailing wages are calculated by using wage data obtained by surveying employers across industries in the occupation in the area of intended employment. In *Hathaway*, the BALCA overruled its decision in *Tuskegee University* (87–INA–561, Feb. 23, 1988, *en banc*), which had interpreted § 656.40 to permit an examination of the nature of the employer's business in ascertaining the appropriate prevailing wage. 87–INA–561 at 4. In Tuskegee, the Board had said, in relevant part:

> Thus to be "similarly employed" for purposes of a prevailing wage determination, it is not enough that the jobs being compared are in the same occupational category; they must also be "substantially comparable." Accordingly, it is wrong to focus only on the job title or duties; the totality of the job opportunity must be examined * * *.
>
> It is clear that it is not only the job titles, but the nature of the business or institution where the jobs are located—for example, public or private, secular or religious, profit or non-profit (sic), multinational corporation or individual proprietorship—which must be evaluated in determining whether the jobs are "substantially comparable."

In *Hathaway*, the Board declined to make an exception for maintenance repairers employed by nonprofit institutions, analogous to the exception it had made in *Tuskegee*. The employer in *Hathaway*, a nonprofit United Way affiliate, urged that the Board's decision in *Tuskegee* should be dispositive. The employer argued that the rationale in *Tuskegee* necessarily extends to nonprofit employers, thereby differentiating them from for-profit employers.

The Board stated in *Hathaway* that its holding in *Tuskegee* was ill-advised and explicitly overruled it. The Board went on to say that:

> The underlying purpose of establishing a prevailing wage rate is to establish a minimum level of wages for workers employed in jobs requiring similar skills and knowledge levels in a particular locality. It follows that the term "similarly employed" does not refer to the nature of the Employer's business as such; on the contrary, it must be determined on the basis of similarity of the skills and knowledge required for performance of the job offered * * *.

In accordance with the holding in *Hathaway*, SESA's were instructed to survey all employers, without regard to the nature of the employer, in the area of intended employment in determining prevailing wages for an occupation.

It was subsequently asserted that implementation of this policy resulted in considerably higher prevailing wage determinations for research positions in colleges and universities. The higher education community maintained that this policy jeopardized its ability to recruit foreign researchers with talents and skills not readily available in the U.S. Further, following the decision in *Hathaway*, the Department received comments and inquiries from Congress and other Federal agencies and organizations, such as the Council of Economic Advisors (CEA); National Science Foundation (NSF); Department of Defense, Defense Research and Engineering (DRE); Office of Science and Technology Policy (OSTP); National Institutes of Health (NIH); National Aeronautics and Space Administration (NASA); United States Department of Agriculture (USDA); United States Geological Survey (USGS), Department of Energy (DOE), and Department of Transportation (DOT), expressing concern about the Department's change of policy in determining prevailing wages for researchers employed by universities.

VI. Bases for Proposed Rule

The Department believed there were substantial policy reasons to propose an exception to the current rule.

Among the bases of the proposed rule were:

- *The nonproprietary nature of academic research as articulated by the American Association of Universities.* The Department specifically requested comments on whether there are attributes of academic research that distinguish it from research conducted by private, for-profit employers. This was a factor in determining that such workers are not similarly employed.
- *Other Federal agencies.* Other Federal agencies and organizations with an interest in the research talent, knowledge, skills and abilities available to the U.S. academic community expressed concerns that the *Hathaway* decision could interfere with the ability of institutions of higher education to obtain the services of talented foreign scholars and researchers.
- *The belief of the academic community and others that intangible, non-pecuniary factors that are incentives for working in an academic environment should be considered in determining prevailing wages for researchers employed by institutions of higher education.* The Department stated that it was interested in comments specifying the nature of these intangible benefits and how they are unique to higher education.

The Department also invited comments with respect to extending the concept discussed in the proposed rule to prevailing wages in other employment, such as instances in which

researchers are employed by Federal research agencies and their affiliated nonprofit research institutions engaged in research, in which postdoctoral fellows and visiting scientists may be employed in a manner similar in certain respects to colleges and universities.

In sum, the proposal reflected a determination that consideration of all of the above factors supported a conclusion that researchers employed by colleges and universities may not be similarly employed to researchers employed by private, for-profit employers.

One also should note that in the context of college and university employment there is precedent, albeit statutory, for treating workers attached to the academic process differently than those outside the academic community. As stated in section 212(a)(5)(A) of the INA, certification of employment of aliens shall be denied on the basis of availability of "qualified" U.S. workers who are able and willing, that is, those who possess the minimum qualifications necessary to perform the job, even if they are less qualified than the alien beneficiary. By contrast, the statute states in the same subparagraph that for job opportunities as college and university teachers, certification of employment of aliens generally may be denied on the basis of availability of "*equally* qualified" (emphasis added) U.S. workers who are able and willing, that is, only those equally or more qualified than the alien beneficiary.

While differentiation of treatment of college and universities in this statutory provision certainly is not dispositive of issues discussed in this rulemaking, it does supplement the concept that it is legitimate to examine the differences between college and university employment and the broader employment market.

VII. Comments on Proposed Rule and Analysis of Comments

Seventy-five comments were received on the April 22, 1996, proposed rule. The largest number of comments were received from independent research institutes. Thirty-four comments were received from research institutes such as the Howard Hughes Medical Institute, the Scripps Research Institute, and the National Biomedical Foundation of Georgetown University.

The next largest group of comments was received from colleges and universities. Twenty-one comments were received from colleges and universities. Colleges and universities represented by these comments included such institutions as Princeton, University of Chicago, Yale, Harvard, Massachusetts Institute of Technology, Johns Hopkins, and Stanford.

Seven comments were received from Federal agencies. The agencies submitting comments were OSTP, NIH, NSF, DRE, the Smithsonian Institution, and the USDA which submitted comments from two different subcomponents.

Seven comments were also received from various associations. These associations included the Association of American Universities (AAU), American Immigration Lawyers Association (AILA), Council of Graduate Schools, and NAFSA Association of International Educators.

Two comments were received from State Employment Security Agencies. The SESA's submitting comments were the Arizona Department of Economic Security and the Wyoming Department of Employment.

One comment was received from each of the following: Congressman Lamar Smith, Massachusetts General Hospital, one international human rights group, and a senior economist employed by an association of universities.

Seventy-two of the comments were in favor of the proposed rule and the majority were in favor of extending the rule to include nonprofit research institutes. Only three commenters opposed the rule. The commenters opposed to the rule were the two SESA's and the senior economist employed by Oak Ridge Associated Universities.

A. Comments About the Proposal to Adopt the Rule as Proposed for Colleges and Universities

All of the 21 comments received from colleges and universities supported the proposed rule. The NPRM was also supported by the Association of American Universities (AAU), Council of Graduate Schools, NAFSA Association of International Educators (NAFSA), several Federal agencies, AILA, and nonprofit research institutes.

In addition to supporting DOL's finding that such employees are not "similarly employed" to commercial researchers, the colleges and universities and some other commenters advanced public policy arguments to the effect that the NPRM would eliminate perceived anomalies and economic hardship caused by the post-*Hathaway* policy of determining prevailing wages by surveying across industries. Perceived problems caused by the post-*Hathaway* policy that would be eliminated by the proposed rule, noted by one or more of the colleges or universities in their comments, included the following:

- Much higher prevailing wage determinations as a result of the post-*Hathaway* policy.
- Higher wages have precluded many universities from using the permanent labor certification program and the H–1B labor condition application program and have disrupted important university-based research programs.
- Need to increase the wage of the H–1B employee or terminate employment of the researcher.
- Some granting agencies, such as the National Institutes of Health, specify the amount to be paid to each researcher; even without such restrictions, it is often not possible to find the additional money needed to increase the salary of a researcher needed to meet the prevailing wage.
- Alien researchers may be paid more than U.S. citizens for performing similar duties and responsibilities.
- Requiring higher salaries to be paid to foreign researchers and foreign scholars who are in lower positions than, for example, Assistant Professors.
- Permanent labor certification applications and H–1B labor condition applications have been withdrawn because of the higher prevailing wages required by the post-*Hathaway* policy.

