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Friday
November 14, 1997

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

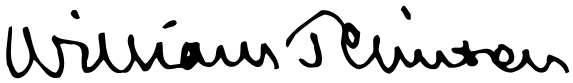
Memorandum of November 4, 1997

Authorization To Redelegate Certain Responsibilities Vested in the President and Delegated to the Secretary of State

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and laws of the United States, including section 301 of Title 3 of the United States Code, to the extent that you consider doing so appropriate to facilitate the consolidation of the Arms Control and Disarmament Agency and the Department of State, I hereby authorize you to redelegate to any officer of the executive branch any or all authorities vested in the President that are delegated to the Secretary of State by any act, order, determination, delegation of authority, regulation, or Executive order heretofore or hereinafter enacted or issued and that have been or may be redelegated to the Under Secretary of State for Arms Control and International Security Affairs.

You are authorized and directed to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, November 4, 1997.

[FR Doc. 97–30160
Filed 11–13–97; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2411

Revision of Freedom of Information Act Regulations

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Federal Service Impasses Panel (FLRA) are amending their regulations governing the release of information as these regulations pertain to the timing of FLRA responses to requests for information. This action is taken to conform the FLRA's regulations to the requirements of the Freedom of Information Act, 5 U.S.C. 552, *et seq.* (FOIA), as amended by the Electronic Freedom of Information Act Amendments of 1996 (EFOIA).

DATES: Effective November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Office of Case Control, Federal Labor Relations Authority, 607 14th Street, N.W., Room 415, Washington, D.C. 20424–0001, or by telephone at (202) 482–6540.

SUPPLEMENTARY INFORMATION: Through the EFOIA, Pub. L. 104–231, 110 Stat. 3048 (1996) Congress amended the FOIA, 5 U.S.C. 552 et seq., to, among other things, increase the time limit for agency responses to requests for information from ten (10) to twenty (20) working days. Accordingly, the FLRA is amending its regulations at 5 CFR Part 2411 to reflect this change. The revisions to the FLRA's FOIA regulations set forth below are neither interpretive nor controversial. For these reasons, the FLRA finds good cause to determine that public notice of, and comments on, this amendment are impracticable, unnecessary, and contrary to the public interest. Therefore, pursuant to 5 U.S.C. 553(b), this regulatory action is exempt from notice and comment requirements.

Executive Order 12886

This final regulation has been reviewed in accordance with Executive Order 12886. It is not classified as significant because it does not meet the criteria for significant regulatory action established by the E.O.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The amendments are procedural in nature and are required to implement EFOIA.

Paperwork Reduction Act of 1995

The proposed regulations contain no additional information collection or record keeping requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*.

List of Subjects in 5 CFR Part 2411

Administrative practice and procedure, Freedom of information, Government employees.

For the reasons stated in the preamble, the FLRA amends part 2411 of chapter XIV, title 5 of the Code of Federal Regulations as follows:

PART 2411—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority citation for part 2411 continues to read as follows:

Authority: 5 U.S.C. 552.

2. In § 2411.6, paragraph (b) is revised to read as follows:

§ 2411.6 Time limits for processing requests.

* * * * *

(b) Except as provided in § 2411.8, the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Panel, as appropriate, shall, within twenty (20) working days following receipt of the request, respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

* * * * *

3. In § 2411.10, paragraph (g)(2) is revised to read as follows:

§ 2411.10 Fees.

* * * * *

(g) * * *

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case the Authority, the General Counsel or the Panel requires the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that the requester has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When the Authority, the General Counsel or the Panel acts under paragraph (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extension of these time limits) will begin only after the Authority, the General Counsel or the Panel has received fee payments described above.

* * * * *

Dated: November 7, 1997.

Solly Thomas,

Executive Director.

[FR Doc. 97–29915 Filed 11–13–97; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket Number FV97–355]

Revision to Part 46, Regulations Under the Perishable Agricultural Commodities Act (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is revising the regulations (other than Rules of Practice) Under the Perishable Agricultural Commodities Act (PACA or Act) to establish that electronic transmissions are ''ordinary and usual billing or invoice statements'' within the meaning of the PACA.

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Charles W. Parrott, Assistant Chief, PACA Branch, Room 2095-So. Bldg., Fruit and Vegetable Division, AMS, USDA, 1400 Independence Avenue, S.W.,Washington, D.C. 20250, Phone (202) 720–4180.

SUPPLEMENTARY INFORMATION: This regulation is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

Background

The PACA establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. It protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. Thus, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefitting the whole marketing chain from farmer to consumer. The PACA provides for a forum to adjudicate commercial disputes in which USDA may award damages against a licensee who fails to meet contractual obligations in violation of the Act. The law also imposes a statutory trust on perishable agricultural commodities received but not yet paid for, products derived from those commodities, and any receivables or proceeds due from the sale of those commodities or products thereof for the benefit of unpaid suppliers or sellers. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

The PACA Amendments of 1995, among other things, eliminated the requirement for unpaid produce suppliers to file trust notices with USDA in order to preserve their trust rights under the statutory trust provision of the Act. Additionally, the amendments to the PACA allow unpaid sellers of fresh and frozen fruits and vegetables to preserve trust benefits by adding language to ''ordinary and usual billing or invoice statements'' that advises the buyer of the creditor's intention to preserve trust benefits. This addition of language indicating the intent to preserve trust benefits to bills or invoices eliminates the need for a trust creditor to provide any additional notice to the debtor of the creditor's intention to preserve trust benefits. However, the Act does not explicitly declare that information transmitted in the course of electronic transactions would constitute ''ordinary and usual billing or invoice statements''.

On January 15, 1997, the United Fresh Fruit and Vegetable Association (UFFVA), a produce industry trade association based in Alexandria, Virginia, petitioned AMS to adopt regulations under the PACA to recognize the use of Electronic Data Interchange. Ten other produce industry organizations joined the UFFVA on the petition. The petitioners sought clarification as to whether EDI transactions are considered by AMS to be ''ordinary and usual billing or invoice statements'' within the meaning of the 1995 PACA amendments. USDA agreed with petitioners that a revision to the regulations would eliminate any uncertainty in this regard and would ensure that licensees can use reasonable technological advances while still receiving appropriate trust protection under the PACA.

Therefore, USDA proposed a change in the PACA regulations to achieve this end. The proposal was published in the **Federal Register** on June 20, 1997 (62 FR 33574). The proposal contained a definition for the term ''ordinary and usual billing or invoice statements'' to be added in section 46.46(a) as follows:

> ''Ordinary and usual billing or invoice statements'' as used in section 5(c)(4) of the Act and ''invoice or other billing statement'' as used in section 46.46(f)(3) mean communications customarily used between parties to a transaction in perishable agricultural commodities in whatever form, documentary or electronic, for billing or invoicing purposes.

The proposed definition specifies that ''ordinary and usual billing or invoice statements'' as used in the PACA and ''invoice or other billing statement'' as used in section 46.46(f)(3) include both paper documentation and electronic transmissions customarily used between a seller and a buyer for billing or invoicing purposes. This change to the regulations is very similar to the change suggested in the UFFVA petition. The 30-day comment period on the proposed rule closed on July 21, 1997.

Comments

USDA received comments on the proposed rule from the American Frozen Food Institute (AFFI), McLean, Virginia; Western Growers Association, Newport Beach, California; Driscoll's Strawberry Associates, Inc., Watsonville, California; and The Nunes Company, Inc., Salinas, California. All of the commentors supported USDA's proposal to amend the regulations to establish that electronic transmissions are ''ordinary and usual billing or invoice statements'' within the meaning of the PACA.

In its favorable comment, AFFI suggested that in order to clarify and strengthen the proposal, USDA should confirm in the final rule that including a statement on an electronic invoice or other billing document that the sale is subject to the provisions of the PACA statutory trust will satisfy the notice requirements under the statute. AFFI is concerned that the statement preserving trust benefits may not be recognized as a standard data field on an electronic document, and therefore may not be received or read by the party to which the information is being disclosed. However, as we stated in the preamble to the proposed rule, both parties to an electronic transaction must agree to the format of the information to be transmitted and received in an electronic transmission. USDA believes that this agreement is the proper forum for ensuring that the buyer receives notice of trust preservation from the seller in the electronic transmission. The PACA requires that the seller give notice to the buyer in order to preserve its trust benefits. Therefore, a seller engaged in electronic transactions must ensure in the agreement with its buyer that the buyer is receiving the trust statement as part of the electronic transmission. Otherwise, the seller is responsible for finding other means of giving notice to the buyer in order to qualify for PACA trust protection. Under these circumstances, USDA is making no change to the final rule based on this comment.

Executive Orders 12866 and 12988

This rule, issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et seq.*), as amended, has been determined to be not significant for the purposes of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended

to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA has considered the economic impact of this final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. The PACA requires all businesses that operate subject to its provisions maintain a license issued by USDA. There are approximately 15,700 PACA licensees, many of which may be classified as small entities.

The revised regulations establish that the electronic transmissions used in perishable agricultural commodity transactions are, in fact, ''ordinary and usual billing or invoice statements.'' The use of electronic transactions is voluntary, and the revised regulations specifically provide companies an electronic alternative to paper documentation to give notice of intent to preserve trust rights.

Accordingly, based on the information in the above discussion, AMS has determined that the provisions of this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements covered by this rule were approved by OMB on October 31, 1996, and expires on October 31, 1999.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o

2. In § 46.46, a new paragraph (a)(5) is added to read as follows:

§ 46.46 Statutory trust.

* * * * *

(a) * * *

(5) ''Ordinary and usual billing or invoice statements'' as used in section 5(c)(4) of the Act, and ''invoice or other billing statement'' as used in § 46.46(f)(3), mean communications customarily used between parties to a transaction in perishable agricultural commodities in whatever form, documentary or electronic, for billing or invoicing purposes.

Dated: November 7, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–29926 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket Nos. AO–99–A7; FV96–927–1]

Winter Pears Grown in Oregon, Washington, and California; Order Amending the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order (order) for winter pears grown in Oregon, Washington, and California. The amendments remove the State of California from the order and make related changes to provisions concerning the production area, districts, and establishment and membership of the Committee. Another amendment allows the use of telecopiers or other electronic means in Committee voting procedures. The amendments will improve the administration, operation and functioning of the order.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, Washington, D.C. 20250–0200; telephone: (202) 720–2491, or FAX (202) 720–5698; or Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, OR 97204–2807; telephone (509) 326–2724 or FAX (509) 326–7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on June 24, 1996, and published in the June 26, 1996, issue of the **Federal Register** (61 FR 33047). Recommended Decision and Opportunity to File Written Exceptions issued on June 9, 1997, and published in the **Federal Register** on June 16, 1997 (62 FR 32548). Secretary's Decision and Referendum Order issued July 22, 1997, and published in the **Federal Register** on July 28, 1997 (62 FR 40310).

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The final rule was formulated on the record of a public hearing held in Sacramento, California, on July 9, 1996, and in Portland, Oregon, on July 10, 1996, to consider the proposed amendment of Marketing Order and Agreement No. 927, regulating the handling of winter pears grown in Oregon, Washington, and California, hereinafter referred to as the ''order.'' Notice of the Hearing was published in the June 26, 1996, issue of the **Federal Register** (61 FR 33047).

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900). The Notice of Hearing contained proposals submitted by the Winter Pear Control Committee (Committee), which locally administers the order.

The Committee's proposals pertained to: (1) revising the definition of ''production area'' to mean only the States of Oregon and Washington; (2) revising ''district'' by removing California, leaving only those districts designated in the States of Oregon and Washington; (3) revising ''establishment and membership'' of the Committee to be consistent with the reduction in size of the regulated production area; (4) revising ''procedure of Control Committee'', ''(a) quorum and voting'', so that the number of members needed for a quorum is consistent with the revised Committee representation, and amending ''(b) mail voting'', to allow for the use of telecopiers and other electronic means; and (5) revising the definition of ''pears'' to exclude pears produced in California.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on June 9, 1997, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by June 26, 1997. No exceptions were received.

A Secretary's Decision and Referendum Order was issued on July 22, 1997, directing that a referendum be conducted during the period August 8 through August 29, 1997, among producers of winter pears in Oregon, Washington, and California to determine whether they favored the proposed amendments to the order. All of the proposed amendments were favored by more than the requisite two-thirds of the producers voting in the referendum by number and volume.

The amended marketing agreement was subsequently mailed to all winter pear handlers throughout the production area for their approval. The marketing agreement was signed by handlers of more than 50 percent of the volume of winter pears handled by all handlers during the representative period of July 1, 1996, through June 30, 1997.

Also, this final rule includes an additional modification to the regulatory text concerning the definition of ''pears'' to clarify that the definition applies to winter pears that are grown in the production area.

Small Business Considerations

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1800 winter pear producers in Oregon, Washington, and California and approximately 100 handlers of winter pears who are subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that handlers will not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding.

During the 1995–96 crop year, approximately 100 handlers were regulated under Marketing Order No. 927. In addition, there were about 1,800 producers of winter pears in the production area. Production for the 1995–96 season showed that 15,316,776 standard boxes were produced in Oregon and Washington, while California produced 434,380 standard boxes.

The removal of the State of California will allow the Northwest winter pear industry to operate more efficiently. There are approximately 60 growers and 19 handlers of winter pears in California who have asked to be removed from the marketing order since the harvesting and marketing seasons for California pears are different than those for pears grown in Oregon and Washington. Production for the 1995–96 season showed that 15,316,776 standard boxes were produced in Oregon and Washington, while California produced 434,380 standard boxes. Revenue generated from assessments collected in 1995–96 would be $175,923 from California compared to $6,203,295 from Oregon and Washington.

Record evidence indicated that during the 1994–95 crop year winter pears were assessed at $.43 per standard box. According to preliminary figures in the record, returns to handlers per standard box for that year were $8.31. The assessment rate is about 5 percent of the preliminary returns.

California growers believed they were funding promotion programs that are in direct competition with their own product. Record evidence showed that there will not be any additional burden imposed on handlers with the implementation of these amendments. In fact, handlers in the State of California will be relieved of any regulatory burden. Those in Oregon and Washington will continue to benefit from operation of the program. There are currently 1,700 winter pear growers and 93 winter pear handlers in Oregon and Washington producing over 15 million standard boxes of pears annually. In California, there are approximately 60 winter pear growers and 19 handlers of winter pears producing over 400,000 standard boxes of pears annually.