1. Department's Analysis of Comments

After consideration of all comments, the Department has concluded that the proposed rule should be adopted for colleges and universities and expanded as set forth below. The comments and the Department's analysis are discussed below in greater depth.

a. *Academic Researchers are not Similarly Employed to Commercial Researchers.* In the preamble to the NPRM, the Department specifically requested comments as to whether there are attributes of academic research that distinguish it from research conducted by private, for-profit employers (see 61 FR at 17613). About half of the comments from colleges and universities asserted that there were substantial differences between academic researchers and researchers working in a for-profit environment. A few commenters attached the AAU position on this issue previously submitted to the Department,[1] and

[1] In the preamble to the NPRM, the AAU's comment was quoted, in part, as follows:

Teaching is a primary mission of universities and occurs in all university settings. Teaching and research are inextricably intermingled in universities, with research extending into undergraduate education, and teaching extending into postdoctoral education. Academic research scientists are expected to operate as teachers as well as researchers. University teaching includes a wide range of activities beyond the traditional classroom lecture, such as seminars, advising and other forms

others addressed this issue directly. Having considered these comments, the Department has determined that different treatment of researchers employed by colleges and universities is justified, in part, by the close relationship of research to teaching in the academic environment. Research positions at colleges and universities are often related to teaching (faculty) positions and often involve teaching duties, albeit not in a classroom setting. See footnote 1.

With one exception, all of the comments that addressed this issue agreed with the view of the AAU. The one commenter that disagreed with this position pointed out that according to the 1993 National Science Foundation survey of doctorate recipients, of those postdoctorates reporting that their primary work activity was research, only 5.3 percent indicated that teaching was their secondary activity. The commenter went on to state that "all highly educated workers play a teaching role by helping to show new employees the ropes in their work environment, but in this regard doctorates in universities who do not teach courses are not substantially different from doctorates in industry or in government."

The preamble to the proposed rule made clear that AAU was not speaking with respect to teaching in a classroom setting conducted by faculty members. In the Department's view, the relationship described by AAU and quoted above, as well as in the NPRM's preamble, goes substantially beyond showing new employees the "ropes in their new environment."

Based on the comments received, the Department is persuaded that teaching, as described by the AAU, is an important function often performed by college and university researchers. This is not as true for non-academic researchers.

Other commenters, such as independent nonprofit research institutes and Federal agencies, were also in agreement that there were significant differences between research conducted by academic institutions and research conducted by private, for-profit employers. These comments provide further amplification and support for the AAU position summarized in the preamble to the NPRM, 61 FR at 17613, that research in academic institutions is nonproprietary as opposed to research conducted in a private, for-profit research organizations. The research product delivered by researchers in private, for-profit organizations is proprietary in nature and can be appropriated by the employing institution for commercial purposes. 61 FR at 17613. Examples of the points made by the colleges and universities include the following:

- Academic research is for the public good and advancement of knowledge, as opposed to having a profit motive.
- Researchers in academia, unlike researchers in for-profit organizations, are expected to publish promptly and widely in peer-reviewed journals; commercial scientists apply research results to product development within the company, often withholding the publication of research.
- Academic research is independently initiated and sustained with the intention of transmitting bodies of knowledge to succeeding generations of researchers, public and private; commercial research priorities are set by company goals for developing marketable products.

Two of the three commenters opposing the rule asserted that the same skills are required on the part of researchers who are employed in a university setting as are required of those employed in a private, for-profit research organization. One of these two commenters acknowledged that university research tends to focus on issues of basic research while private sector research tends to focus on the applied end of the spectrum. However, this commenter indicated that the degree to which an academic institution is engaged in applied and basic research across a variety of disciplines is a function of the extent to which the institution's research is leveraged by private sector or Federal agency contracts.

The third commenter opposing the rule indicated that the dichotomy between university and industry research cited by the AAU is exaggerated. Industry funding of academic research has been growing rapidly, and many universities have been applying for patents of their own in promising new fields such as biotechnology, human genome research, and exotic materials.

These comments in opposition to the rule presently are unpersuasive, for the following reasons.

(1) Skill Requirements

Differences in the skills and knowledge required of researchers to work in an academic environment compared to the skills and knowledge in a private, for-profit organization was not one of the policy reasons for issuing the NPRM. The differences articulated in the proposed rule discussed such factors as the wide dissemination of research results in peer-reviewed scientific journals, the expected application of research results to producing marketable products within commercial organizations, the expansion of the frontiers of knowledge by academic researchers conducting fundamental research programs, and the nonproprietary nature of research performed in an academic setting as opposed to that performed in a private, for-profit setting. 61 FR at 17613.

(2) Differences Between Academic and Commercial Researchers

The Department has carefully considered the issues raised concerning the differences between academic and commercial research and has found that, at present, sufficient distinctions exist between the two to support separate treatment of researchers in the two venues.

Despite trends regarding sources and uses of research funds in colleges and universities, the overwhelming majority of R&D the $21.6 billion spent for R&D at U.S. academic institutions in 1995 appears to be nonproprietary in nature. This conclusion is supported by the following:

- Funds from the commercial sector during the past two decades grew faster than funds from any other source. Funding from the commercial sector, however, constituted a relatively small proportion (6.9 percent) of academic R&D funding in 1995. *Science & Engineering Indicators 1996*, National Science Board Subcommittee, National Science Foundation, at 5–8 and 5–9.
- Although patents awarded to universities have grown rapidly over the past two decades and universities are increasingly negotiating royalty and licensing arrangements based on their patents, income from these licensing arrangements are modest when compared with total R&D expenditures. In 1993, gross revenues received by U.S. universities from licensing arrangements amounted to $242 million. *Ibid.* at 5–42 and 5–43.
- The nonproprietary nature of academic research and the fact that academic researchers are expected to publish widely in peer-reviewed journals is also supported by the fact

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of mentoring. Some of the most effective teaching *about* research is carried out by *doing* research, and university research personnel often operate as student and teacher at the same time in the same setting: a postdoctoral fellow is instructed by the faculty researchers with whom he or she is working at the same time he or she serves as a teacher for graduate and undergraduate students working in the same lab. (Emphasis in original.)

61 FR at 17613.

that in 1993, as in previous years, the United States contributed the largest fraction—34 percent—of 414,000 articles published in refereed journals worldwide. About 70 percent of the U.S. articles had academic authors. Further, in virtually all nations' journals, U.S. articles are cited more heavily than articles appearing in domestic publications. *Ibid.* at 5–4, 5–30, 5–31, and 5–40.

In view of the trends regarding sources and uses of academic R&D funds, the Department plans to monitor such trends in promulgating a rule establishing an exception to the results of the *Hathaway* decision that would permit prevailing wage determinations for researchers in colleges and universities to be based solely on the wages paid by such institutions. If the current trends relative to the performance of research by colleges and universities were to continue long enough, one or more of the bases for concluding that researchers employed by colleges and universities are not similarly employed to nonacademic researchers may no longer be valid.

b. *Non-pecuniary Factors.* In the preamble to the proposed rule, the Department asked for comments that specify the nature of the intangible, non-pecuniary incentives to working in an academic environment and how they are unique to higher education. Several of the colleges and universities addressed this issue. These comments provide further amplification of and support for the nature of the intangible, non-pecuniary incentives to working in an academic environment advanced by the Council of Economic Advisors and cited in the NPRM (see 61 FR 17614). Other commenters, such as independent nonprofit research institutes and Federal agencies, were also in agreement that there were significant non-pecuniary incentives to working in an academic environment. Examples of these comments included the following:

- Intellectual freedom to determine one's own research direction is relatively unhindered by direction from management or by a profit motivation.
- The opportunity exists to interact with a large number of people with similar goals and interests.
- Academic research, unlike commercial research, is characterized by a great diversity of research interests and activities.

One commenter maintained that although "tenured professors appreciate the autonomy they have in research universities and that this permits the universities to compete in the labor market without paying wages and benefits equal to those in industry," it is not clear that this applies to non-tenure track, temporary research appointments. The commenter observed that employees on temporary research appointments do not enjoy the autonomy experienced by tenure and tenure-tack faculty who are principal investigators on research projects. In particular, postdoctoral appointees and research associates do not have faculty status and enjoy few if any of the non-pecuniary incentives alluded to by the CEA.

Nonetheless, autonomy in choice of research projects is not the only intangible benefit associated with working in an academic environment. The Department believes, based on the comments, that postdoctorates are also significantly motivated by other non-pecuniary factors, such as working with leaders in their chosen field and generally working with colleagues and other scholars. The Department also believes that working on nonproprietary research issues adds an important qualitative dimension to the non-pecuniary incentives that is not readily duplicated in other work environments.

2. Additional Issues Raised by Commenters Opposing Rule; DOL Analysis

Additionally, the three commenters opposing the rule raised issues that were not addressed in the preamble to the NPRM. Those comments and the Department's analysis of them are provided below.

a. *Wage Differentials.* One commenter took issue with the claim that there is a great wage differential between researchers in private industry and in colleges and universities. According to this commenter, the wage differentials cited in the preamble to the proposed rule between industry and colleges and universities for researches are grossly exaggerated. According to the commenter, a "true national average which included industry wages would almost certainly be less than 20 percent higher than a national average which included only colleges and universities." According to the commenter, such a differential was 23 percent in 1989. The commenter also maintained that implementation of the rule would reduce costs on research projects by an average of much less than 10 percent compared to the prevailing wage methodology required by the current regulation.

Economic hardship to employers due to wage differentials, by itself, would not be a basis for promulgating an exception to the decision in *Hathaway.* However, the Department is convinced that the wage differentials are significant and, in combination with the other factors—differences between academic and commercial research and the value of non-pecuniary benefits and incentives—constitute sufficient reason to conclude that researchers employed by colleges and universities and researchers employed by for-profit commercial employers are not "similarly employed".

Most employers would find wage differentials of 23 percent, as cited by the commenter, to be significant. Further comments received prior to the issuance and subsequent to the issuance of the NPRM suggest that the national wage differential could be greater than 23 percent. On a localized level, some commenters report differentials much greater than 23 percent. The Department is convinced that enough of a national differential exists, in combination with the other bases for the rule, discussed above, to justify the conclusion that DOL's regulations should recognize that researchers employed by colleges and universities and researchers employed by for-profit commercial employers are not similarly employed.

b. *General Labor Market Conditions.* Two commenters expressed concern about the general labor market impact of the proposed rule. These comments, in large measure, misconstrue the nature of the rulemaking. The Department's mandate under the permanent labor certification program is to prevent the entry of foreign immigrant workers from adversely affecting the wages or working conditions of similarly employed U.S. workers. The wage protection component of this requirement is effectuated by regulations which require that the employers seeking labor certification must offer at least the prevailing wage paid to similarly employed U.S. workers in the area of intended employment. The proposed rule was not intended to alter this basic structure and it does not do so. The rule addresses only the narrow issue of how the phrase "similarly employed" should be defined. Whether the use of foreign researchers, in and of itself, has some negative impact on the domestic labor market is simply beyond the scope of this rulemaking. The determination as to whether academic researchers and researchers in the for-profit sector are or are not similarly employed is not impacted by considerations of potential adverse effect on labor market conditions among researchers. If, as the Department has now concluded, academic researchers are not similarly employed to their colleagues outside academe, the adverse effect is addressed by requiring the payment of the prevailing wage among similarly

employed academic researchers. To the extent there are economic factors limiting the employment potential of researchers, they are outside the scope of this rulemaking.

Nevertheless, the Department is concerned about the possible adverse effect on U.S. researchers as a result of this rulemaking and has considered the comments submitted in this regard. As a result of the comments indicating that adverse effect may arise from this rule and trends regarding sources and uses of academic R&D funds discussed above, the Department plans to study the effects of this rulemaking over the next 5 years.

One SESA's comments were, on balance, against the proposed rule because of perceived adverse effects on U.S. researchers. The Arizona SESA pointed out that one published survey it used until recently to make prevailing wage determinations for researchers showed, based on a universe of employers that did not include colleges and universities, a wage level that was more than 30 percent higher than the universities' salary schedules. According to the SESA, many U.S. workers majoring or obtaining degrees in the Sciences, quickly go on to employment opportunities in private industry because of the higher wage scale. The SESA was of the opinion that many foreign workers are willing to work for universities at low wages because the opportunity to stay in the United States, either permanently or temporarily, is a big enticement. According to the SESA, many foreign workers know that if they can get permanent employment with a college or university, the opportunity to adjust to permanent residence status increases because of the INA's "equally qualified" provision which provides the basis for the special handling procedures for college and university teachers in the permanent labor certification regulations. See 8 U.S.C. 1182(a)(5)(A)(I)(I) and (a)(5)(A)(ii); 20 CFR 656.21a; and 61 FR at 17612. The SESA, in addition, expressed the view that grant funding restrictions and other established practices do not justify basing prevailing wage determinations for researchers employed by colleges and universities solely on the wages paid by such institutions if it discourages U.S. workers from applying for such positions.

This SESA in its comments indicated, however, that it may be appropriate to consider academic researchers as not similarly employed to researchers employed in the private sector and to base prevailing wage determinations solely on the wages paid by colleges and universities. Specifically, the SESA stated in the course of its comments that:

> The research positions at the universities and in the private sector are not totally comparable, since researchers are not "similarly employed" as the current regulation determines. The researcher at the university may also be teaching, writing articles for scientific journals, working on basic, fundamental or theoretical research. If they are performing other duties then they should be given a different job title and code (presumably from private sector researchers).

The Department has concluded that, currently, there are ample bases to conclude that researchers employed by colleges and universities and researchers employed by for-profit commercial employers are not similarly employed. The observations of the Arizona SESA concerning the general labor market effects of foreign doctorates in the labor force are discussed below along with those of another commenter who submitted comments expressing concern about the effect of foreign doctorates on the general labor market for doctorate recipients employed as researchers.

The senior economist employed by an association of universities offered a number of reasons for not promulgating a final rule that would allow prevailing wage determinations for researchers employed by colleges and universities to be based solely on the wages paid by such institutions. The reasons advanced by this commenter concerned general labor market factors affecting the supply and demand for researchers and the policy bases articulated for issuing the NPRM.

The comments concerning general labor market conditions are summarized and discussed below.

(1) Unemployment Rate

A commenter asserted that unemployment and underemployment, as measured by the NSF, are higher now for doctorate scientists and engineers than they have been in many years. Such concerns, however, are not relevant to this rulemaking, which is implementing the statutory protection against adverse effect on wages and working conditions of similarly employed U.S. workers, due to the importation of foreign workers. Further, in the permanent alien labor certification program, high levels of unemployment should have a self-correcting effect, since more U.S. workers will be available for the jobs for which certification is sought. In the H–1B program, to which this rule also will be applied, Congress has determined that no labor market test is necessary.

Nevertheless, available information indicates that, generally, job prospects for recent Ph.D. recipients remain strong. According to the NSF, in April 1993, the overall unemployment rate for recent science and engineering (S&E) doctorate recipients stood at 1.7 percent, while the NSF states that the unemployment rate for the entire U.S. labor force for the comparable period—1993—was 6.8 percent.[2] *Ibid.* at 3–5.