Record evidence also showed that the collection of information under the marketing order will not be effected by removing California from the marketing order. A witness testified that there are alternatives that will replace the current information that is being collected from the State of California, if it is needed. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information

requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

The amendment allowing Committee members to vote by telecopiers or other electronic means provides members with the option to use these methods if available when voting on an action is to be done quickly. This allows Committee members to vote without assembling at a meeting place and, therefore, reduce administrative costs and act quickly on a recommendation that needs the Committee's attention. ''Other electronic means'' includes the use of modems, video and teleconferencing. The term is flexible to allow for the use of new technologies by the Committee for voting.

The additional amendments are changes that need to be made to the marketing order to reflect the removal of the State of California.

All of these amendments are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry.

Order Further Amending the Order Regulating the Handling of Winter Pears Grown in Oregon, Washington, and California

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and applicable rules of practice and procedure effective thereunder (7 CFR part 900), public hearings were held upon the amendments to Marketing Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon, Washington, and California.

Upon the basis of the evidence introduced at such hearings and the record thereof, it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of winter pears grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings were held;

(3) The order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) The order, as amended, as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of winter pears grown in the production area; and

(5) All handling of winter pears grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make these order amendments effective one day after publication.

This final order changes the production area by removing the State of California from order provisions. Upon the effective date of this order, effected parties will need to be informed of these provisions. In addition, the committee needs to make budgetary and other administrative decisions implementing the new provisions. The 1997–98 fiscal period began on July 1, 1997, and these provisions need to be in place as soon as possible as handlers are already shipping winter pears. A later effective date would unnecessarily delay the implementation of the order amendments and the improvement in operation of the marketing order program.

In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective one day after publication, and that it would be contrary to the public interest to delay the effective date of these order amendments for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping winter pears covered by the said order, as amended, and as hereby further amended) who, during the period July 1, 1996, through June 30, 1997, handled 50 percent or more of the volume of such winter pears covered by said order, as amended, and as hereby further amended, have signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period July 1, 1996, through June 30, 1997 (which has been deemed to be a representative period), have been engaged within the production area in the production of such winter pears for fresh market.

(3) The signed marketing agreement and the issuance of this amendatory order are the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of winter pears in the production area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of winter pears grown in Oregon and Washington, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby further amended as follows:

The provisions of the proposed marketing order amendments further amending the order contained in the Recommended Decision issued by the Administrator on June 9, 1997, and published in the **Federal Register** on June 16, 1997 (62 FR 32548), and in the Secretary's Decision issued on July 22, 1997, and published in the **Federal Register** on July 28, 1997 (62 FR 40310), and as modified in this final rule, shall be and are the terms and provisions of this order further amending the order, and are set forth in full herein.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. The part heading is revised to read as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

3. Section 927.4 is revised to read as follows:

§ 927.4 Pears.

Pears means and includes any and all of the Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Forelle, and Seckel varieties of pears, and any other winter pear varieties or subvarieties that are grown in the production area and are recognized by the Control Committee and approved by the Secretary.

4. Section 927.10 is revised to read as follows:

§ 927.10 Production area.

Production area means and includes the States of Oregon and Washington.

§ 927.11 [Amended]

5. In § 927.11, paragraph (e) is removed.

§ 927.20 [Amended]

6. Section 927.20 is amended by removing the number ''14'' in the first sentence and adding in its place the number ''12'', and removing the word ''seven'' each time it appears in the third sentence and adding in its place the word ''six''.

§ 927.33 [Amended]

7. In § 927.33, paragraph (a) is amended by removing the word ''ten'' in the first sentence and adding in its place the word ''nine''; and adding the words ''telecopier or other electronic means,'' and a comma after the word ''mail'' in paragraph (b) first sentence.

Dated: November 7, 1997.

Thomas A. O'Brien,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 97–29927 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 96–066–2]

Importation of Sliced and Pre-Packaged Dry-Cured Pork Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations to allow dry-cured pork products that have been sliced and packaged prior to shipment to the United States to be imported into the United States under specified conditions. This action will relieve some restrictions on the importation of pork into the United States without presenting a significant risk of introducing any serious communicable diseases of animals.

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Julia Sturm, Supervisory Staff Officer, Products Program, National Center for Import and Export, VS, APHIS, Suite 3B66, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3277; or E-mail: jsturm@.aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, hog cholera, African swine fever, and swine vesicular disease, into the United States. These are dangerous and destructive communicable diseases of ruminants and swine.

Under the regulations, certain animal products—whole hams, pork shoulders, and pork loins—from regions where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists may be imported into the United States only under certain conditions. To be eligible for importation, these products must have been dry-cured and otherwise handled in accordance with procedures specified in § 94.17 of the regulations. However, the regulations have not allowed these same products to be eligible for importation if they have been sliced and packaged prior to shipment. We have prohibited the importation of sliced and packaged dry-cured hams, pork shoulders, and pork loins because of the difficulty in verifying the origin of the meat and how it has been processed. Without this information, we cannot easily determine whether the meat has been treated and otherwise handled in a manner that ensures it is free of disease agents.

On April 14, 1997, we published in the **Federal Register** (62 FR 18055–18059, Docket No. 96–066–1) a proposal to allow presliced and prepackaged dry-cured pork to be imported into the United States under certain conditions from countries [1] where foot-and-mouth disease, rinderpest, swine vesicular disease, African swine fever, and hog cholera exist. The proposed conditions were designed to ensure that the origin of the pork and the method of processing could be verified.

We solicited comments concerning our proposal for 60 days ending June 13, 1997. We received 13 comments by that date. They were from importers, foreign governments and meat processors, and one veterinarian. The comments were primarily positive. Several comments suggested changes in the proposed regulations. These suggestions are discussed individually below.

Separation of Facilities

In our proposed rule, we required that the slicing/packaging facility itself would have to be in a separate building, physically detached from any area where pork or pork products are handled for other purposes. This requirement was designed to prevent any possible contamination of the meat.

Several commenters objected to this requirement as unnecessarily restrictive. Commenters made various suggestions as to how we could minimize contamination without requiring a separate building for the slicing/packaging facility. Among the suggestions were: require workers moving from the pork processing facility to the slicing/packaging facility to change into either freshly laundered or disposable clothing, including caps, masks, gloves and footwear; require a ''changing/scrub'' room for employees; and require ''walls, doors, passageways, etc.''

After carefully considering these comments, we have determined that our proposed requirement that the slicing/packaging facility be in a separate building is overly restrictive. Having the

[1] Since the proposed rule was published, we have amended our regulations for importing animals and animal products to refer to regions, rather than countries. See the paragraph headed ''Miscellaneous,'' elsewhere in this Supplementary Information section.

slicing/packaging facility in a separate building would achieve our goal of separating the facilities so that disease agents cannot be transmitted from areas in the facility where pork is cured and dried to the slicing/packaging facility. However, it may not be practical in all situations, and we believe the desired goal can be accomplished by other means. Therefore, our final rule (§ 94.17(p)(1)(ii)) will state that the slicing/packaging facility may either be in a separate, physically detached building, or in a separate room within the same building where the pork is cured and dried if the slicing and packing room has no direct access to areas in the facility where pork is cured and dried and if the room can be closed off from the rest of the facility so unauthorized individuals cannot enter.

We are not making any changes based on the commenters' suggestions regarding showering and clothing for workers. Our proposed rule included a requirement (see § 94.17(p)(1)(ix)) that workers in the slicing/packaging facilities who handle dry-cured hams, pork shoulders, and pork loins either shower and put on a full set of clean clothes, or wait 24 hours after handling other pork or pork products before handling dry-cured pork hams, pork shoulders, or pork loins in the facility that are intended for importation into the United States. We believe the commenters' suggestions are already covered by this requirement.

Safeguards

One commenter objected that our proposed rule would eliminate ''critical safeguard and identification points.'' The commenter pointed out that no individual identification would remain on the pork after slicing and packaging, and that the Animal and Plant Health Inspection Service (APHIS) would have to rely on ''paper certification'' and records compiled by facilities that process, slice, and package dry-cured pork products.

As discussed in our proposal, we believe that the combination of inspection and recordkeeping requirements included in this rulemakng will allow verification of the meat's origin, treatment, and handling. Therefore, we have made no changes in response to this comment. Our rule provides for periodic inspections of slicing/packaging facilities (see proposed § 94.17(p)(1)). These include inspections by both APHIS personnel and personnel from the Food Safety Inspection Service (FSIS) of the U.S. Department of Agriculture. In addition, our rule requires slicing/packaging facilities to maintain specific, detailed records on the source and identity of all dry-cured pork they handle (see § 94.17(p)(1)(iv)). Access to these records must be restricted to officials of the national government of the region of origin, representatives of the United States Government, and persons maintaining the records (see § 94.17(p)(1)(v)). In addition, APHIS representatives, or individuals authorized by APHIS, will make unannounced visits to inspect the facility and the required records (see § 94.17(p)(1)(viii)).

Since April 1987, similar recordkeeping and inspection requirements have been in effect for facilities that cure and dry whole pork products. These products have been imported into the United States since 1988 without problems.

We realize that the effectiveness of our regulations is dependent to some extent on the honesty and reliability of others. However, this is also true in reverse: foreign governments rely on records maintained by U.S. producers and processors, and on certificates issued by APHIS. In a system of mutual reliance, we believe the possibility of violations is minimized.

Under these circumstances, we believe our regulations are adequate to protect the health of livestock in the United States.

Lot Numbers

One commenter suggested that we require lot numbers to be placed on packages of sliced pork.

When drafting the proposed rule, we considered requiring the lot number of the meat to appear on the label, or requiring that meat from only one lot be in a package. However, as we explained in our proposed rule, current industry practice is to label packages with the lot number. Current industry practice is also to package only meat from one lot in a package. Under these circumstances, it appears unnecessary to include either requirement in our regulations. However, if industry practices change, and we believe it is necessary to require lot numbers or to require that only meat from one lot be in a package, we will publish a proposal in the **Federal Register** for public comment.

Miscellaneous

On October 28, 1997, we published in the **Federal Register** (62 FR 56000—56026, Docket No. 94–106–9) a final rule establishing procedures for recognizing regions, rather than only countries, for the purpose of importation of animals and animal products into the United States. In that rule, scheduled to be effective on November 28, 1997, we amended 9 CFR part 94 to remove the words ''country'' and ''countries'' and replace them, respectively, with the words ''region'' and ''regions''. To reflect these intervening changes, we have therefore adjusted the language in this rule.

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 the 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. 603, we have performed a Final Regulatory Flexibility Act Analysis, set forth below, regarding the economic impact of this rule on small entities.

This final rule will amend the regulations regarding importation of dry-cured pork products from regions where certain diseases of concern exist, by providing that certain sliced and packaged products may be imported into the United States under specified conditions.

We have used all available data to estimate the potential economic effects of allowing these sliced and pre-packaged dry-cured pork products to be imported into the United States. However, some of the data we believe would be helpful in making this determination has not been available. Specifically, data on: (1) The quantity of specialty dry-cured hams produced domestically; (2) the quantity of potential imports; and (3) the degree to which imported presliced and prepackaged dry-cured pork products will displace existing imported or domestic products, is not available. In our proposed rule, we invited comments. However, none of the comments we received addressed these economic issues.

The pork products covered by the rule are specialty products, such as Parma hams from Italy. These products are similar to other dry-cured pork products consumed in the United States, some imported from other countries and some produced domestically. Currently, only whole dry-cured pork hams, pork shoulders, and pork loins are being imported into the United States. Slightly less than 3 million pounds of such whole products were imported in 1995, the most recent year for which figures are available. Presliced and prepackaged dry-cured pork products are not being imported into the United States at this time.

We estimate that fewer than 15 domestic companies produce dry-cured

pork products similar to those covered by this final rule as a primary or major product line. At least two of these companies are very large, and these types of products constitute only a small fraction of their overall business. Of the others, four are subsidiaries of Italian or Swiss companies.

There are also a number of other producers of cured and smoked hams who may produce similar products. If they do, this final rule could affect them. In addition, there are approximately 10 domestic establishments that buy cured hams and trim and dress them for resale. Some of the resulting products might be similar to the presliced and prepackaged products covered by this rule. If so, these businesses could also be affected by this final rule.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget.

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

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0015.

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 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.17 [Amended]

2. Section 94.17 is amended as follows:

a. By revising the introductory text to read as set forth below.

b. In paragraph (d), by adding the word ''whole'' immediately before the word ''ham,''.

c. In paragraph (e), by adding the word ''whole'' immediately after the words ''was processed''; and in footnote 14, by removing the words ''9 CFR part 301, *et seq.*'' and adding the words ''9 CFR, chapter III'' in their place.

d. In paragraph (f), by adding the word ''whole'' immediately after the words ''was processed''.

e. In paragraph (g), by adding the word ''whole'' immediately after the words ''was processed'', and by removing the words ''within 12 months''.

f. In the introductory text of paragraph (h), and in the introductory text of paragraph (i), by adding the word ''whole'' immediately after the words ''was processed''.

g. In paragraphs (j)(1), (j)(2), (j)(3), (k), (l), and (n), by adding the word ''whole'' immediately after the first word ''The'' in each paragraph.

h. In paragraph (j)(2), by adding the word ''whole'' immediately before the words ''dry-cured pork shoulder''.

i. In paragraph (n), by removing the words ''trust fund agreement'' and adding the words ''cooperative service agreement'' in its place each time it appears.

j. By adding a new paragraph (p) to read as set forth below.

§ 94.17 Dry-cured pork products from regions where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists.

Notwithstanding any other provisions in this part, dry-cured ham, pork shoulder, or pork loin, whether whole or sliced and packaged, shall not be prohibited from being imported into the United States if it meets the following conditions:

* * * * *

(p) Whole hams, pork shoulders, and pork loins that have been dry-cured in accordance with paragraph (i) of this section may be transported to a facility in the same region for slicing and packaging in accordance with this paragraph.

(1) *The slicing/packaging facility.* (i) The slicing/packaging facility [2] must be inspected, prior to slicing and packaging any hams, pork shoulders, or pork loins in accordance with this paragraph, by an APHIS representative and determined by the Administrator to be capable of meeting the provisions of this paragraph.

(ii) The slicing/packaging facility must be either in a separate, physically detached building, or in a separate room in the facility where the whole ham, pork shoulder, or pork loin was dry-cured in accordance with paragraph (i) of this section. If the slicing/packaging facility is in a separate room, the room must have no direct access to areas in the facility where pork is cured and dried and it must be capable of being closed off from the rest of the facility so unauthorized individuals cannot enter.