According to the NSF, concerns expressed about labor market prospects by recent S&E doctorate recipients have less to do with their ability to find a job than with their ability to get full-time jobs that use their training. In 1993, the "involuntary out-of-field" (IOF) rate for all recent S&E doctorate recipients was 3.6 percent. Individuals were considered involuntarily out of their Ph.D. field if they stated in an NSF survey that they were either working part-time solely because a full-time job was not available or that one reason they were working outside of their Ph.D. field was because a job in their field was not available. Unfortunately, it is not possible to compare the IOF rate for 1993 with previous years because of the lack of comparable data. *Ibid.* at 3–6. However, another measure reported by the NSF indicates that foreign doctorate recipients have not had a significant impact on the overall labor market for recent doctorate recipients. Self-assessment by recent S&E doctorate recipients as to whether their primary jobs in 1993 are closely related to their Ph.D. fields shows very similar patterns to the information pertaining to then-recent doctorate recipients in 1988. *Ibid.* at 3–8 and 3–9.

(2) Effect on Recent Doctorate Recipients in Universities

Two commenters maintained that the wage levels of recent U.S. doctorate recipients employed in colleges and universities have been held in check by the hiring of foreign researchers. One commenter maintained that the rule as proposed, in conjunction with the hiring of foreign researchers, increased immigration levels, and the elimination of the growth in research and development funding will have unfavorable consequences for U.S. researchers.

It does not appear that the number of foreign doctoral recipients who remain in the United States after graduating are numerous enough to have any appreciable affect on general wage

[2] The Bureau of Labor Statistics, in its "Labor Force Statistics from the Current Population Survey" reports that for September 1996, the seasonally adjusted civilian unemployment rate was 5.2 percent.

levels. About 30 percent of the 8,000 foreign students earning S&E doctoral degrees received firm offers to stay in the United States in 1993. (This overall percentage has been stable over the past several years.) The firm offers were from three primary sources:

- About 400, or 5 percent, received firm offers for academic employment.
- Almost 500, or 6 percent, received firm offers for commercial employment.
- A larger group, almost 1,500, or 18 percent, obtained a postdoctoral research position for 1 year.

Ibid. at 2–28 and 2–29.

Not all foreign students who receive a firm offer to stay in the United States do so. A number of factors influence foreign doctoral recipients' decisions to return home. Further, as emerging countries expand their capacity to educate at the doctoral level, the NSF expects that fewer foreign students will come to the United States to be educated. *Ibid.* at 2–29. The number of foreign students studying S&E fields in the United States seems to have peaked in 1992. *Ibid.* at 2–33.

With respect to the comment concerning flattened growth in R&D funding, a look at overall R&D spending presents a rather complex picture. Overall R&D spending in the 1990's generally has not kept pace with inflation. The decline, in real terms (largely related to the Defense downsizing), has been modest—2 percent. In nominal terms, R&D funding reached an all time high of $171 billion in 1995. It is important to note, however, that of the three major R&D performing sectors—industry, the Federal Government, and academia—academic is the only one to have registered a real increase in R&D performance since 1990. *Ibid.* at 4–2. A more detailed examination of the trends reveals that the annual rate of increase in academic R&D performance has been falling fairly steadily since the late 1980's. On the other hand, the Federal Government, which supplies about three-fifths of all funds used to perform R&D on campus, has been increasing its support of academic research continuously since 1982. *Ibid.* at 4–2. This suggests that job opportunities involving research in academia have been growing rather than declining, albeit at a slow rate over the last several years.

If foreign doctorate recipients have an adverse effect on any part of the labor market segment, it is most likely to be on the market for postdoctoral appointments. However, the wage data included in the comments of the individual opposing the rule do not indicate that foreign doctorate recipients have had an adverse effect on the market for postdoctoral appointments. This commenter asserted that the wage gap between academe and industry for recent doctorate recipients with less than 6 years of work experience has been steadily declining. According to information furnished by the commenter, the percentage gap between non-academic and academic salaries of doctorates with less than 6 years of experience declined from 32 percent in 1981 to 23 percent, as indicated above, in 1989. And this trend, according to the commenter, continued through 1993—the year of last available data.

DOL is not convinced, for the reasons cited above, that the admission of foreign academic researchers, at current levels, is at such an extent as to diminish or stagnate the wage levels of doctoral recipients doing academic research nationwide. While foreign worker penetration of the job market for postdoctoral positions is greater, DOL has reached the same conclusion for those job opportunities. The Department, however, plans to study over the next 5 years whether pervasive hiring of foreign workers has taken place and whether adverse effect has occurred on a scale broader than individual job opportunities or individual localities.

(3) Discourages U.S. Workers From Obtaining Doctorates

One commenter expressed the belief that declining labor market conditions for young researchers will discourage talented young Americans from choosing to make investments in S&E graduate education in the near future, and that the United States will suffer as a result. These concerns appear to be overstated in light of the supply and demand projections for S&E personnel discussed in *Science & Engineering Indicators 1996*.

According to the NSF-reported "mid-growth scenario" of the demand for S&E workers, overall demand for S&E will slightly exceed supply by the year 2005 by a small amount—4 percent. Most of this excess demand occurs in the last 3 years of the forecast; until 2002, the S&E labor market appears to be in balance. This should not be a problem, since the NSF indicates that even if the "high-growth scenario" were to materialize there would be sufficient time for the labor market to respond to the new higher demands. *Ibid.* at 3–21. In any event, these models suggest that concerns that foreign researchers are shutting U.S. researchers out of the labor market are not a problem over the long term.

The Department, based on the above, is not convinced at this time that foreign recipients of doctoral degrees have had an appreciable impact on the general market for recent doctorate recipients or on the market for postdoctoral recipients. However, the impact of foreign labor on the ability of recent U.S. recipients of doctorates to obtain employment generally and to obtain postdoctoral appointments in particular has not been definitively determined. Therefore, the Department cannot dismiss those related issues raised by the commenters in view of its statutory responsibility to protect wages and working conditions of similarly employed U.S. workers under section 212(a)(5)(A) of the INA. The Department, therefore, plans to study the impact of the final rule over the next 5 years.

3. Conclusion

The Department is convinced that a set of unique factors lead to the conclusion that, at this time, researchers in academe and researchers employed by for-profit commercial employers are not similarly employed and that the proposed rule should be adopted for colleges and universities. The Department, however, plans to study the impact of the final rule over the next 5 years, and determine whether the bases for promulgating the rule continue to hold.

B. Other Issues Relating to Colleges and Universities

Commenters submitting comments on the NPRM also raised other issues relating to colleges and universities that are discussed below.

1. Definition of "College and University"

Nine commenters, including six universities, two academic associations and one Congressman recommended that the term "institutions of higher education as defined in section 1201(a) of the Higher Education Act of 1965" be used instead of the term "colleges and universities" in any final rule promulgated by the Department. The Department has reviewed the definition of institutions of higher education in section 1201(a) of the Higher Education Act and has determined that it is not appropriate for the labor certification program. The definition proposed by commenters is not consistent with the definition of "college or university" that has been used for many years in administering the special handling provisions in the regulations established for college and university teachers. Unlike the definition of "colleges and

universities" used in administering the permanent labor certification program, section 1201(a) of the Higher Education Act includes business and vocational schools and is limited to public or other nonprofit institutions. A directive dated January 13, 1984, from Bryan T. Keilty, then ETA's Acting Administrator for Regional Management, to all regional administrators, in relevant part, defined "college or university" as follows:

> "College or university" means an educational institution: (A) which admits as regular students only individuals having a certificate or diploma of graduation from high school, or the recognized equivalent of such a certificate or diploma; (B) which is legally authorized by the Federal and/or State Government(s) to provide a program of education beyond high school; and (C) which provides an educational program for which it awards a baccalaureate (bachelor's) or higher degree, or provides a program which is acceptable for such a degree. This would include those junior or community colleges which award associate degrees, but which teach courses which can be credited toward a baccalaureate degree at another college or university.

The Department has concluded it cannot change the definition of "college or university" used for the past 14 years in administering the permanent labor certification program without complying with the notice and comment requirements of the Administrative Procedure Act.

2. Extension of Proposed Amendment to H–1B Labor Condition Application (LCA) Program

Many commenters, including several colleges and universities, independent nonprofit research institutes, various associations, the American Immigration Lawyers Association, Federal agencies and one member of Congress, indicated that the H–1B regulations dealing with prevailing wages, at 20 CFR 655.731(a)(2)(iv), should be modified to clarify that the proposed changes would also apply to the H–1B program. Amendment of the H–1B regulations at 20 CFR 655.731(a)(2)(iv) would require the initiation of a separate NPRM to modify that regulation, but such a rulemaking is unnecessary for the reasons discussed below.

There are sufficient bases to apply the methodology required by this final rule to the H–1B program. The Department clearly expressed in the preamble to the proposed rule that the change proposed for § 656.40(b) would be followed in determining prevailing wage for the H–1B LCA program, as well as the permanent labor certification program. The preamble stated that the "proposed rule would also change the way prevailing wages are determined for colleges and universities filing H–1B labor condition applications on behalf of researchers, since the regulations governing prevailing wage determinations for the permanent program are followed by State Employment Security Agencies in determining prevailing wages for the H–1B program." The preamble also noted that the H–1B regulations incorporate the language of 20 CFR 656.40 (as suggested by H.R. Conf. Rep. No. 101–955 (October 26, 1990), page 122). Specifically, the conference report at page 122 stated that the prevailing wage to which an H–1B visa petitioner "must attest is expected to be interpreted by the Department of Labor in a like manner as regulations currently guiding section 212(a)(14)" (now section 212(a)(5)(A) of the Immigration and Nationality Act).

It should also be noted that the H–1B regulations at § 655.731(a)(2)(iv) define "similarly employed" as it is defined in the current permanent labor certification rule. Section 655.731(a)(2)(iii)(A) provides, in relevant part, that "(w)here the prevailing wage is not immediately available, the SESA will conduct a prevailing wage survey using the methods outlined at 20 CFR 656.40 and other administrative guidelines or regulations issued by ETA." On May 18, 1995, ETA issued General Administrative Letter (GAL) No. 4–95 to All State Employment Security Agencies, Subject: *Interim Prevailing Wage Policy for Nonagricultural Immigration Programs*. That GAL provided, in relevant part, that "(i)n determining prevailing wages for the permanent and temporary labor certification programs, the H–1B program, and the F–1 student attestation program, the regulatory scheme at 20 CFR 656.40 must be strictly followed." [3]

3. Extension of the Proposed Amendment to Research Institutes Affiliated with Colleges and Universities

Some commenters expressed the view that institutions "affiliated" with colleges and universities should be included in the exception to the Department's general prevailing wage methodology crafted for colleges and universities. The Department is not including institutions affiliated with colleges and universities because it requires additional information as to whether researchers employed by such affiliated institutions are sufficiently similar to college and university researchers to warrant similar treatment, and if so, how to define affiliated research institutes and what institutions should be included in wage surveys to determine prevailing wages for such institutions.

4. Including an Express Provision to Permit Consideration of Wage Differences by Discipline

The AILA recommended that the rule should explicitly provide for consideration of wage differentials among researchers working in different disciplines. The Department does not believe such an express provision is necessary. According to the *Dictionary of Occupational Titles* (DOT), researchers are classified according to field of specialization. Consequently, the Department currently makes prevailing wage determinations for researchers by discipline.

C. Extension of Rule to Nonprofit Research Institutes

As indicated above, commenters also were invited in the preamble to the NPRM to submit comments with respect to extending the proposed rule change to researchers in other employment. All of the comments submitted by apparently nonprofit, independent research institutes were in favor of extending the scope of the proposed rule to cover independent research institutes. The overwhelming majority of the comments received from independent research institutes included the reasons discussed below for extending the rule to cover such research institutes.

1. Competitive Factors

The commenters maintained that researchers at independent research institutes across the Nation compete for Federal grants and publish research results in the same manner as universities. According to the commenters, the only difference between institutes and universities is that most institutes are not degree-granting institutions.

The Department did not receive sufficient information to evaluate to what extent the independent research institutes compete for Federal grants and publish research results in the same manner as universities. However, an issue more important to this rulemaking would be the extent to which researchers at independent research institutes are or are not "similarly employed" to researchers in private industry. The extent to which the

[3] General Administrative Letter 2–98, issued on October 31, 1997, which superseded GAL 4–95, provides that the regulatory scheme at 20 CFR 656.40 must be followed in determining prevailing wages for the permanent and temporary H–2B labor certification programs and the H–1B program.

nonprofit research institutes perform nonproprietary research as opposed to proprietary research and development would, for example, be an important factor in making this determination. The commenters did not submit sufficient information with respect to competitive factors and the "similarly employed" issue to determine that such concerns could be used as a basis for making an exception in the prevailing wage methodology for researchers employed by nonprofit research institutes.

2. Prevailing Wage Methodology for Researchers

The research institutes asserted that prior to *Hathaway*, researchers in independent research institutes were included with researchers at colleges and universities in determining prevailing wages. The commenters stated that inclusion of independent research institutes would not be an extension of the proposed rule—it would be a restoration of the pre-*Hathaway* practice. It was stated in the preamble to the NPRM that prior to *Hathaway*, SESA's, in conducting prevailing wage surveys for researchers employed by colleges and universities, consistently limited prevailing wage surveys to colleges and universities, and DOL was not aware of any other situation in which a similar practice was followed in determining prevailing wages for an occupation found in a variety of industries.

Further investigation of sampling practices by SESA's subsequent to the receipt of comments on the NPRM, however, indicates that there was greater variation in sampling practices for colleges and universities than indicated in the NPRM. Not all SESA's limited surveys only to researchers employed by colleges and universities. Some surveyed a variety of industries in making such determinations. Some SESA's included nonprofit research institutes in the sample used in determining prevailing wages for colleges and universities. Some sampled nonprofit research institutions separately in the course of making prevailing wage determinations for researchers employed by such institutions. Some SESA's pointed out that they would not have known prior to the *Hathaway* decision whether the employer was profit or nonprofit, and included profit and nonprofit institutes in the same sample when responding to prevailing wage requests. Because SESA's were inconsistent in their sampling practices, their practices in this regard cannot be considered as a basis for the NPRM or the final rule.

3. Pending Legislation to Change Prevailing Wage Methodology for Researchers

Many commenters stated that Congress has acknowledged the similarities between researchers in academic settings and those at nonprofit, independent research institutes by providing legislative language in immigration bills that would require prevailing wage determinations for employees employed by colleges and universities and research institutes to be based solely on the wages paid by such institutions. Unenacted legislation is, however, outside the scope of this rulemaking and to consider it in the rulemaking would be speculative.

4. Additional Reasons Advanced for Extending the Proposed Rule to Nonprofit Research Institutes

One or more commenters offered additional reasons for extending the proposed rule to nonprofit, independent research institutes. Their comments and the Department's response to them are provided below.

a. *Anomalies of Staff Doing the Same Work Being Paid at Dissimilar Rates.* Some commenters pointed out that there are many situations where staff from the university and nonprofit research institutes work side-by-side. One commenter expressed the opinion that it would make little sense for institute employees on H–1B visas to be subject to a different wage structure than everyone else on the university campus.

Such anomalies are not prohibited under the H–1B program, as a result of amendments made to the INA by the Miscellaneous and Technical Immigration Amendments of 1991 (MTINA), Pub. L. 102–232, 105 Stat. 1733 (December 12, 1991). The anomalies are not a function of DOL prevailing wage methodologies and policies. The INA, as amended by the Immigration Act of 1990 (IMMACT), Pub. L. 101–649, 104 Stat. 4978, provided that employers did not have to pay similarly employed U.S. workers the same wage as must be paid to H–1B workers. Under IMMACT prior to MTINA, the employer was required to pay the higher of the actual or prevailing wage for an occupation to both H–1B nonimmigrant and "to other individuals employed in the occupational classification and in the area of employment. . . ." MTINA amended the INA/IMMACT wage requirements, in relevant part, so that the obligation that the employer pay the prevailing wage applied only to its H–1B nonimmigrant workers and not to the "other individuals employed in the occupational classification. . . ." Thus, subsequent to MTINA, not all workers in the U.S. labor market receive prevailing wage protections, even when they have foreign co-workers. It is, therefore, not illegal under this program to have workers working side-by-side being paid disparate wages. This possible disparity in wages between U.S. workers and H–1B nonimmigrant workers is not unique to colleges and universities, Federal research agencies, nonprofit research institutes, or even for-profit entities.