(iii) The slicing/packaging facility, including all equipment used to handle pork and pork products, such as containers, work surfaces, slicing machines, and packaging equipment, must be cleaned and disinfected after sliced and packaged pork products that are not eligible for export to the United States leave the facility, and before whole dry-cured hams, pork shoulders, or pork intended for importation into the United States enter the facility for slicing and packaging. Cleaning and disinfecting must be adequate to ensure that disease agents of concern are killed or inactivated and that pork products intended for importation into the United States are not contaminated.

(iv) The slicing/packaging facility must maintain under lock and key for a minimum of 2 years, original records on each lot of whole dry-cured hams, pork shoulders, and pork loins entering the facility for slicing and packaging under this section, including:

(A) The approval number of the facility where the whole ham, shoulder, or loin was dry-cured in accordance with paragraph (i) of this section;

(B) The date the whole ham, shoulder, or loin started dry-curing;

(C) The date the whole ham, shoulder, or loin completed dry-curing;

(D) The date the whole ham, shoulder, or loin was sliced and packaged; and

[2] See footnote 14 in § 94.17(e).

(E) A copy of all certifications required under paragraph (p) of this section.

(v) Access to records required to be maintained under paragraph (p) of this section must be restricted to officials of the national government of the region of origin, representatives of the United States Government, and persons maintaining the records.

(vi) The operator of the slicing/packaging facility must have signed a cooperative service agreement with APHIS prior to receipt of the whole dry-cured hams, pork shoulders, or pork loins for slicing and packaging, stating that all hams, pork shoulders, or pork loins sliced and packaged at the facility for importation into the United States will be sliced and packaged only in accordance with this section.

(vii) The operator of the slicing/packaging facility must be current, in accordance with the terms of the cooperative service agreement signed with APHIS, in paying all costs for an APHIS representative to inspect the establishment, including travel, salary, subsistence, administrative overhead, and other incidental expenses.

(viii) The slicing/packaging facility must allow the unannounced entry into the establishment of APHIS representatives, or other persons authorized by the Administrator, for the purpose of inspecting the establishment and records of the establishment.

(ix) Workers at the slicing/packaging facility who handle pork or pork products in the facility must shower and put on a full set of clean clothes, or wait 24 hours after handling pork or pork products that are not eligible for importation into the United States, before handling dry-cured hams, pork shoulders, or pork loins in the slicing/packaging facility that are intended for importation into the United States.

(x) Pork products intended for importation into the United States may not be in the slicing/packaging facility at the same time as pork products not intended for exportation to the United States.

(2) *Slicing and packaging and labeling procedures.* (i) A full-time salaried veterinarian employed by the national government of the region of origin must inspect each lot of whole dry-cured hams, pork shoulders, and pork loins at the slicing/packaging facility, before slicing is begun, and must certify in English that it is eligible for importation into the United States in accordance with this section; and

(ii) Either a full-time salaried veterinarian employed by the national government of the region of origin, or, if the national government of the region of origin recognizes a local consortium as responsible for product quality, a representative of that local consortium, must certify in English that he or she personally supervised the entire process of slicing and packaging each lot of dry-cured hams, pork shoulders, and pork loins at the slicing/packaging facility; that each lot of dry-cured hams, pork shoulders, and pork loins was sliced and packaged in accordance with the requirements of this paragraph; and that the sliced and packaged pork ham, shoulder, or loin is the same dry-cured ham, pork shoulder, or pork loin certified under paragraph (p)(2)(i).

(iii) The sliced and packaged dry-cured pork ham, pork shoulder, or pork loin must be labeled with the date that processing of the meat under paragraph (i) of this section began, and with the date the meat was sliced and packaged.

(Approved by the Office of Management and Budget under control number 0579–0015)

Done in Washington, DC, this 7th day of November 1997.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–29989 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 96–089–1]

Import/Export User Fees; Exemptions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the user fee regulations to provide that user fees are not charged for veterinary diagnostic services in the following cases: When veterinary diagnostic services are provided in connection with Federal programs to control or eradicate diseases or pests of livestock or poultry in the United States (program diseases) or in support of zoonotic disease surveillance when there is a significant risk to human health; and when veterinary diagnostic reagents are distributed within the United States for testing for foreign animal diseases. In addition, we are eliminating the user fee for export health certificates that are requested and reviewed, but not endorsed. We are making these changes to eliminate confusion, clarify when certain user fees apply, and eliminate an unnecessary user fee.

DATES: Interim rule effective November 7, 1997. Consideration will be given only to comments received on or before January 13, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–089–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–089–1. 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: Ms. Donna Ford, Section Head, Financial Systems and Services Branch, Budget and Accounting Division, M&B, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services, and import-related and export-related services for live animals and birds and animal products are contained in 9 CFR part 130. Sections 130.14 through 130.18 list the various veterinary diagnostic services for which user fees are charged and the associated user fees.

We are proposing to amend 9 CFR part 130 (the regulations) to provide that user fees will not be charged for veterinary diagnostic services listed in §§ 130.14 through 130.18 in the following cases: (1) When veterinary diagnostic services are provided in connection with Federal programs to control or eradicate diseases or pests of animals in the United States (program diseases) or in support of zoonotic disease surveillance when there is a significant risk to human health; and (2) when veterinary diagnostic reagents are distributed within the United States for testing for foreign animal diseases. In addition, we are eliminating the user fee listed in § 130.20(d) for export health certificates that are requested and reviewed, but not endorsed.

Veterinary Diagnostic Services

Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or

chemical agent is present in body tissues or cells and to identify those organisms or agents. Services in this category include performing laboratory tests at the National Veterinary Services Laboratories (NVSL) and providing diagnostic reagents and other veterinary diagnostic materials and services. Diagnostic reagents are biological materials used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction. NVSL also collects data and compiles statistics on the incidence of various livestock diseases based on the results of the veterinary diagnostic tests.

We do not charge user fees for veterinary diagnostic services provided in connection with Federal programs to control or eradicate diseases or pests (program diseases). Examples of program diseases are tuberculosis, brucellosis, and pseudorabies. These activities are covered by appropriated funding. Our policy not to charge for these services was specified in the background portion in previously published proposed and final rules concerning user fees for veterinary diagnostic services (58 FR 15292–15301, Docket No. 91–021–4, March 22, 1993, and 58 FR 38954–38961, Docket No. 91–021–5, July 21, 1993). In this document, we are amending the regulations to specify that user fees are not charged for these services.

While not specified in earlier user fee rules, there are other activities which we cover by appropriated funding instead of user fees. We routinely distribute veterinary diagnostic reagents free of charge to laboratories throughout the United States for testing for foreign animal diseases. This allows these laboratories to immediately test animals suspected of being infected with a foreign animal disease. The distribution of these diagnostic reagents is covered by appropriated funding to ensure that we are able to identify foreign animal diseases as quickly as possible. In this document, we are clarifying the regulations by specifying that this service is exempt from user fees.

In addition, we provide veterinary diagnostic services in support of zoonotic disease surveillance. Zoonotic diseases are those that affect both animals and humans and are communicable from animals to humans. Examples of zoonotic diseases are anthrax, brucellosis, leptospirosis, rabies, salmonellosis, tuberculosis, and vesicular stomatitis. Some of these are program diseases and, therefore, user fees are not charged, as stated above. Occasionally, there are zoonotic diseases that pose a significant threat to human health, and a thorough knowledge of the prevalence of the disease in animals will directly benefit control of the disease in humans. In these cases, we believe that the cost of the testing related to the zoonotic disease surveillance should be covered by appropriated funds. At this time, salmonellosis is the only zoonotic disease that falls into this second category, and user fees are not charged for the salmonella testing that will provide direct benefit to control of disease in humans. User fees are charged for other salmonellosis testing. Therefore, we are amending our regulations to state that user fees are not charged for veterinary diagnostic services provided in relation to zoonotic diseases when the Administrator has determined that there is a significant threat to human health.

We are adding a new § 130.49 to the regulations that lists the circumstances under which we do not charge user fees for veterinary diagnostic services. The exemptions will be specified as follows: User fees for veterinary diagnostic services, including, but not limited to, tests and diagnostic reagents specified in §§ 130.14 through 130.18, are not charged under the following conditions:

(1) When veterinary diagnostic services are provided in connection with Federal programs to control or eradicate diseases or pests of animals in the United States (program diseases);

(2) When veterinary diagnostic services are provided in support of zoonotic disease surveillance when the Administrator has determined that there is a significant risk to human health; and

(3) When veterinary diagnostic reagents are distributed within the United States for testing for foreign animal diseases.

Nonendorsed Export Health Certificates

We established a user fee for nonendorsed export health certificates in a final rule published in the **Federal Register** on May 7, 1996 (61 FR 20421–20437, Docket No. 92–174–2). These are certificates that are requested from the Animal and Plant Health Inspection Service (APHIS) and then are reviewed by APHIS, but either withdrawn or returned without being endorsed. The user fee was intended to cover the costs of the APHIS review. We have reviewed this user fee and have determined that we do not need to charge for these services because these services are comparable to those consultation services that we provide via the telephone to customers requesting information about animal or animal product exportation requirements. Most export health certificates that are returned by the APHIS veterinarian for corrective action are later resubmitted and endorsed. The user fee for the endorsement of these export health certificates recovers the costs for the full review including any consultations. Therefore, we are removing § 130.20(d) from the regulations and will not charge a user fee for export health certificates that are reviewed but not endorsed.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to encourage participation in programs to control and eradicate disease and pests of livestock or poultry, eliminate confusion about when user fees are charged, and to eliminate an unnecessary user fee. These changes will benefit users and help ensure that veterinary diagnostic services will continue to be requested for testing in connection with program diseases and zoonotic disease surveillance when there is a significant risk to human health.

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

Executive Order 12866 and Regulatory Flexibility Act

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

This rule provides that we do not charge user fees for (1) veterinary diagnostic services related to program diseases, (2) veterinary diagnostic services related to zoonotic disease surveillance when there is a significant risk to human health, (3) the distribution of diagnostic reagents within the United States used in testing for foreign animal diseases, or (4) services provided to review, but not endorse, export health certificates. Our policy, has been not to charge user fees for these services, and we are now

clarifying that policy in the regulations. Therefore, this rule should have no impact on entities whether they are large or small.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

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 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, 9 CFR part 130 is amended as follows:

PART 130—USER FEES

1. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 7 CFR 2.22, 2.80, and 371.2(d).

§ 130.20 [Amended]

2. Section 130.20 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

3. A new § 130.49 is added to read as follows.

§ 130.49 Exemptions.

(a) *Veterinary diagnostics*. User fees for veterinary diagnostic services, including, but not limited to, tests and diagnostic reagents specified in §§ 130.14 through 130.18, are not charged under the following conditions:

(1) When veterinary diagnostic services are provided in connection with Federal programs to control or eradicate diseases or pests of livestock or poultry in the United States (program diseases);

(2) When veterinary diagnostic services are provided in support of zoonotic disease surveillance when the Administrator has determined that there is a significant threat to human health; and

(3) When veterinary diagnostic reagents are distributed within the United States for testing for foreign animal diseases.

(b) [Reserved].

Done in Washington, DC, this 7th day of November 1997.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–29990 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 310, 381, and 417

[Docket No. 97–056DF]

RIN 0583–AC40

Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems—Sample Collection—Technical Amendments and Corrections: Direct Final Rule

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: FSIS is making technical corrections and amendments to the final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems,'' published on July 25, 1996. In response to worker safety concerns, FSIS will permit samples collected for generic *E. coli* testing of turkeys to be collected by sponging two sites. Samples may still be collected by the whole bird rinse procedure (shaking turkeys in a bag containing a buffer solution). FSIS will also permit chickens and turkeys to be taken from the end of the slaughter line if it is impracticable to take a whole bird from the end of the chilling process. Additionally, FSIS is amending the regulations to add the performance standard for *Salmonella* in fresh pork sausage, which was unavailable at the time the rule was published, and correct a minor editorial oversight.

DATES: This rule will be effective on January 13, 1998, unless adverse or critical comments are received on or before December 15, 1997. If adverse or critical comments within the scope of the rulemaking are received, FSIS will issue timely notice in the **Federal Register**.

ADDRESSES: Send an original and two copies of adverse written comments within the scope of the rulemaking to: FSIS Docket Clerk, DOCKET # 97–056DF, Room 102, Cotton Annex, 300 12th Street, SW, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700. Reference materials cited in this docket will be available for public inspection in the FSIS Docket Room from 8:30 to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Stolfa, Assistant Deputy Administrator, Office of Policy, Program Development and Evaluation, (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1996, FSIS published a final rule ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems,'' (61 FR 38806). The final rule required all slaughter establishments to test for generic *E. coli* at a frequency based on production volume to verify that plants are meeting the established performance criteria. In the preamble to the final rule, FSIS solicited comments and information on a number of technical issues concerning the protocols for generic *E. coli* testing and announced that conferences would be held to discuss these issues.

The first conference was held on September 12 and 13, 1996. Participants discussed issues such as testing frequency, sampling procedures, and revision of the testing protocol to better account for differing establishment characteristics. In light of these comments, FSIS published the May 13, 1997, final rule ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems—Technical Amendments and Corrections'' (62 FR 26211). The final rule made some changes to the *E. coli* testing requirements.

On May 8, 1997, FSIS held a follow-up conference ''Technical Conference: Review of *E. coli* Testing.'' A panel of

industry and academia representatives made presentations about the on-going generic *E. coli* verification testing by establishments and discussed their observations and views. In response to information provided at the conference, FSIS is amending the sample collection procedures for turkeys and allowing flexibility for the collection of poultry to be sampled.

Currently, turkeys randomly selected for sampling must be rinsed in a buffer solution. The rinsing technique involves shaking a whole turkey carcass in a bag containing the buffer solution. Prior to the meeting, FSIS was aware of concerns regarding this process. At the meeting, commenters raised the issue and presented data that supports an alternative means of sample collection.

The primary concern regarding the current sampling technique for turkeys is the physical difficulty of shaking large turkeys (i.e., those that are 15 to 20 pounds). Also, some commenters have stated that the size of the turkeys makes it difficult to prevent sample contamination when the buffer solution is decanted from the sampling bag into the sample bottle for transportation to the laboratory. At the conference, data was presented which indicated that a sponging technique is more practical, and provides accurate and reliable results for microbiological sampling.

FSIS agrees that shaking turkeys in the bag may be difficult for individuals taking the sample and that sample contamination may occur. Because of the lack of data in support of an alternative method, FSIS has not previously adopted another sample collection method for turkeys. However, after reviewing the data presented at the conference, FSIS has determined that a sponge method for the collection of turkey samples is effective. Therefore, FSIS will amend the Pathogen Reduction/HACCP final rule to permit establishments to sample turkeys by sponging the back and thigh or to continue using the whole bird rinse procedure.