In the Department's view, disparities in wages paid to researchers with similar duties working side-by-side does not justify establishing an exception to the prevailing wage determination methodology currently followed in situations involving employers other than colleges and universities. More fundamentally, wage disparity among workers is not germane to the question of whether the workers are similarly employed.

b. *Source of Funding Should be Considered.* One commenter pointed out that research projects are funded by many different government agencies, and it is a waste of taxpayers' money to require payment of artificially high salaries to temporary foreign and immigrant employees.

The Department has consistently taken the view that sources of funding are not factors to be taken into consideration in prevailing wage determinations. Had source of funding been a determinant, the broad protection against adverse effect in the INA would have made an exception for government-funded employment—but it does not do so. Further, in the Department's view, such a position furthers its statutory mission to protect the wages and working conditions of U.S. worker, rather than constituting a waste.

However, the Department recognizes that source of funding may be a factor for determining similarity of employment, to the extent it supports nonproprietary research, as opposed to proprietary research and development. Since nonproprietary research currently dominates academic research performance in large measure, it is one determinant that distinguishes academic research from commercial research. The rulemaking record does not establish to the satisfaction of the Department that nonprofit research institutes perform nonproprietary research in relative or absolute terms to the same extent as colleges and universities.

c. *Non-pecuniary Motivations.* Some commenters asserted that non-pecuniary motivations of researchers working in nonprofit research institutes are similar to those working in academia. This may be true, but unlike academe, research in nonprofit institutions does not appear to be "inextricably intermingled" with teaching in an academic setting as it is in colleges and universities. Nor is there any firm information as to the relative significance of performing research with the attributes that distinguish that research from research in a for-profit setting, to the total research and development effort. The Department believes that the amount of nonproprietary research performed by an institution is not only important in terms of the attributes that distinguish it from commercial research, but that it adds an important dimension to the non-pecuniary incentives to working in a research environment.

d. *Worker Displacement.* At least one commenter maintained that foreign researchers do not displace immigrant or citizen researchers, but rather complement their efforts. As previously indicated, available information does not indicate that displacement of domestic doctorate recipients by foreign labor is significant. In any event, as indicated above, this rule addresses only the narrow issue of how the phrase "similarly employed" should be defined.

5. Overly Broad Implementation of Hathaway

The AILA was strongly in favor of the NPRM, but was of the opinion that DOL's implementation of *Hathaway* was overly broad and incorrect, and did not require conducting wage surveys across industries to determine prevailing wages for researchers employed by colleges and universities. The Department does not believe these comments are germane to the rulemaking. Assuming that the recognition of a separate wage system for college and university researchers was achievable under the existing regulations, a proposition that the Department does not accept, that conclusion would not preclude the Department from addressing the matter through a regulatory change. Given the interest expressed and the need to assure consistent treatment of the issue, the Department concluded that rulemaking was the appropriate course. Whether the *Hathaway* precedent is being applied improperly in occupations other than academic researchers is both beyond the scope of this rulemaking and is a matter that can and should be addressed to the BALCA in an appropriate case.

D. Other Requests to Extend the Rule

In response to the proposed rule, comments also were received from Federally Funded Research and Development Centers (FFRDC's) and Federal agencies urging that they be included within the scope of the rule. The comments received from the FFRDC's and the Federal agencies are discussed below.

1. Federal Research Centers

The Department has concluded that it is appropriate to include FFRDC's administered by academic institutions within the scope of the final rule. The Department believes that research conducted by FFRDC's administered by academic institutions are an extension of the research environment existing in the colleges and universities and the research performed in such FFRDC's has the same attributes as research performed by colleges and universities; i.e., nonproprietary in nature, inextricably intermingled with teaching, and offers significant intangible, nonpecuniary incentives.

Comments to support this conclusion were received from the National Laboratory Immigration Forum (NLIF) which represents the 10 most well known of the FFRDC's often referred to as the national laboratories. The comments of the NLIF relevant to the scope of this rule were similar to those made by the colleges and universities and the independent research institutes. The main points made by the NLIF were:

- National laboratories are involved in far-ranging collaborative efforts with the academic community and many researchers have joint appointments with both a laboratory and a university, which involve teaching as well as research.
- Most funding for the operation of the national laboratory complex comes through the Federal Government and is subject to many of the same salary limitations that universities are subject to under non-DOE Federal research grants.
- Research conducted by the national laboratories is largely nonproprietary in nature. Research results are expected to be disseminated through publication in peer-reviewed scientific journals.
- Non-pecuniary factors are a substantial motivator for researchers seeking employment in the national laboratories.
- Some areas of research are well beyond the scope of normal domestic research and may call for expertise in disciplines that are not readily available in the United States.

The above comments are consistent with the comments of the colleges and universities urging that the national laboratories be included within the scope of the proposed rule.

The Department believes the above factors apply in large measure to all of the FFRDC's administered by colleges and universities, and has therefore, concluded that FFRDC's administered by academic institutions should be included within the final rule. The Department, however, does not believe the FFRDC's managed by non-academic institutions should be included in the final rule establishing an exception to the way prevailing wage determinations are made for researchers employed by colleges and universities. The Department is not convinced that the attributes of academic research which distinguish it from commercial research are as pronounced in those FFRDC's managed by nonacademic institutions as they are in the FFRDC's administered by colleges and universities. Further, the Department is concerned that researchers from other countries coming to work for the FFRDC's managed by nonacademic entities may be used to a greater extent to perform research of a proprietary nature in those FFRDC's that are not managed by academic institutions. Therefore, the Department is extending the final rule to include only those FFRDC's managed by colleges and universities.

2. Federal Agencies

All Federal agencies that submitted comments were in favor of the thrust of the proposed rule, but generally indicated that it was too narrow and should be extended to Federal agencies and laboratories; federally-affiliated, nonprofit institutions; and other nonprofit institutions affiliated with universities and colleges. Reasons offered for supporting the rule were similar to those advanced by many of the other commenters. The major points made by one or more of the agencies with respect to extending the proposed rule to cover Federal agencies were:

- Post-*Hathaway* policies impact negatively on the ability to recruit foreign scientists and result in such anomalies as foreign staff being paid more than U.S. workers.
- The proposed rule is too narrow. It should be extended to Federal agencies and laboratories, federally-affiliated nonprofit institutions, and other nonprofit institutions affiliated with universities and colleges.
- Research by Federal agencies is nonproprietary in nature.

• Non-pecuniary factors similar to those in colleges and universities motivate individuals to work for Federal research agencies and federally affiliated nonprofit institutions.

• The Federal pay scale should be accepted by DOL as a "legitimate source" of prevailing wage data for federally sponsored employment. Alternatively, a rule should be promulgated recognizing that postdoctoral fellows, visiting scientists and other scholars employed by Federal agencies in H–1B status will necessarily be paid according to the pay practices of the research entity, and this fact satisfies prevailing wage concerns.

Although the comments advocating inclusion of the Federal research agencies did not provide sufficient information to draft a final rule excluding all Federal research agencies as a class from the effects of *Hathaway Children's Services* on the Department's prevailing wage methodology, the Department is convinced that some Federal agencies may be able to satisfy the necessary criteria in order to be provided such an exception. These criteria are: (1) A close relationship between research and teaching; (2) a primary engagement in nonproprietary research; and (3) significant, intangible nonpecuniary factors that motivate researchers to work for the Federal research agency. Federal research agencies, by virtue of the fact that they are Government institutions, can presumptively satisfy the criterion of being primarily performers of nonproprietary research. Therefore, the final rule provides that Federal research agencies may petition the Director, U.S. Employment Service, to submit evidence that shows they meet the other two criteria necessary to obtain an exception to the prevailing wage methodology required by the issuance of *Hathaway Children's Services*. The rule also provides that if a petition is denied, a request for review of the denial may be made to the Board of Alien Labor Certification Appeals.

The procedures that will have to be followed and the documentation that will have to be supplied by the Federal research agencies to obtain an exception from the general prevailing wage methodology that requires prevailing wages to be determined by surveying employers across industries in the occupation in the area of intended employment will be developed and issued by ETA within 45 days of publication of the final rule. Prevailing wages for the research agencies that are granted an exception from the general prevailing wage methodology will be determined by considering only the wages paid to researchers by Federal research agencies, colleges and universities, and FFRDC's administered by colleges and universities.

ETA believes that to meet the criteria contemplated by this rule requires a relatively large organization. The research agency must be rather large before it can have researchers significantly and substantially involved in teaching as well as research and offer significant, intangible nonpecuniary incentives similar to those offered by colleges and universities. Therefore, a Federal research agency is defined for the purpose of this rule as:

> [A] major organizational component of a Federal cabinet level agency or other agency operating with appropriated funds that has as its primary purpose the performance of scientific research. Federal research agencies are presumed to be doing nonproprietary research. To be considered a major organizational component of a cabinet level agency or other agency operating with appropriated funds for the purpose of this part, the organizational component or other agency must be administered by a person who is no lower than Level V (or the equivalent) of the Executive Schedule (see 5 U.S.C. 5316).

ETA is not establishing a similar petitioning process for other members of the research community, such as nonprofit research institutes. Since such entities are private organizations, it cannot be presumed that the research they perform is of a nonproprietary nature. Since they are private entities, they can engage in either proprietary or nonproprietary research. Although the entity may be accorded a nonprofit status under the Internal Revenue Code, they can contract to perform research that has a commercial application for private, for-profit entities. The ETA cannot be expected to sort out in this rulemaking process the extent to which non-profit research organizations are or are not performing research that has commercial applications for a for-profit entity.

Executive Order 12866

The Department has determined that this proposed rule is not an "economically significant regulatory action" within the meaning of Executive Order 12866, in that it will not have an economic effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

While it is not economically significant, the Office of Management and Budget reviewed the final rule because of the novel legal and policy issues raised by the rulemaking.

Regulatory Flexibility Act

When the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant impact on a substantial number of small entities. The Chief Counsel did not submit a comment.

Small Business Regulatory Enforcement Fairness Act

The Department has determined that this final rule is not a "major rule" pursuant to the Small Business Enforcement Regulatory Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Paperwork Reduction Act

This final rule will create no collection of information requirements. The petitioning process for Federal agencies requests information from current Federal employees acting in their official capacity.

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.203. "Certification for Immigrant Workers."

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Employment and training, Enforcement, Fraud, Guam, Immigration, Labor, Longshore work, Unemployment, Wages, and Working conditions.

Final Rule

Accordingly, part 656 of Chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 656—[AMENDED]

1. The authority citation for part 656 continues to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A); 29 U.S.C. 49 *et seq.*; section 122, Pub. L. 101–649, 109 Stat. 4978.

2. Section 656.3 is amended as follows:

a. A definition of "Federal research agency" is added in alphabetical order as follows:

§ 656.3 Definitions for the purpose of this part, of terms used in this part.

* * * * *

Federal research agency means a major organizational component of a Federal cabinet level agency or other agency operating with appropriated funds that has as its primary purpose the performance of scientific research. Federal research agencies are presumed to be doing nonproprietary research. To be considered a major organizational component of a cabinet level agency or other agency operating with appropriated funds for the purpose of this part the organizational component or other agency must be administered by a person who is no lower than Level V (or the equivalent) of the Executive Schedule (see 5 U.S.C. 5316).

* * * * *

3. Section 656.40 is amended as follows:

a. In the introductory language in paragraph (b), the phrase "except as provided in paragraph (c) of this section," is added immediately after the phrase "For purposes of this section,".

b. Paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 656.40 Determination of prevailing wage for labor certification purposes.

* * * * *

(c) For purposes of this section, *similarly employed* in the case of researchers employed by colleges and universities, Federally Funded Research and Development Centers (FFRDC's) administered by colleges and universities or Federal research agencies, means researchers employed by colleges and universities, FFRDC's administered by colleges and universities, and Federal research agencies in the area of intended employment." If no researchers are employed by colleges and universities, FFRDC's administered by colleges and universities, and Federal research agencies other than the employer applicant, researchers employed by colleges and universities, FFRDC's administered by colleges and universities, and Federal research agencies outside the area of intended employment shall be considered "similarly employed."

* * * * *

4. Subpart E is added to read as follows:

Subpart E—Petitioning Process for Federal Research Agencies

§ 656.50 Petitioning Process.

(a) Federal research agencies seeking to have prevailing wages determined in accordance with § 656.40(c)(2) shall file a petition with the Director, U.S. Employment Service.

(b) The procedures and information to be included in the petition shall be in accordance with administrative directives issued by ETA that will specify the procedures to be followed and information that shall be filed in support of the petition by the requesting agency.

(c) The Director shall make a determination either to grant or deny the petition on the basis of whether the petitioning agency is a Federal research agency, whether most researchers at the petitioning agency have a close relationship with teaching as well as research, and whether the employment environment for researchers at the petitioning agency provides significant intangible and nonpecuniary incentives of the nature found at colleges and universities.

(d) Denials of agency petitions may be appealed to the Board of Alien Labor Certification Appeals.

(1) The request for review shall be in writing and shall be mailed by certified mail to the Director, U.S. Employment Service, within 35 calendar days of the date of the determination, that is by the date specified in the Director's determination; shall set forth the particular grounds for the request; and shall include all the documents which accompanied the Director's determination.

(2) Failure to file a request for review in a timely manner shall constitute a failure to exhaust available administrative remedies.

(e) Upon a request for review, the Director shall immediately assemble an indexed Appeal File.

(1) The Appeal File shall be in chronological order, shall have the index on top followed by the most recent document. The Appeal File shall contain the request for review, the complete petition file, and copies of all the written material upon which the denial was based.

(2) The Director shall send the Appeal File to the Board of Alien Labor Certification Appeals.

(f) In considering requests for review of denied petitions, the Board of Alien Labor Certification Appeals shall be guided by § 656.27.

Signed at Washington, DC, this 17th day of March, 1998.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 98–7339 Filed 3–19–98; 8:45 am]

BILLING CODE 4510–30–P

federal register

Friday
March 20, 1998

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 31 and 46
Federal Acquisition Regulations; Mandatory Government Source Inspection; Civil Defense Costs; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 46

[FAR Case 97–027]

RIN 9000–AH94

Federal Acquisition Regulation; Mandatory Government Source Inspection

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to facilitate the elimination of unnecessary Government contract quality assurance requirements at source. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before May 19, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. E-mail comments submitted over Internet should be addressed to: farcase.97–027@gsa.gov. Please cite FAR case 97–027 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 97–027.

SUPPLEMENTARY INFORMATION:

A. Background

The Acting Under Secretary of Defense (Acquisition and Technology), by memorandum dated March 20, 1997, tasked the Commander, Defense Contract Management Command, to establish a process action team (PAT) that would, in part, review and recommend steps to eliminate unnecessary Government source inspections for commercial and non-commercial item micro-purchases. The Under Secretary of Defense (Comptroller/Chief Financial Officer), by memorandum dated May 29, 1997, requested that the scope of the review be expanded to reassess all source acceptance policies and procedures, including a full accounting of all Government steps and costs in the source acceptance process; a comparison with alternate methods; and a determination of whether or not the existing 1.8 million stock items requiring source acceptance still merit that designation.