Data collected using the sponge technique will be evaluated using statistical process control techniques as required in the May 13, 1997, technical amendments final rule. FSIS has begun to develop m/M criteria for turkey samples collected by the sponge method and will release data from this baseline quarterly so that establishments can use them for statistical process control techniques. FSIS also is in the process of developing m/M criteria for cattle and swine samples collected by the sponge method. The results from FSIS's first quarter of the study is as follows: for cattle m=negative and M=1; for swine m=.1 and M=100.

Commenters also expressed concern about the difficulty in taking whole birds from the end of the chilling process, after the drip line, because the birds on the drip line are often high off the ground and hard to reach. FSIS understands this concern. In the technical amendments final rule, FSIS provided establishments with the option of taking birds from the end of the slaughter line for carcasses that are hot-boned. With this rule, FSIS is amending the regulations to permit birds to be taken at the end of the slaughter line for carcasses, if sampling at the end of the drip line is impracticable.

In the pathogen reduction/HACCP final rule, FSIS stated that it was in the process of developing a *Salmonella* performance standard for fresh pork sausages. That work has been completed and the performance standard will be added to the regulations. The performance standard is 30% (percent positive for *Salmonella*), the number of samples tested (n) equals 53, and the maximum number of positives to achieve the standard (c) equals 18. The methodology used to develop this performance standard was the same as for the other ground products. To further explain how the performance standard was developed, FSIS is making available copies of the paper ''Estimation of *Salmonella* Prevalence in 25-gram Portions of Fresh Ground Pork'' in the FSIS Docket Room.

Lastly, FSIS is making a technical correction to 9 CFR 417.2(e). The section should reference the Poultry Products Inspection Act (PPIA) and the Federal Meat Inspection Act (FMIA). FSIS inadvertently omitted references to sections 21 U.S.C. 456 and 463 of the PPIA and only referenced sections 21 U.S.C. 608 and 621 of the FMIA. Therefore, references to the PPIA authority will be added to this section.

FSIS expects no adverse public reaction resulting from this change in regulatory language. Therefore, unless the Agency receives adverse or critical comments within the scope of this rulemaking, or a notice of intent to submit adverse comments within the scope of this rulemaking within 30 days, the action will become final 60 days after publication in the **Federal Register**. If adverse comments within the scope of the rulemaking are received, the final rulemaking notice will be withdrawn and a proposed rulemaking notice will be published. The proposed rulemaking notice will establish a comment period.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget.

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

The Pathogen Reduction/HACCP final rule included a Final Regulatory Impact Assessment (FRIA) (61 FR 38945). The technical corrections and amendment do not change the cost and benefit estimates and impact assessments presented in the FRIA.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In this final rule: (1) all state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Requirements

The Pathogen Reduction/HACCP final rule included a paperwork analysis (61 FR 38862) prepared in accordance with the Paperwork Reduction Act. FSIS has determined that the technical corrections and amendments in this rule do not change any information collection burden hours.

Final Rules

List of Subjects

9 CFR Part 310

Meat inspection, Microbial testing.

9 CFR Part 381

Poultry and poultry products, Microbial testing.

For reasons set forth in this preamble, 9 CFR chapter III is amended as follows:

PART 310—POST MORTEM INSPECTION

1. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 310.25 is amended by revising Table 2 in paragraph (b)(1) to read as follows:

§ 310.25 Contamination with microorganisms; pathogen reduction performance standards for Salmonella.

* * * * *

(b) * * *

(1) * * *

TABLE 2.—SALMONELLA PERFORMANCE STANDARDS

Class of product	Performance standard (percent positive for Salmonella) [a]	Number of samples tested (n)	Maximum number of positives to achieve standard (c)
Steers/heifers	1.0	82	1
Cows/bulls	2.7	58	2
Ground beef	7.5	53	5
Hogs	8.7	55	6
Fresh pork sausages	30	53	18

[a] Performance Standards are FSIS's calculation of the national prevalence of *Salmonella* on the indicated raw product based on data developed by FSIS in its nationwide microbiological data collection programs and surveys. (Copies of Reports on FSIS's Nationwide Microbiological Data Collection Programs and Nationwide Microbiological Surveys used in determining the prevalence of *Salmonella* on raw products are available in the FSIS Docket Room.)

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470, 7 CFR 2.18, 2.53.

Subpart K—Post Mortem Inspection; Disposition of Carcasses and Parts

4. Section 381.94 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 381.94 Contamination with microorganisms; process control verification criteria and testing; pathogen reduction standards.

(a) * * *

(2) Sampling requirements.

(ii) *Sample collection.* A whole bird must be taken from the end of the chilling process. If this is impracticable, the whole bird can be taken from the end of the slaughter line. Samples must be collected by rinsing the whole carcass in an amount of buffer appropriate for that type of bird. Samples from turkeys also may be collected by sponging the carcass on the back and thigh.[1]

* * * * *

PART 417—HAZARD ANALYSIS AND CRITICAL CONTROL POINT (HACCP) SYSTEMS

3. The authority citation for part 417 continues to reads as follows:

Authority: 7 U.S.C. 450; 21 U.S.C. 451–470, 601–695; 7 U.S.C. 1901–1906; 7 CFR 2.18, 2.53.

[1] A copy of FSIS's ''Guidelines for *Escherichia coli* Testing for Process Control Verification in Poultry Slaughter Establishments'' and ''FSIS Turkey Microbiological Procedures for Sponge Sample Collection and Methods of Analysis'' are available for inspection in the FSIS Docket Room.

§ 417.2 Hazard Analysis and HACCP Plan.

4. Section 417.2 is amended by revising paragraph (e) to read as follows:

* * * * *

(e) Pursuant to 21 U.S.C. 456, 463, 608, and 621, the failure of an establishment to develop and implement a HACCP plan that complies with this section, or to operate in accordance with the requirements of this part, may render the products produced under those conditions adulterated.

Done at Washington, DC, on November 4, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–29929 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 331 and 381

[Docket No. 97–050F]

Designation of the State of Florida Under the Federal Meat Inspection Act and the Poultry Products Inspection Act

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: Representatives of the State of Florida have advised the Agency that, because of a lack of funding, the State of Florida will no longer continue administering its State meat and poultry inspection programs after November 30, 1997. The Food Safety and Inspection Service (FSIS) is mandated by law to assume the responsibility, previously held by the State of Florida, for administering the meat and poultry inspection programs with respect to operations and transactions within the State of Florida. Therefore, in accordance with the law, the Secretary of Agriculture is designating the State of Florida to receive Federal inspection with respect to operations and transactions within the State, and FSIS is amending the Federal meat and poultry inspection regulations by adding Florida to the list of ''designated'' States.

DATES: This final rule will be effective on December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. William Leese, Director, Federal-State Relations Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700 at (202) 720–6313.

SUPPLEMENTARY INFORMATION:

Background

Under section 301 of the Federal Meat Inspection Act (FMIA) and section 5 of the Poultry Products Inspection Act (PPIA), a State may administer State meat and poultry inspection programs provided the State has developed and is effectively enforcing State meat and poultry inspection requirements at least equal to those imposed under titles I and IV of the FMIA and section 1–4, 6–10, and 12–22 of the PPIA (collectively referred to below as the titles). These titles contemplate continuous ongoing programs. When States can no longer effectively enforce meat and poultry inspection requirements at least equal to Federal requirements, then they must be ''designated'' by the Secretary to receive Federal inspection.

In accordance with the FMIA and PPIA, the Secretary had determined that the State of Florida had developed and was enforcing State meat and poultry inspection requirements for establishments at least equal to Federal meat and poultry inspection

requirements under the titles. However, on July 23, 1997, representatives of the State of Florida notified FSIS that, because of a lack of funding, Florida will no longer continue to administer its State meat and poultry inspection programs after November 30, 1997. The representatives have requested that the Department assume responsibility for the meat and poultry inspection programs.

In view of the termination date, it is determined that the State of Florida would not effectively enforce requirements at least equal to those imposed under the titles. Therefore, the Secretary of Agriculture must designate the State of Florida under section 301(c)(3) of the FMIA and section 5(c)(3) of the PPIA. Therefore, on and after December 2, 1997, the provisions of the titles will apply to operations and transactions within the State of Florida, unless exempt under sections 23 or 301(c)(2) of the FMIA or sections 5(c)(2) or 15 of the PPIA.

Owners or operators of Florida's meat and poultry establishments wishing to continue operations after November 30, 1997, must contact the FSIS District Office in order to receive Federal inspection. This office will provide information concerning requirements and exemptions under the FMIA and the PPIA, applications for inspection, and requests for surveys of establishments. Address correspondence to USDA/FSIS District Office, 100 Alabama Street, SW, Suite 3R90, Atlanta, GA 30303.

The Administrator, FSIS, has determined that there is good cause for issuing this final rule without prior notice and opportunity for public comment. Because the State of Florida has advised FSIS that its State-operated meat and poultry inspection programs will be discontinued, the Agency is mandated by law to assume the responsibilities for administering the meat and poultry inspection programs. It is necessary, therefore, to designate the State of Florida immediately, in accordance with section 301(c)(3) of the FMIA and section 5(c)(3) of the PPIA, in order to carry out the Secretary's responsibilities under the FMIA and PPIA.

In addition, it does not appear that additional relevant information would be made available to the Secretary by public participation in this rulemaking proceeding. Accordingly, under the administrative procedures in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures are impracticable and contrary to the public interest.

Executive Order 12866 and Regulatory Flexibility Act

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

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The U.S. Department of Agriculture, pursuant to law, is assuming the responsibility, previously held by the State of Florida, of administering the meat and poultry inspection programs with respect to operations and transactions within the State of Florida. This action will affect approximately 122 State, 26 custom exempt, and 0 Talmadge Aiken meat and poultry establishments in Florida, and most, if not all, of which may be presumed to be small businesses. However, this is not a substantial number of establishments given the approximately 6,800 small meat and small poultry establishments nationwide, which are either federally or State inspected. In addition, the application of certain Federal facility and other requirements will be flexible, and each facility will be reviewed with regard to the circumstances peculiar to that establishment. Further, it is not anticipated that significant costs will be incurred by these Florida establishments as a result of this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts 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. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or the PPIA.

Paperwork Requirements

This rule has been reviewed under the Paperwork Reduction Act and imposes no new paperwork or recordkeeping requirements.

List of Subjects

9 CFR Part 331

Meat inspection.

9 CFR Part 381

Poultry and poultry products.

Accordingly, 9 CFR parts 331 and 381 are amended as follows:

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

1. The authority citation for part 331 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 331.2 [Amended]

2. The table in section 331.2 is amended in the ''State'' column by adding ''Florida'' immediately below ''Connecticut'' and in the ''Effective date of application of Federal provisions'' column, by adding ''Dec. 2, 1997'' on the line with ''Florida.''

PART 381—POULTRY PRODUCTS INSPECTION

3. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.221 [Amended]

4. The table in section 381.221 is amended in the ''States'' column by adding ''Florida'' immediately below ''Connecticut'' and in the ''Effective date of application of Federal provisions'' column, by adding ''Dec. 2, 1997,'' on the line with ''Florida.''

Done at Washington, DC, on: November 4, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–29928 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–35; Amendment 39–10134; AD 97–19–13]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 97–19–13 applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines that was published in the **Federal Register** on September 19, 1997 (62 FR 49135). The paragraph references to the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. 5944, Revision 3, dated December 16, 1994, in paragraph (a)(3) of the compliance section are incorrect. This document corrects the paragraph references. In all other respects, the original document remains the same.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines, was published in the **Federal Register** on September 19, 1997 (62 FR 49135). The following correction is needed:

§ 39.13 [Corrected]

On page 49136, in the third column, in the Compliance Section, in paragraph (a)(3), in the sixth line, ''2.A.(2) (c) and (d) or (f) and (g)'' is corrected to read ''2.A.(2) (a) and (b) or (d) and (e)''.

Issued in Burlington, MA, on November 6, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–29968 Filed 11–13–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Carbarsone and Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved carbarsone and bacitracin zinc Type A medicated articles to make Type C medicated turkey feeds used for prevention of blackhead, increased rate of weight gain, and improved feed efficiency.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA 200–203 that provides for combining approved carbarsone and bacitracin zinc Type A medicated articles to make Type C medicated feeds for turkeys containing carbarsone 227 to 340.5 grams per ton (g/t) and bacitracin zinc 4 to 45 g/t. The Type C medicated feed is used as an aid in the prevention of blackhead, for increased rate of weight gain, and improved feed efficiency.

Alpharma Inc.'s, ANADA 200–203 is approved as a generic copy of Hoffmann-LaRoche's NADA 136–484. The ANADA is approved as of November 14, 1997, and the regulations are amended in § 558.120 (21 CFR 558.120) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, § 558.120 is revised by redesignating paragraph (c) as (d), by reserving paragraph (c), and newly redesignated paragraph (d)(1)(iii)(*b*) is amended to reflect the approval.

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.120 [Amended]

2. Section 558.120 *Carbarsone (not U.S.P.)* is amended by redesignating paragraph (c) as paragraph (d), by reserving paragraph (c), and in newly redesignated paragraph (d)(1)(iii)(*b*) by removing ''No. 000004'' and adding in its place ''Nos. 000004 and 046573''.

Dated: October 22, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30033 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–01–F

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure for E–Z Trials

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule; correcting amendment.

SUMMARY: This document restores the selection provision for commencing E–Z Trial, 29 CFR 2200.203(a), which was inadvertently removed.

DATES: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, (202) 606–5410, Occupational Safety and Health Review Commission, 1120 20th Street NW., 9th Floor, Washington, DC 20036–3419.

SUPPLEMENTARY INFORMATION: On October 30, 1997, (62 FR 58650), paragraph (a) of § 2200.203 was inadvertently removed. In order for the Rules of Procedures for E–Z trial to operate effectively, paragraph (a) must be restored.

List of Subjects in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends Title 29, Chapter XX, Part 2200, Subpart M of the Code of Federal Regulations as follows:

PART 2200—RULES OF PROCEDURE

1. The authority citation continues to read as follows:

Authority: 29 U.S.C. 661(g).

2. Section 2200.203 is amended by adding paragraph (a), to read as follow:

§ 2200.203 Commencing E–Z Trial.

(a) *Selection.* Upon receipt of a Notice of Contest, the Chief Administrative Law Judge may, at his or her discretion, assign an appropriate case for E–Z Trial.

* * * * *

Dated: November 7, 1997.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 97–29956 Filed 11–13–97; 8:45 am]

BILLING CODE 7600–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in December 1997.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during December 1997.

For annuity benefits, the interest assumptions will be 5.60 percent for the first 25 years following the valuation date and 5.00 percent thereafter. The annuity interest assumptions represent a decrease (from those in effect for November 1997) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for November 1997.

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

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during December 1997, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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

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

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

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

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

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

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

2. In appendix B, a new entry is added to Table I, and Rate Set 50 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

Table I.—Annuity Valuations

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*	*	
December 1997	.0560	1–25	.0500	>25	N/A	N/A

Table II.—Lump Sum Valuations

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall

apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* *	*	*		*		*		*
50	12–1–97	01–1–98	4.50	4.00	4.00	4.00	7	8

Issued in Washington, D.C., on this 10th day of November 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–30043 Filed 11–13–97; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 285

[DoD 5400.7]

DoD Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This revision conforms 32 CFR part 285, DoD Freedom of Information Act (FOIA) program, to the requirements of the Electronic Freedom of Information Act Amendments of 1996, as amended by Pub. L. 104–231.

EFFECTIVE DATE: September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, 703–697–1171.

SUPPLEMENTARY INFORMATION: On May 12, 1997 (62 FR 25875), the Department of Defense published a proposed rule for comment. No comments were received.

Executive Order 12866, Regulatory Planning and Review

It has been determined that this final rule (32 CFR part 285) is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section 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 loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, Regulatory Flexibility Act (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the Freedom of Information Act (5 U.S.C. 552), a statue concerning the release of Federal Government records, and does not economically impact Federal Government relations with the private sector.

Public Law 96–511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 285

Freedom of information.

Accordingly, 32 CFR part 285 is revised to read as follows:

PART 285—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Sec.
285.1 Purpose.
285.2 Applicability and scope.
285.3 Policy.
285.4 Responsibilities.
285.5 Information requirements.

Authority: 5 U.S.C. 552.

§ 285.1 Purpose.

This part:

(a) Updates policies and responsibilities for the implementation of the DoD FOIA Program under 5 U.S.C. 552.

(b) Continues to delegate authorities and responsibilities for the effective administration of the FOIA program.

§ 285.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD Components'').

(b) National Security Agency/Central Security Service records are subject to this part unless the records are exempt under section 6 of Pub. L. 86–36 (1959), codified at 50 U.S.C. 402 note. The records of the Defense Intelligence Agency, National Reconnaissance Office, and the National Imagery and Mapping Agency are also subject to this part unless the records are exempt under 10 U.S.C. 424.

§ 285.3 Policy.

It is DoD policy to:

(a) Promote public trust by making the maximum amount of information available to the public, in both hard copy and electronic formats, on the operation and activities of the Department of Defense, consistent with DoD responsibility to ensure national security.

(b) Allow a requester to obtain agency records from the Department of Defense that are available through other public information services without invoking the FOIA.

(c) Make available, under the procedures established by 32 CFR part 286, those agency records that are requested by a member of the general public who explicitly or implicitly cites the FOIA.

(d) Answer promptly all other requests for information, agency records, objects, and articles under established procedures and practices.

(e) Release agency records to the public unless those records are exempt from mandatory disclosure as outlined in 5 U.S.C. 552. Make discretionary disclosures of exempt records or information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption.

(f) Process requests by individuals for access to records about themselves contained in a Privacy Act system of records under procedures set forth in

DoD 5400.11–R,[1] and procedures outlined in this part amplified by 32 CFR part 286.

§ 285.4 Responsibilities.

(a) The Assistant Secretary of Defense for Public Affairs shall:

(1) Direct and administer the DoD FOIA Program to ensure compliance with policies and procedures that govern the administration of the program.

(2) Issue a DoD FOIA regulation and other discretionary instructions and guidance to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

(3) Internally administer the FOIA Program for OSD, the Chairman of the Joint Chiefs of Staff and, as an exception to DoD Directive 5100.3,[2] the Combatant Commands.

(4) As the designee of the Secretary of Defense, serve as the sole appellate authority for appeals to decisions of respective Initial Denial Authorities within OSD, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, and the DoD Field Activities.

(b) The General Counsel of the Department of Defense shall provide uniformity in the legal interpretation of this part.

(c) The Heads of the DoD Components shall:

(1) Publish in the **Federal Register** any instructions necessary for the internal administration of this part within a DoD Component that are not prescribed by this Directive or by other issuances of the Assistant Secretary of Defense (Public Affairs). For the guidance of the public, the information specified in 5 U.S.C. 552(a)(1) shall be published in accordance with DoD Directive 5400.9.[3]

(2) Conduct training on the provisions of this part, 5 U.S.C. 552, and 32 CFR part 286 for officials and employees who implement the FOIA.

(3) Submit the report prescribed in subpart G of 32 CFR part 286.

(4) Make available for public inspection and copying in an appropriate facility or facilities, in accordance with rules published in the **Federal Register,** the records specified in 10 U.S.C. 552(a)(2), unless such records are published and copies are offered for sale. These records shall be made available to the public in hard copy, by computer telecommunications, or other electronic means.

(5) Maintain and make available for public inspection and copying current indices of all (a)(2) records as required by 10 U.S.C. 552(a)(2).

§ 285.5 Information requirements.

The reporting requirements in subpart G of 32 CFR part 286 have been assigned Report Control Symbol DD–PA(A) 1365.

Dated: November 5, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29659 Filed 11–13–97; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1.

[3] See footnote 1.

POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Certain Nonprofit Standard Mail Rate Matter

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This notice adopts a proposed rule which was published in the **Federal Register** on September 8, 1997 (62 FR 47178–47179). It amends the regulations of the Postal Service governing the eligibility requirements for mail to be sent at the Nonprofit Standard Mail rates of postage. For the most part, this final rule adopts the proposal as it was published with changes suggested in comments received from interested parties.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, 202–268–5188.

SUPPLEMENTARY INFORMATION: The proposed rule discussed in detail the common practice of nonprofit organizations to offer premium items, such as tote bags, umbrellas, t-shirts, and coffee mugs when seeking contributions or membership dues payments from new members. As explained in the proposed rule, by statute, material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of any product or service, other than separately restricted travel, insurance, and financial instruments such as credit cards, is ineligible for the nonprofit rates of postage unless the sale of the product or the provision of such service is substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at the Nonprofit Standard Mail rates or other prescribed exceptions are met. 39 U.S.C. 3626(j)(1)(D).

The Postal Service promulgated standards implementing the statute effective October 1, 1995. Since that time, the Postal Service has consistently held that ''backend premiums'' such as those described above are to be considered advertising for the product offered as a premium. In addition, the Postal Service has generally concluded that ''utilitarian'' items such as coffee mugs, t-shirts, tote bags, umbrellas, and similar items are not normally related to an organization's qualifying purposes, thus disqualifying such advertisements from being mailed at the Nonprofit Standard Mail rates.

The proposed rule offered standards by which, if met, the Postal Service would not consider the announcement of the backend premium as an ''advertisement.'' Specifically, the Postal Service proposed two tests. First, the requested contribution must be at least five (5) times the cost of the premium to exempt the announcement from being considered as an advertisement for the premium. The cost of the premium is its actual cost to the nonprofit organization. Second, the requested contribution must be at least three (3) times the represented value in the mailpiece, if any, of the premium. *Each* test must be met or the offer will be considered an advertisement.

The Postal Service received a total of 12 comments on the proposed rule. In one fashion or another, all of the commenters expressed their support for a test or threshold by which announcements of backend premiums would not be considered as advertisements, thereby eliminating the need for consideration of the substantially related test. Accordingly, after full consideration of the comments received, the Postal Service believes it is appropriate to adopt, with revision of the ratios, the proposed changes in eligibility requirements at this time.

Evaluation of Comments Received

Written comments were received from 12 organizations and associations representing nonprofit organizations. Of primary concern to 11 of the 12 commenters is the Postal Service's proposed test of requiring a contribution or dues payment to be at least five times the cost and three times the represented value of the premium to activate the exception from material being considered as an advertisement. Four commenters supported the proposal in its entirety including the five times cost and three times represented value criteria. On the other hand, two commenters requested a test of three times the cost and eliminating the represented value test. Other

suggestions included a test of three times cost and 1½ times represented value; three times cost and two times represented value; four times cost and two times represented value; and a single test that would be based on the lower of cost or market value of the premium.

The most common reason for requesting lower numbers be used, particularly with respect to the test related to the ''represented value'' of the premium, is a disclosure requirement of the Internal Revenue Service which requires that the ''fair market value'' of a premium be disclosed. (The donor may not take a charitable deduction for that part of his or her payment). Along those same lines, one commenter was concerned about using a cost figure when merchandise which is ''obsolete'' and without current market value is offered as a premium. Others simply cited lower numbers as a more reasonable way to fairly assess whether the offer of a premium should be considered advertising.

We have considered the comments, and determined to adopt both of the proposed tests, albeit with modifications in the original ratios. Up to this time, the Postal Service viewed these solicitations as two distinct transactions (i.e., part donation and part sale). Even though the amount of the donation generally exceeded the amount of the sale, the premium offer was considered to be an advertisement for that item. The rulemaking looks to the premise, supported by a recent ruling of another agency, that the solicitation is a single transaction (rather than part solicitation and part sale); it then looks to whether the solicitation or sale is the predominant part of the transaction. That is, it looks to whether the amount of the sale is greater than the amount of the donation.

One means to make this judgment would be to compare the fair market value of the premium(s) with the ''donation'' (i.e., the difference between the amount solicited and the fair market value). However, the fair market value of the premium may not always be clear or readily ascertained. Accordingly, the Postal Service proposal looked to the represented value, if any, of the premium(s), since this would be the perceived value of the premium(s), as well as the cost to the nonprofit, since there is generally a relationship (i.e., markup) between cost and market value.

We continue to believe that both of these standards are appropriate, but will adjust the ratios. With respect to represented value, the solicitation will not be considered to be an advertisement if the requested donation is *more* than two times the represented value of the premium(s). (For example, if the request is for $100.00, the represented value of the premium(s) could be no more than $49.99). With respect to cost to the nonprofit, the solicitation will not be considered an advertisement if the requested donation is *more* than four times the represented value of the premium(s). (For example, if the request is for $100.00, the cost of the premium(s) may be no more than $24.99). In adopting this test, we considered that a usual ''markup'' over costs is two to one, which was suggested in some comments (although other comments suggest the ratio may be higher).

The comment concerning application of the test to ''obsolete'' merchandise raises an interesting concern. Even if we would be inclined to consider this concern, it is not clear to us how a standard could easily be administered (e.g., how can we determine what is ''obsolete?''). While we do not believe it appropriate to delay this rulemaking to give further consideration to this concern, we will consider further proposals regarding it.

Two commenters were concerned that the proposed rule does not make clear that only premium offers which are not substantially related to a nonprofit organization's qualifying purposes must meet the test incorporated in the final rule to be eligible for mailing at Nonprofit Standard Mail rates. We believe that adoption of these suggestions is not needed, and would unnecessarily complicate the regulations. The rule is intended to define the solicitations which will not be considered advertising. If solicitations are advertising, they may still be eligible for nonprofit rates if the premiums are substantially related to the organization's purposes or contained in material meeting the content requirements of a periodical.

One commenter also suggested that future adjustments be made possible, such as adjustments for inflation. We will remain open to future suggestions to change the standards adopted here.

Another commenter requested that the Postal Service include a provision for ''one written warning'' if a premium offer for a product or service is determined to be ineligible for mailing at the nonprofit rates; and, to create a statute of limitations to limit a nonprofit organization's liability for making improper mailings. This same commenter requested ''retroactive'' application of the policy adopted in the final rule, although no justification for this request was offered in the comment provided. These requests are beyond the scope of this rulemaking. Nevertheless, the Postal Service has an ongoing dialogue with the nonprofit community and concerns such as those expressed here have been considered.

Finally, one commenter offered views concerning the application of the ''substantially related'' standard. These comments were beyond the scope of the rulemaking.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. In the Domestic Mail Manual, redesignate 5.9, 5.10, 5.11, and 5.12 as 5.10, 5.11, 5.12, and 5.13, respectively; add new 5.9 to read as follows:

5.0 ELIGIBLE AND INELIGIBLE MATTER

* * * * *

5.9 Contribution and Membership Premiums

Announcements for premiums received as a result of a contribution or payment of membership dues are not considered advertisements if the requested contribution or membership dues is more than 4 times the cost of the premium item(s) offered and more than 2 times the represented value in the mailpiece, if any, of the premium item(s) offered.

* * * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–30008 Filed 11–13–97; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–5029a; FRL–5921–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of VOC RACT Determinations for Individual Sources; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; corrections.

SUMMARY: This document corrects the preamble to a direct final rule published in the **Federal Register** of October 14, 1997 regarding the approval of Reasonably Available Control Technology (RACT) for six major sources of volatile organic compounds (VOC) located in Virginia. The document contains an incorrect annual emission rate and a typographical error.

DATES: Effective November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Kimberly Peck, (215) 566–2165.

SUPPLEMENTARY INFORMATION: In direct final rule FRL–5904–3, beginning on page 53243 in the **Federal Register** issue of October 14, 1997, make the following corrections, in the Preamble section. On page 53243 in the middle column, change the second full paragraph to the following:

''The uncontrolled stack VOC emissions from the Bermuda Hundred Facility are estimated to be 93.4 tons per year.''

On page 53243 in the middle column, change the third full paragraph to the following:

''RACT as prescribed in the Consent Agreement, Registration Number 50722, dated March 26, 1997 is determined to be no controls as Virginia determined that add-on controls were not economically feasible or cost-effective.''

Dated: November 3, 1997.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 97–30020 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–184; MM Docket No. 92–260; FCC 97–376]

Inside Wiring

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Report and Order and Second Further Notice of Proposed Rulemaking* which addresses rules and policies concerning cable inside wiring. The *Second Further Notice of Proposed Rulemaking* segment of this decision may be found elsewhere in this issue of the **Federal Register**. *The Report and Order* (''*Order*'') segment amends the Commission's regulations relating to the disposition of cable home wiring and establishes regulations for the disposition of home run wiring and related issues including the sharing of molding, the demarcation point for multiple dwelling unit buildings (''MDUs''), loop-through cable wiring configurations, customer access to cable home wiring before termination of service, and signal leakage. This action was necessary because competition is currently being deterred by disputes over control and use of the wires necessary to reach each unit in an MDU. The intended effect of this action is to expand opportunities for new entrants seeking to compete in distributing video programming and to broaden consumers' ability to install and maintain their own wiring.