The PAT's initial review found that contributors of unnecessary Government contract quality assurance at source are FAR 46.402(e), which requires mandatory contract quality assurance at source when higher-level quality requirements are invoked, and 46.402(g), which appears to discourage destination acceptance for overseas shipments. The proposed rule amends FAR 46.402 to delete these paragraphs.

B. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because both large and small entities will see a reduction in the administrative burden caused by the Government's in-plant presence to perform quality assurance at source when higher-level quality requirements have been included in Government contracts or when supplies requiring inspection are destined for points of embarkation for overseas shipment. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The IRFA is summarized as follows:

There is no statistical data to support an estimate of the dollar value related to the reduction in the administrative burden associated with this rule. However, DOD administers the contracts of approximately 10,129 large and 18,329 small entities. Approximately 30 percent have contracts that contain the clause at FAR 52.246–11, Higher-Level Contract Quality Requirement (Government Specification). It is anticipated that the proposed rule's reduction in the administrative burden may serve to motivate more small entities to do business with the Government. This rule imposes no additional reporting, recordkeeping, or compliance requirements on offerors or contractors. This rule does not duplicate, overlap, or conflict with any other Federal rules. Consideration was given to not making the revision to the FAR. It was determined that not making these revisions would be unacceptable because of the adverse impact on an efficient and effective acquisition process. Consideration also was given to making all of the requirements at FAR 46.402 discretionary, but it was decided that this would be premature since the PAT has not completed its review and made its final recommendations.

A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 97–027), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 46

Government procurement.

Dated: March 17, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 46 amended as set forth below:

PART 46—QUALITY ASSURANCE

1. The authority citation for 48 CFR Part 46 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

46.402 [Amended]

2. Section 46.402 is amended by removing paragraphs (e) and (g); redesignating paragraphs (f) and (h) as (e) and (f), respectively; and by adding "or" to the end of the newly designated paragraph (e).

[FR Doc. 98–7350 Filed 3–19–98; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 97–036]

RIN 9000–AH95

Federal Acquisition Regulation; Civil Defense Costs

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to delete the civil defense cost principle. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before May 19, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. E-mail comments submitted over Internet should be addressed to: farcase.97–036@gsa.gov. Please cite FAR case 97–036 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 97–036.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule amends FAR Part 31 to delete the cost principle at FAR 31.205–5, Civil defense costs. With the end of the Cold War, the special guidance provided in this cost principle is no longer deemed necessary. The acceptability of this type of costs will remain governed by the allocability, allowability, and reasonableness criteria discussed in FAR Part 31.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97–036), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do no impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: March 17, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

31.205–5 [Removed and Reserved]

2. Section 31.205–5 is removed and reserved.

[FR Doc. 98–7349 Filed 3–19–98; 8:45 am]

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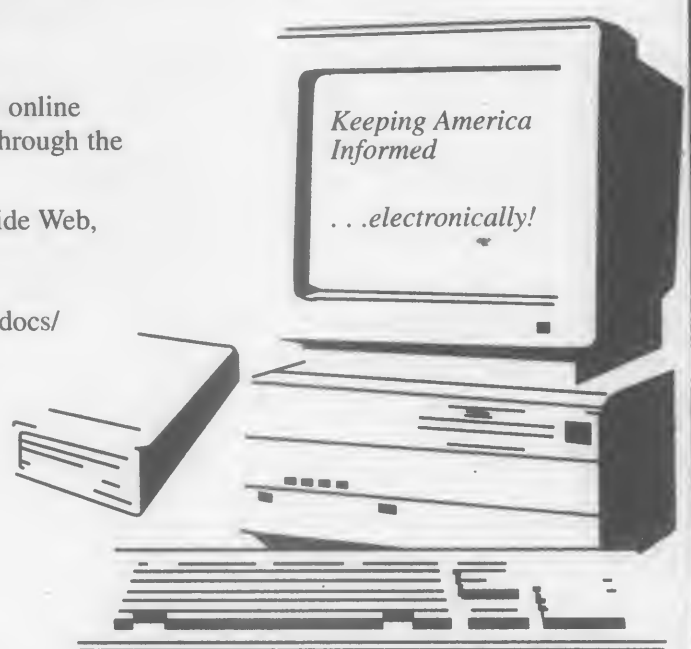

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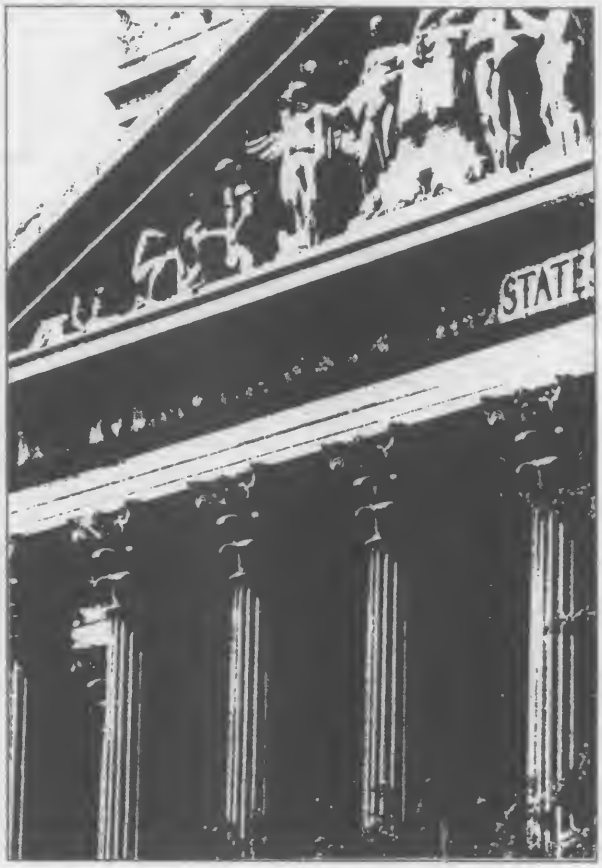

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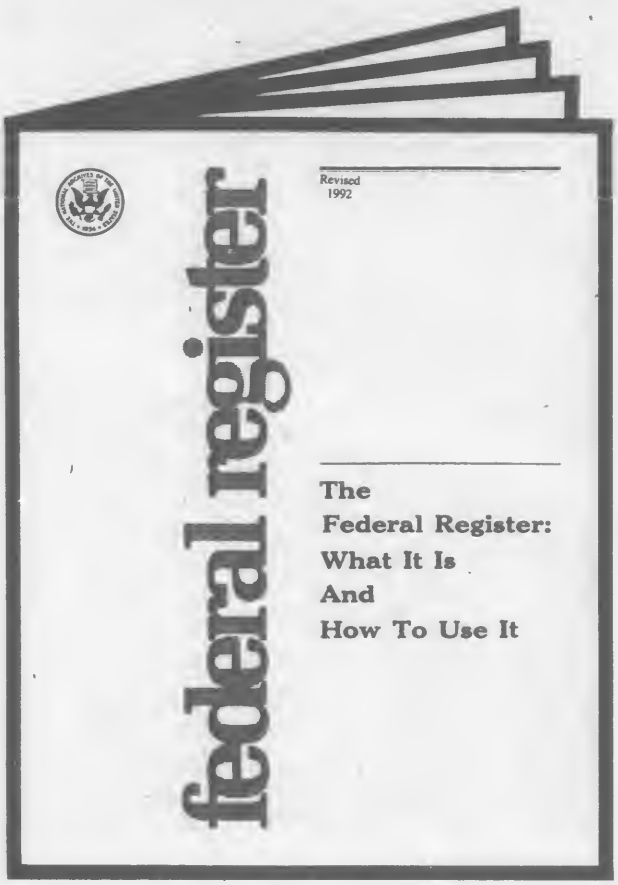

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