DATES: Amendments in §§ 76.613, 76.802 and 76.804 contain information collection requirements, and will not become effective until approved by the Office of Management and Budget (''OMB''). Amendments in §§ 76.5, 76.620, 76.800, 76.805 and 76.806 become effective December 15, 1997. However, compliance with amendments in §§ 76.5, 76.620, 76.800, 76.805 and 76.806 will not be required until OMB approval of the information collection requirements in §§ 76.613, 76.802 and 76.804. When approval is received, the Commission will publish a document announcing the effective date of the amendments in §§ 76.613, 76.802 and 76.804, and the date of compliance for the amendments in §§ 76.5, 76.620, 76.800, 76.805 and 76.806.

Written comments by the public on the modified information collections are due on or before January 13, 1998.

ADDRESSES: 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, NW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained herein, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

Paperwork Reduction Act

The *Order* contains modified information collection requirements. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. 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.

OMB Approval Number: 3060–0692.

Title: Cable Inside Wiring Provisions.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals; Businesses or other for-profit entities.

Number of Respondents: 30,500 (20,500 MVPDs and 10,000 MDU owners).

Estimated Time Per Response: 5 minutes to 30 minutes.

Total Annual Burden to Respondents: 46,114 hours, calculated as follows: This collection (3060–0692) accounts for all information collection requirements that may come into play during the disposition of cable home wiring in single dwelling units, as well as the disposition of home run wiring and cable home wiring in multiple dwelling units. All multichannel video programming distributors (''MVPDs''), both cable and non-cable alike, will be subject to the disposition rules in MDUs. Pursuant to the Paperwork Reduction Act, when modifying only portions of an information collection, agencies are still obligated to put forth the entire collection for public comment.

This information collection also now accounts for information collection stated in 47 CFR 76.613, where MVPDs causing harmful signal interference may be required by the Commission's District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures. Through the course of this rulemaking proceeding, the Commission

has identified this information collection requirement as not having previously been reported to OMB for approval. We estimate that no more than 10 interference reports will be submitted annually to the Commission's District Director and/or Resident Agent, each having an average burden of 2 hours to prepare. (10 reports × 2 hours = 20 hours).

47 CFR 76.620 applies the Commission's signal leakage rules to all non-cable MVPDs. Our rules require that each cable system perform an independent signal leakage test annually, therefore, non-cable MVPDs will now be subject to the same requirement. We recognize, however, that immediate compliance with these requirements may present hardships to existing non-cable MVPDs not previously subject to such rules. We will allow a five-year transition period from the effective date of these rules to afford non-cable MVPDs time to comply with our signal leakage rules other than § 76.613. The transition period will apply only to systems of those non-cable MVPDs that have been substantially built as of January 1, 1998. Considering non-cable MVPD systems that will be built after January 1, 1998, we estimate that 500 new entities will be subject to signal leakage filing requirements, with an estimated burden of 20 hours per entity. (500 systems × 20 hours = 10,000 hours). 47 CFR 76.802, Disposition of Cable Home Wiring, gives individual video service subscribers in single unit dwellings and MDUs the opportunity to purchase their cable home wiring at replacement cost upon voluntary termination of service. In calculating hour burdens for notifying individual subscribers of their purchase rights, we make the following assumptions: There are approximately 20,000 MVPDs serving approximately 72 million subscribers in the United States. The average rate of churn (subscriber termination) for all MVPDs is estimated to be 1% per month, or 12% per year. MVPDs own the home wiring in 50% of the occurrences of voluntary subscriber termination and subscribers or property owners already have gained ownership of the wiring in the other 50% of occurrences (*e.g.,* where the MVPD has charged the subscriber for the wiring upon installation, has treated the wiring as belonging to the subscriber for tax purposes, or where state and/or local law treats cable home wiring as a fixture). Where MVPDs own the wiring, we estimate that they intend to actually remove the wiring 5% of the time, thus initiating the disclosure requirement. We believe in most cases that MVPDs will choose to abandon the home wiring because the cost and effort required to remove the wiring generally outweigh its value. The burden to disclose the information at the time of termination will vary depending on the manner of disclosure, *e.g.,* by telephone, customer visit or registered mail. Virtually all voluntary service terminations are done by telephone. The estimated average time consumed in the process of the MVPD's disclosure and subscriber's election is 5 minutes (.083 hours). Estimated annual number of occurrences is 72,000,000 × 12% × 50% × 5% = 216,000. (216,000 × .083 hours = 17,928 hours).

In addition, 47 CFR 76.802 states that if a subscriber in an MDU declines to purchase the wiring, the MDU owner or alternative provider (where permitted by the MDU owner) may purchase the home wiring where reasonable advance notice has been provided to the incumbent. According to the Statistical Abstracts of the United States, 1995 at 733 Table No. 1224, over 28 million people resided in MDUs with three or more units in 1993. We therefore estimate that there are currently 30 million MDU residents and that MDUs house an average of 50 residents, and so we estimate that there are approximately 600,000 MDUs in the United States. We estimate that 2,000 MDU owners will provide advance notice to the incumbent that the MDU owner or alternative provider (where permitted by the MDU owner) will purchase the home wiring where a terminating individual subscriber declines. The estimated average time for MDU owners to provide such notice is estimated to be 15 minutes (.25 hours). The estimated average time consumed in the process of the MVPD's subsequent disclosure and the MDU owner or alternative provider's election is 5 minutes (.083 hours). Estimated annual time consumed is 2,000 notifications × .333 hours = 666 hours. 47 CFR 76.802 also states that, to inform subscribers of per-foot replacement costs, MVPDs may develop replacement cost schedules based on readily available information; if the MVPD chooses to develop such schedules, it must place them in a public file available for public inspection during regular business hours. We estimate that 50% of MVPDs will develop such cost schedules to place in their public files. Virtually all individual subscribers terminate service via telephone, and few subscribers are anticipated to review cost schedules on public file. The annual recordkeeping burden for these cost schedules is estimated to be 0.5 hours per MVPD. (20,000 MVPDs × 50% × 0.5 hours = 5,000 hours).

47 CFR 76.804 Disposition of Home Run Wiring. We estimate the burden for notification and election requirements for building-by-building and unit-by-unit disposition of home run wiring as described below. Note that these requirements apply only when an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the entity that owns or controls the common areas of the MDU or have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes. We use the term ''MDU owner'' to include whatever entity owns or controls the common areas of an apartment building, condominium or cooperative. For building-by-building disposition of home run wiring, the MDU owner gives the incumbent service provider a minimum of 90 days' written notice that its access to the entire building will be terminated. The incumbent then has 30 days to elect what it will do with the home run wiring. Where parties negotiate a price for the wiring and are unable to agree on a price, the incumbent service provider must elect among abandonment, removal of the wiring, or arbitration for a price determination. Also, regarding cable home wiring, when the MDU owner notifies the incumbent service provider that its access to the building will be terminated, the incumbent provider must, within 30 days of the initial notice and in accordance with our home wiring rules, (1) offer to sell to the MDU owner any home wiring within the individual dwelling units which the incumbent provider owns and intends to remove, and (2) provide the MDU owner with the total per-foot replacement cost of such home wiring. The MDU owner must then notify the incumbent provider as to whether the MDU owner or an alternative provider intends to purchase the home wiring not later than 30 days before the incumbent's access to the building will be terminated.

For unit-by-unit disposition of home run wiring, an MDU owner must provide at least 60 days' written notice to the incumbent MVPD that it intends to permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit. The incumbent service provider then has 30 days to provide the MDU owner with a written election as to whether, for all of the incumbent's home run wires

dedicated to individual subscribers who may later choose the alternative provider's service, it will remove the wiring, abandon the wiring, or sell the wiring to the MDU owner. In other words, the incumbent service provider will be required to make a single election for how it will handle the disposition of individual home run wires whenever a subscriber wishes to switch service providers; that election will then be implemented each time an individual subscriber switches service providers. Where parties negotiate a price for the wiring and are unable to agree on a price, the incumbent service provider must elect among abandonment, removal of the wiring, or arbitration for a price determination. The MDU owner also must provide reasonable advance notice to the incumbent provider that it will purchase, or that it will allow an alternative provider to purchase, the cable home wiring when a terminating individual subscriber declines. If the alternative provider is permitted to purchase the wiring, it will be required to make a similar election during the initial 30-day notice period for each subscriber who switches back from the alternative provider to the incumbent MVPD.

According to the Statistical Abstracts of the United States, 1995 at 733 Table No. 1224, over 28 million people resided in MDUs with three or more units in 1993. We therefore estimate that there are currently 30 million MDU residents and that MDUs house an average of 50 residents, and so we estimate that there are approximately 600,000 MDUs in the United States. In many instances, incumbent service providers may no longer own the home run wiring or may continue to have a legally enforceable right to remain on the premises. Also, MDU owners may forego the notice and election processes for various other reasons, e.g., they have no interest in purchasing the home run or cable home wiring. We estimate that there will be approximately 12,500 notices and 12,500 elections made on an annual basis. The number of notices accounts for the occasions when the MDU owner simultaneously notifies the incumbent provider that: (1) It is invoking the home run wiring disposition procedures, and (2) whether the MDU owner or alternative provider intends to purchase the cable home wiring. It also accounts for those occasions when the MDU owner makes a separate notification regarding the purchase of cable home wiring. The number of elections accounts for instances when the incumbent elects to sell the wiring but the parties are unable to agree on a price, therefore necessitating a second election. We assume all notifications and elections (except when an individual subscriber is terminating service) will be in writing and take an average burden of 30 minutes (0.5 hours) to prepare. (25,000 notifications and elections × 0.5 hours = 12,500 hours).

Total Annual Cost to Respondents: $37,510, estimated as follows: Under the annual operation and maintenance costs category, we estimate that stationery and postage costs for interference reports submitted to the Commission pursuant to § 76.613 to be $1 per report. (10 reports × $1 = $10). We estimate stationery and postage costs for signal leakage filings to be $1 per filing. (500 filings × $1 = $500). We estimate that 50% of the 20,000 MVPDs will annually develop cost schedules. We estimate recordkeeping expenses for these schedules to be $1 per MVPD. (20,000 × 50% × $1 = $10,000). We estimate stationery and postage costs for the various disposition notifications and elections to be $1 per occurrence. (27,000 notifications and elections × $1 = $27,000). There are no estimated capital and start-up costs.

Needs and Uses: The various notification and election requirements in this collection (3060–0692) are set forth in order to promote competition and consumer choice by minimizing any potential disruption in service to a subscriber switching video providers.

SUPPLEMENTARY INFORMATION: The following is a synopsis of the Commission's *Report and Order* in CS Docket No. 95–184 and MM Docket No. 92–260, FCC No. 97–376, adopted October 9, 1997 and released October 17, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800 (phone), (202) 857–3805 (fax), 1231 20th Street, NW, Washington, DC 20036.

Synopsis

I. Introduction

The *Order* addresses the issues raised in the *Notice of Proposed Rulemaking* in CS Docket No. 95–184, 61 FR 3657 (February 1, 1996) (''*Inside Wiring Notice*''), the *Order On Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket No. 92–260, 61 FR 6131 (February 16, 1996) and 61 FR 6210 (February 16, 1996) (''*Cable Home Wiring Further Notice*''), and the *Further Notice of Proposed Rulemaking* in CS Docket No. 95–184 and MM Docket No. 92–260, 62 FR 46453 (September 3, 1997) (''*Inside Wiring Further Notice*'') regarding potential changes in our telephone and cable inside wiring rules in light of the evolving telecommunications marketplace.

II. Disposition of Home Run Wiring

1. We believe that one of the primary competitive problems in MDUs is the difficulty for some service providers to obtain access to the property for the purpose of running additional home run wires to subscribers' units. Home run wiring is defined as the wiring from the point at which it becomes dedicated to an individual unit in an MDU to the cable demarcation point. The record indicates that MDU property owners often object to the installation of multiple home run wires in the hallways of their properties, for reasons including aesthetics, space limitations, the avoidance of disruption and inconvenience, and the potential for property damage. Incumbents often refuse to sell the home run wiring to the new provider or to cooperate in any transition. The result, regardless of the cable operators' motives, is to chill the competitive environment.

2. In the *Order*, we establish procedures for building-by-building disposition of the home run wiring (where the MDU owner decides to convert the entire building to a new video service provider) and for unit-by-unit disposition of the home run wiring (where an MDU owner is willing to permit two or more video service providers to compete for subscribers on a unit-by-unit basis) where the MDU owner wants the alternative provider to be able to use the existing home run wiring. We believe that our procedural mechanisms will not create or destroy any property rights, but will promote competition and consumer choice by bringing order and certainty to the disposition of the MDU home run wiring upon termination of service. We clarify that riser cable is not covered by the following procedures.

A. Building-by-Building Procedures

3. We adopt the following procedures for building-by-building disposition of home run wiring. Where the incumbent service provider owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises, and the MDU owner wants to be able to use the existing home run wiring for service

from another provider, the MDU owner may give the incumbent service provider a minimum of 90 days' written notice that the provider's access to the entire building will be terminated. By adopting this procedural mechanism, we do not intend to affect any contractual rights the parties may have to terminate service in a different manner. We believe that it is reasonable to require, and thus our rules will require, that MDU owners that wish to avail themselves of these procedures notify the incumbent providers of termination of service for the entire building in writing. The incumbent provider will have 30 days to notify the MDU owner in writing of its election to do one of the following for all the home run wiring inside the MDU: (1) to remove the wiring and restore the MDU consistent with state law within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first; (2) to abandon and not disable the wiring at the end of the 90-day notice period; or (3) to sell the wiring to the MDU owner. If the MDU owner refuses to purchase the home run wiring, the MDU owner may permit the alternative video service provider to purchase it. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90-day notice period, the incumbent provider will be required to notify the MDU owner at the time of this election of the date on which it intends to terminate service.

4. If the incumbent elects to abandon the wiring, its ownership will be determined as a matter of state law. Passive devices such as splitters, as in the cable home wiring context, will be considered part of the home run wiring for this purpose. While the operator may remove its amplifiers or other active devices used in the wiring, it may do so only if an equivalent replacement can easily be reattached. Our decision in this proceeding assumes adherence to standards of good faith that are necessary elements of an orderly transition. In addition, we will require the party removing any active elements to comply with the notice requirements and other rules regarding the removal of home run wiring. Although we will not require that incumbents must transfer or relinquish all rights in molding or conduit when they sell, remove or abandon their wiring, we will prohibit incumbent providers from using any ownership interests they may have in property located on or near the home run wiring, such as molding or conduit, to prevent, impede or in any way interfere with the ability of an alternative MVPD to use the home run wiring.

5. Where the incumbent provider elects to sell the home run wiring, we will allow the parties to negotiate the price of the wiring. We believe that market forces will provide adequate incentives for the parties to reach a reasonable price, particularly in these circumstances where the incumbent has no legally enforceable right to remain on the premises. The parties will have 30 days from the date of the incumbent's election to negotiate a price for the home run wiring. The parties may also negotiate to purchase additional wiring (e.g., riser cables) at their option. As stated above, our procedures do not apply to riser cable in that the incumbent provider is not required to sell, remove or abandon its riser cable, but it does have the option of doing so if all parties agree. If the parties are unable to agree on a price, the incumbent will then be required to elect: (1) to abandon without disabling the wiring; (2) to remove the wiring and restore the MDU consistent with state law; or (3) to submit the price determination to binding arbitration by an independent expert. If the incumbent fails to comply with any of the deadlines established herein, it will be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment will become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. Similarly, if the incumbent elects at this point to remove its wiring and restore the building consistent with state law, it will have to do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first.

6. At this time we decline to establish a penalty for an incumbent provider that fails to remove wiring after electing to do so, or, for that matter, for any other party that violates our cable inside wiring rules. We expect all parties participating in the procedures for the disposition of home run wiring to cooperate and act in full compliance with our rules and the policies underlying them. Similarly, at this time we will not require the incumbent to post a performance bond prior to removal. There is not sufficient evidence to conclude that a significant problem will exist, or that MDU owners are unable to protect their interests pursuant to contract or state law.

7. If the incumbent chooses to abandon or remove its wiring, it must notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90-day notice period. In addition to this and other notice requirements, we will adopt a general rule requiring the parties to cooperate to avoid service disruption to subscribers to the extent possible. One of our overriding goals in this proceeding is to ensure as seamless a transition as possible. Our rules are premised on the good faith cooperation of all parties to protect against such disruption. We expect service providers to cooperate and to make all necessary efforts to minimize any service disruption when a transition is undertaken. We believe that the current notification requirements, in conjunction with a general rule requiring a seamless transition, are sufficient to protect subscribers from lengthy service disruptions when switching providers. We therefore will not require incumbents to continue service until the new provider is connected.

8. If the parties are unable to agree on a price and the incumbent elects to submit to binding arbitration, the parties will have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring by the end of the 90-day notice period. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or, in some cases, the alternative provider) refuses to participate, the incumbent will have no further obligations under our home run wiring disposition procedures.

B. Unit-by-Unit Procedures

9. We adopt the following procedures for unit-by-unit disposition of home run wiring. Where the incumbent video service provider owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain its home run wiring on the premises, the MDU owner may permit multiple service providers to compete head-to-head in the building for the right to use the individual home run wires dedicated to each unit. Where an MDU owner wishes to permit such head-to-head competition, the MDU owner must provide at least 60 days' written notice to the incumbent provider of the owner's intention to invoke the following procedure. The incumbent service provider will then have 30 days to provide the MDU owner with a written election as to whether,

for all of the incumbent's home run wires dedicated to individual subscribers who may later choose the alternative provider's service, it will: (1) remove the wiring and restore the MDU consistent with state law; (2) abandon the wiring without disabling it (as in the building-by-building situation, if the incumbent elects to abandon the wiring, its ownership will be determined by state law, and passive devices will be considered part of the home run wiring); or (3) sell the wiring to the MDU owner (as in the building-by-building situation, the MDU owner may permit the alternative provider to purchase the home run wiring if the MDU owner refuses to purchase it). In other words, the incumbent service provider will be required to make a single election for how it will handle the disposition of individual home run wires whenever a subscriber wishes to switch video service providers; that election will then be implemented each time an individual subscriber switches service providers. As in the context of building-by-building dispositions of home run wiring, incumbent providers will be prohibited from using any ownership interests they may have in property on or near the home run wiring, such as molding or conduit, to prevent, impede, or in any way interfere with the ability of an alternative MVPD to use the home run wiring. If the MDU owner permits the alternative service provider to purchase the home run wiring, the alternative service provider will be required to make a similar election within this same 30-day period for any home run wiring that the alternative provider subsequently owns (i.e., after the alternative provider has purchased the wiring from the current incumbent provider) and that is solely dedicated to a subscriber who switches back from the alternative provider to the incumbent.

10. We continue to believe that it would streamline and expedite the process of changing service providers if alternative service providers and MDU owners were permitted to act as subscribers' agents in providing notice of a subscriber's desire to change services. However, consistent with our intention not to ''create or destroy any property rights'' by these procedures, we will not create any new right of MDU owners and alternative providers to act on behalf of subscribers in terminating service. Nor will we restrict the rights of such MDU owners and alternative providers under state law. We therefore decline at this time to adopt specific procedures to guard against unauthorized changes in service, i.e., ''slamming.'' (''Slamming'' is the unauthorized change of a consumer's chosen long distance service. We use the term more generically here to mean an unauthorized change in any communications service.)

11. As with the proposed building-by-building procedures, we will permit the parties to negotiate for the sale of the home run wiring. If one or both of the video service providers elects to negotiate for the sale of the home run wiring it may own, the parties will have 30 days from the date of such election to reach an agreement. During this 30-day negotiation period, the incumbent, the MDU owner and/or the new provider may also work out arrangements for an up-front lump sum payment in lieu of a unit-by-unit payment. An up-front lump sum payment would permit either service provider to use the home run wiring to provide service to a subscriber without the administrative burden of paying separately for each home run wire every time a subscriber changes providers.

12. If the parties cannot agree on a price, the provider that has elected to sell the wiring will be required to elect: (1) to abandon without disabling the wiring; (2) to remove the wiring and restore the MDU consistent with state law; or (3) to submit the price determination to binding arbitration by an independent expert. Again, if the MDU owner (or, in some cases, the alternative provider) refuses to submit the issue to arbitration, the incumbent's obligations under our procedures will cease. If the incumbent fails to comply with any of the deadlines established herein, the home run wiring will be considered abandoned and the incumbent may not prevent the alternative provider from using the home run wiring immediately to provide service.

13. If the incumbent elects to submit to binding arbitration, the parties will have seven days to agree on an independent expert or each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen would be required to assess the price for the wiring within 14 days. We realize that the expert's price determination may not be issued for up to 28 days after the 60-day notice period has expired. If subscribers wish to switch service providers during this period, the procedures set forth below should be followed, subject to the price established by the arbitrator. If the MDU owner (or, in some cases, the alternative provider) refuses to participate, the incumbent's obligations under the Commission's home run wiring procedures will cease.

14. After completion of this initial process, a provider's election will be carried out if and when the provider is notified either orally or in writing that a subscriber wishes to terminate service and that an alternative service provider intends to use the existing home run wire to provide service to that particular subscriber. At that point, a provider that has elected to remove its home run wiring will have seven days to do so and to restore the building consistent with state law. If the subscriber has requested service termination more than seven days in the future, the seven-day removal period will begin on the date of actual service termination (and, in any event, shall end no later than seven days after the requested date of termination).

15. If the current service provider has elected to abandon or sell the wiring, the abandonment or sale will become effective upon actual service termination or upon the requested date of termination, whichever occurs first. If the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent will be required to inform the subscriber or the subscriber's agent (whichever is notifying the incumbent that the subscriber wishes to terminate service) at the time of the request for service termination of the date on which service will be terminated. In addition, the incumbent provider must disconnect the home run wiring from its lockbox and leave it accessible for the new provider within 24 hours of actual service termination.

16. We base the above procedures on the assumption that the alternative service provider will have an incentive to ensure that the incumbent is notified that the alternative service provider intends to use the existing home run wire to provide service. If, however, the subscriber's service is simply terminated without any indication that a competing service provider wishes to use the home run wiring, the incumbent service provider will not be required to carry out its election to sell, remove or abandon the home run wiring. This might occur, for instance, where an MDU tenant is moving out of the building. In such cases, we do not believe that it would be appropriate to require the incumbent to sell, remove or abandon the home run wiring when it might have every reasonable expectation that the next tenant will request its service. However, the incumbent provider will be required to carry out its election with regard to the home run wiring if and when it receives notice from a subsequent tenant (either directly or through an alternative provider) that

the tenant wishes to use the home run wiring to receive a competing service.

17. Where the incumbent receives a request for service termination but does not receive notice that an alternative provider wishes to use the home run wiring, the incumbent will still be required to follow the procedures set forth in our cable home wiring rules—e.g., to offer to sell to the subscriber any cable home wiring that the incumbent provider otherwise intends to remove. The required notice in the unit-by-unit context may be effected in two stages (i.e., the subscriber may call to terminate service and the alternative provider may separately notify the incumbent that it wishes to use the home run wiring). In order for the home run wiring and the home wiring to be disposed of in a coordinated manner, we believe that our cable home wiring rules must apply upon any termination of service. In addition, we believe that subscribers should have the right to purchase their home wiring to protect themselves from unnecessary disruption associated with removal of home wiring, regardless of whether they intend to subscribe to an alternative service.

C. Ownership of Home Run Wiring

18. In both the building-by-building and unit-by-unit approaches, the MDU owner will have the initial option to negotiate for ownership and control of the home run wiring because the property owner is responsible for the common areas of a building, including safety and security concerns, compliance with building and electrical codes, maintaining the aesthetics of the building and balancing the concerns of all of the residents. Moreover, vesting ownership of the home run wiring in the MDU owner, as opposed to the alternative service provider, will reduce future transaction costs since the above procedures will not need to be repeated if service is subsequently switched again. Nevertheless, we recognize that some MDU owners may not want to own the home run wiring in their buildings; in such cases, the MDU owner may permit the alternative service provider to purchase the wiring.

19. We will not require video service providers to transfer ownership of cable inside wiring to MDU owners upon installation. At this time, we believe this issue is best left to marketplace negotiations between the service provider and the MDU owner. Some MDU owners may choose to bargain for ownership of the inside wiring, while others may prefer to let the service provider maintain ownership. We are not convinced that MDU owners have insufficient bargaining power in this situation to protect their interests. Even under the home run disposition procedures adopted above, we recognize that some MDU owners may not wish to exercise ownership over the inside wiring. We believe that MDU owners should have the same option at the time of installation.

20. We do believe, however, that all parties involved would benefit from additional certainty regarding ownership of the home run wiring upon termination of a service contract. For any contracts between MVPDs and MDU owners entered into after the effective date of our rules, we will require the MVPD to include a provision describing the disposition of the home run wiring upon the contract's termination. We believe that such a rule will provide certainty to the parties and permit them to address the disposition of home run wiring in light of their circumstances. Where the parties' contract clearly and expressly addresses the disposition of the home run wiring, our procedures will not apply. We also reiterate that the parties may rely upon any existing contractual rights upon termination, in addition to the procedures we are adopting.

D. Application of Procedural Framework

21. As noted above, the procedural mechanisms we are adopting will apply only where the incumbent provider no longer has an enforceable legal right to maintain its home run wiring on the premises against the will of the MDU owner. These procedures will not apply where the incumbent provider has a contractual, statutory or common law right to maintain its home run wiring on the property. We also reiterate that we are not preempting any rights the incumbent provider may have under state law. In the building-by-building context, the procedures will not apply where the incumbent provider has a legally enforceable right to maintain its home run wiring on the premises, even against the MDU owner's wishes, and to prevent any third party from using the wiring. In the unit-by-unit context, the procedures will not apply where the incumbent provider has a legally enforceable right to keep a particular home run wire dedicated to a particular unit (not including the wiring on the subscriber's side of the demarcation point) on the premises, even against the property owner's wishes.

22. We will adopt a presumption that the building-by-building and unit-by-unit procedural mechanisms will apply unless and until the incumbent obtains a court ruling or an injunction enjoining its displacement during the 45-day period following the initial notice. The incumbent will still be required to make its election to sell, remove or abandon the wiring by the end of the initial 30-day period in the absence of such a ruling or injunction. In light of this rule, we decline to shorten the initial election period. We also decline to stay our procedures until all judicial procedures are terminated, including all appeals. We have not received evidence sufficient to persuade us that state courts will not respond expeditiously. Significantly, the record indicates state courts' ability to protect incumbents' rights. The record continues to support our judgment that an incumbent's failure to obtain a state court injunction justifies a presumption that the incumbent no longer has an enforceable legal right to remain on the premises. We do not believe that this presumption interferes with the incumbent's state law rights. A court applying state law will continue to be the ultimate arbiter of whether the incumbent has a legally enforceable right to remain on the premises, and possesses the ability to take any necessary and appropriate steps to make the parties whole under state law. Our presumption simply means that if the incumbent cannot obtain an injunction to maintain its home run wiring on the premises, it is appropriate to permit the MDU owner to invoke our procedures pending any further litigation.

23. We will adopt one exception to our presumption that our procedures will apply in the absence of a state court ruling or injunction obtained within 45 days of the initial notice. We will not require an incumbent provider to obtain such a ruling or injunction where a state's highest court has found that, under its state mandatory access statute, the incumbent always has an enforceable right to maintain its home run wiring on the premises. We believe that to require the incumbent to initiate court proceedings in this situation is wasteful and unnecessary. In such cases, we believe that the burden should shift to the new provider to obtain a judicial determination to the contrary.

24. We decline, however, to provide that our procedures do not apply in states that have enacted mandatory access statutes. Several parties take issue with our statement that where the incumbent provider's mandatory right of access is dependent upon a subscriber's request for service, the provider may no longer have a legally enforceable right to maintain that subscriber's home run wiring on the premises against the MDU owner's wishes once the subscriber no longer requests service. We clarify that we did

not intend to and do not now express any opinion on the merits of this issue. The enforceability of a state mandatory access statute is an issue for the state courts to decide under their particular statutes. We are unwilling to conclude that state mandatory access statutes always grant incumbents the right to maintain their home run wiring in an MDU over the MDU owner's objection. Similarly, we express no opinion on whether state mandatory access statutes permit an incumbent MVPD to block moldings or conduits with unused wiring. Contrary to the arguments of some cable operators, this is not an issue of the right to install wiring. Rather, the issue is whether the incumbent has a legally enforceable right to maintain its home run wiring on the premises over the objection of the MDU owner. Accordingly, our procedures will apply in mandatory access states to the extent state law does not permit the incumbent to maintain its home run wiring (in the case of a building-by-building disposition) or a particular home run wire to a particular subscriber (in the case of a unit-by-unit disposition) against the will of the MDU owner.

25. The above procedural mechanisms will apply regardless of the identity of the incumbent video service provider involved. While initially this incumbent would commonly be a cable operator, it could also be a SMATV provider, an MMDS provider, a DBS provider or others. We believe that this will ensure competitive parity among MVPDs and ensure that MDU owners are able to benefit from these procedures regardless of the MVPD that initially wired their buildings.

III. Sharing of Molding

26. We will permit an alternative MVPD to install its wiring within an incumbent's existing molding, even over the incumbent provider's objection, where the MDU owner agrees that there is adequate space in the molding and the MDU owner gives its affirmative consent. We believe that such a rule will promote head-to-head competition among MVPDs by overcoming the resistance of MDU owners to the installation of redundant molding. At this time we will not require the sharing of space within conduits. However, we will not apply this rule where the incumbent has an exclusive contractual right to occupy the molding. Since we do not believe that the incumbent ordinarily will have a property interest in the vacant air space inside the hallway molding, we will not require the alternative MVPD to compensate the incumbent for the placement of its wires. The alternative provider will, however, be required to pay any and all installation costs, including the costs of restoring the property to its prior condition and the costs of any damage to the incumbent's wiring or other property.

27. Under the rule we will adopt, where the MDU owner does not agree that there is adequate space in the molding for the additional wiring, and the MDU owner is willing to permit the installation of larger molding that could contain both the incumbent's and the alternative MVPD's wiring, the MDU owner (with or without the assistance of the incumbent and/or the alternative provider) shall be permitted to remove the existing molding (and return the molding to the incumbent, if appropriate) and replace it with the larger molding at the alternative MVPD's expense. Again, the alternative MVPD would be required to pay any and all installation costs, including the costs of restoring the property to its prior condition and the costs of any damage to the incumbent's wiring or other property. This rule will not apply if the incumbent has contracted for the right to maintain its molding on the MDU owner's property without alteration by the MDU owner. Absent such a contractual provision, we believe that the incumbent has no right to prevent the MDU owner from altering the molding in its hallways and other areas of its property.

IV. Disposition of Cable Home Wiring

28. The procedural framework discussed above addresses the disposition of MDU home run wiring. Here, we set forth specific rules on how to address certain issues regarding the disposition of MDU cable home wiring that were not addressed in our prior home wiring order. Cable home wiring is defined as the internal wiring contained within the premises of a subscriber which begins at the demarcation point, not including any active elements such as amplifiers, converter or decoder boxes, or remote control units. As in the context of home run wiring, our MDU home wiring rules will apply regardless of the identity of the incumbent video service provider involved. While initially this incumbent will commonly be a cable operator, it could also be a SMATV provider, an MMDS provider, a DBS provider or others. We therefore will apply all of our cable home wiring rules for multiple-unit installations to all MVPDs. We also believe that it may be beneficial to apply our cable home wiring rules for single-unit installations to all MVPDs. We seek comment on this issue in the *Second Further Notice of Proposed Rulemaking*, which is summarized elsewhere in the **Federal Register**.

A. Disposition of Home Wiring When Service is Terminated for an Entire MDU

29. We conclude that, if the MDU owner has the legal right, either by law or by contract, to terminate the subscriber's cable service, the owner terminating service for the entire building is effectively voluntarily terminating service on the subscriber's behalf, and our home wiring rules would be triggered. We conclude that providing the cable operator a single point of contact (i.e., the MDU owner) will further the statutory purposes of minimizing disruption and facilitating the transfer of service to a competing video service provider. Because we believe that it would be impractical and inefficient for the incumbent provider to deal with each individual subscriber regarding the disposition of his or her cable home wiring when the entire MDU is switching providers, we will deem the MDU owner to be acting as the terminating ''subscriber'' for purposes of the disposition of the cable home wiring within the individual dwelling unit where the cable home wiring is not already owned by a resident. We clarify, however, that we are not changing our definition of subscriber to include MDU owners. We believe that, when as a matter of law or contract, the MDU owner has the right to terminate service, the MDU owner is effectively terminating service on behalf of the subscriber. Similarly, with regard to exclusive bulk service contracts, we conclude that it is logical for the landlord to be deemed the subscriber, and thus for the landlord to have the right to purchase the home wiring as provided in our general rules.

30. For those MDU owners proceeding under our home run wiring disposition procedures, we will adopt the following framework in order to ensure the orderly disposition of the home wiring. When an incumbent provider is notified under our home run wiring disposition procedures that the incumbent provider's access to the entire building will be terminated and that the MDU owner seeks to use the home run wiring for another service, the incumbent provider must, within 30 days: (1) offer to sell to the MDU owner any home wiring within the individual dwelling units which the incumbent provider owns and intends to remove; and (2) provide the MDU owner with the total per-foot replacement cost of such home wiring.

31. As with the home run wiring, if an MDU owner declines to purchase the cable home wiring not already owned by a resident, the MDU owner may permit the alternative service provider to purchase the wiring upon service termination under our rules. We will require that the MDU owner decide whether it or the alternative provider will purchase the cable home wiring and so notify the incumbent provider no later than 30 days before the termination of access to the building will become effective. If the MDU owner and the alternative service provider decline to purchase the home wiring, the incumbent provider will not be permitted to remove the home wiring until the date of actual service termination, i.e., likely 90 days after the building owner notified the incumbent that its access to the entire building will be terminated. We will modify our current home wiring rules to allow the incumbent provider 30 days after service termination, rather than the current seven days, to remove all of the cable home wiring for the entire building if the MDU owner has terminated service for the entire building and has declined to purchase the home wiring. We believe this is appropriate given the amount of home wiring that may need to be removed from an entire building. Under these circumstances, if the incumbent provider fails to remove the home wiring within 30 days of actual service termination, it cannot make any subsequent attempt to remove the wiring or restrict its use.

B. Disposition of Home Wiring When Service Is Terminated by an Individual Subscriber

32. We will continue to apply our rules permitting individual terminating subscribers (or their agents) to purchase the cable home wiring up to a point at or about 12 inches outside their individual units. We continue to believe that this is consistent with the purposes of section 624(i) to promote consumer choice and competition by permitting subscribers to avoid the disruption of having their home wiring removed upon voluntary termination and to subsequently utilize that wiring for an alternative service. If the subscriber declines to purchase its home wiring, we believe that the premises owner should be permitted to purchase the cable home wiring within the individual's premises based on the per-foot replacement cost. This approach will preserve the current subscriber's rights, and still allow the premises owner to act on behalf of future tenants, thus promoting competition and consumer choice. As with the home run wiring in an MDU, if the premises owner declines to purchase the cable home wiring, the owner may permit the alternative service provider to purchase it.

33. Where an individual MDU resident terminates service, the MDU owner must provide reasonable advance notice to the incumbent provider if it wishes to purchase the home wiring (or that the alternative provider will purchase it) if and when an individual subscriber declines. The MDU owner will be required to inform the incumbent provider one time for the entire building. If the MDU owner fails to provide the incumbent with such notice, the incumbent will be under no obligation to sell the home wiring to the MDU owner or the alternative provider when an individual subscriber terminates and declines to purchase the wiring. Where an MDU owner does not or cannot invoke our unit-by-unit home run wiring disposition procedures (e.g., if it elects to have two-wire competition to each unit), we will require the MDU owner to provide the incumbent provider reasonable advance notice if the MDU owner or the alternative provider intends to purchase the home wiring if and when a subscriber declines.

34. In addition, where an individual subscriber is terminating service, we will change the time in which an incumbent provider must remove the home wiring or make no further effort to use it or restrict its use in single unit installations from seven business days to seven calendar days after the individual subscriber terminates service. We believe that this minor change is sufficient time for removal of a single subscriber's cable home wiring, and will avoid customer confusion by having the time permitted for the provider to remove the home wiring within the individual unit run concurrently with the time permitted for the provider to remove, sell or abandon the home run wiring under our procedural framework.

C. Effect of Subscriber Vacating the Premises on the Application of Cable Home Wiring Rules

35. We conclude that our cable home wiring rules should apply even when the subscriber terminates cable service, elects not to purchase the wiring and vacates the premises within the seven-day time period the operator has to remove the home wiring. A cable operator that owns the wiring and intends to remove it must offer to sell the cable home wiring to the subscriber upon voluntary termination, and if the subscriber declines, the operator must remove the wiring within seven days or make no further effort to remove it or restrict its use. We expressly state that the cable operator must be given reasonable access to the individual premises during the removal period. We believe that the foregoing policy will promote the objectives of section 624(i) by minimizing disruption and facilitating subsequent subscribers' ability to use their home wiring to connect to the video service provider of their choice.

36. The disposition of the cable home wiring under these circumstances will not affect our rules for the unit-by-unit disposition of the MDU home run wiring. As described above, our rules regarding the disposition of the home run wiring are not triggered where a subscriber terminates service and vacates the premises unless and until a new or subsequent subscriber (or his or her agent) notifies the incumbent service provider that the subscriber wishes to receive service from an alternative service provider lawfully serving the premises.

V. MDU Demarcation Point

37. We believe that it is not necessary to establish a common cable and telephone demarcation point at this time. At least as far as inside wiring is concerned, telephony generally appears to continue to be delivered over twisted pair wiring and multichannel video programming generally appears to be delivered over coaxial cable. Based on the record in this proceeding, it appears that cable operators and other entities planning to offer telephone service generally will do so by connecting to the existing telephone inside wiring network. The record before us indicates that this distinction is likely to continue for at least the near future. If and when circumstances change, we will revisit this issue with the goal of creating a single set of inside wiring rules. We note that, as a practical matter, the telephone demarcation point in new single family home installations may be located at a point outside of where the wiring enters the home, near the cable demarcation point. Similarly, the points at which the telephone and cable inside wiring become devoted to individual multiple dwelling units may be at similar locations (e.g., in garden-style apartment buildings, such points may both be located in the basement of the individual buildings). While such examples may create a de facto convergence in many cases, so long as the cable and telephone inside wiring networks remain distinct, we do not

believe that the Commission need require such a result.

38. At this time, we will not modify the cable demarcation point in MDUs. We will, however, adopt our tentative conclusion that where the cable demarcation point is ''physically inaccessible'' to an alternative MVPD, the demarcation point should be moved to the point at which it first becomes physically accessible. We clarify that this movement should be the closest point at which the wiring becomes physically accessible that does not require access to the subscriber's unit. Moving the demarcation point into the unit in such situations would add significantly to the disruption and inconvenience of switching service providers, contrary to the intent of section 624(i).

39. In addition, we will adopt a definition of ''physically inaccessible'' which asks whether accessing the demarcation point (1) would require significant modification or damage of preexisting structural elements, and (2) would add significantly to the physical difficulty and/or cost of accessing the subscriber's home wiring. For example, wiring embedded in brick, metal conduit or cinder blocks would likely be ''physically inaccessible'' under this definition; wiring simply enclosed within hallway molding would not.

VI. Loop-Through Cable Wiring Configurations

40. In a loop-through cable wiring system, a single cable is used to provide service to either a portion of or an entire MDU. Every subscriber on the loop is therefore limited to receiving video services from the same provider. If the cable is broken or removed, signals to all succeeding units are interrupted. Previously, we excluded MDU loop-through wiring from the cable home wiring rules because we believed that applying our rules to loop-through wiring would give the initial subscriber control over cable service for all subscribers in the loop. Because loop-through configurations are excluded from the home wiring rules, cable operators are not currently required to offer to sell the wire to subscribers upon termination of service, and no subscriber on the loop has the right to purchase that portion of the loop-through cable wiring located inside his or her dwelling unit. The ownership of loop-through wiring therefore currently depends on the circumstances (e.g., who installed the wire, whether the wire has been sold and state fixture law) and is not affected by our rules.

41. As with other cable inside wiring configurations in MDUs, a wiring loop may include both wiring inside the individual dwelling unit and wiring in common areas which extends outside the individual dwelling unit to the riser or feeder cable. We now believe that, for purposes of our cable inside wiring rules, all loop-through wiring should not be treated the same. We therefore conclude that, when the property owner or the entity that owns or controls the common areas elects to switch to a new service provider, our cable home wiring rules will apply to that portion of the loop-through wiring that is inside the individual dwelling unit (up to the demarcation point(s) discussed below). For example, when an MDU owner wishes to terminate service for a building with loop-through wiring and invokes our building-by-building procedures for disposition of the home run wiring, those procedures will govern the disposition of the wiring that is dedicated to each loop other than the cable home wiring within each unit. Consistent with our building-by-building procedures, the MDU owner will be permitted to purchase the loop-through home wiring pursuant to our cable home wiring rules. In addition, where the MDU owner terminates service for the entire loop but does not or cannot invoke our procedures for the disposition of home run wiring, the MDU owner will nevertheless have certain rights to the home wiring within the individual dwelling units.

42. Where a building is comprised of rental units, the building owner will have the right to elect to switch service providers and the right to purchase the loop-through home wiring. In buildings in which persons have a direct or indirect ownership interest in individual units (as with condominiums and cooperatives), the election of whether to switch service providers will be determined under the rules of the association or entity that owns and controls the building's common areas, in a manner similar to other decisions made by the entity with respect to the common areas. If the MDU owner elects to switch to a new service provider but does not wish to purchase the loop-through home wiring, the new service provider may elect to purchase the wiring.

43. Allowing the MDU owner to purchase loop-through home wiring under these circumstances will allow that party to control the wiring. We believe that, at least in competitive markets, the MDU owner has a significant incentive to represent the subscribers' interests. In addition, the management structures of condominium or cooperative buildings are designed to reflect their residents' interests. Allowing the MDU owner to control loop-through home wiring gives the subscriber an opportunity for increased choice and enhanced service, and furthers section 624(i)'s statutory purpose of facilitating the transfer to an alternate service provider with minimal disruption to the subscriber. We previously excluded loop-through wiring from our cable home wiring rules because we did not believe it was appropriate to give the initial individual subscriber in the loop control over the cable service of all remaining subscribers on the loop. Under the procedures we adopt today, that situation cannot occur.

44. We clarify that our rules will provide the MDU owner, not the alternative provider, with the first opportunity to purchase the loop-through wiring. Once the MDU owner owns and controls the wiring, the cable operator will be on equal footing under our rules with other video service providers with regard to subsequently providing service to the tenants. Only if the MDU owner declines to purchase the wiring will the alternative provider have the opportunity to purchase the loop-through wiring.

45. We will set the demarcation points, i.e., the points between which the MDU owner may purchase the loop-through home wiring under our cable home wiring rules, at or about 12 inches outside the point at which the loop enters or exits the first and last individual dwelling units on the loop, or as close as practicable where 12 inches outside is physically inaccessible. In some cases, the loop may begin and end outside of the same unit, and thus the demarcation points shall be 12 inches outside the point at which the loop enters and exits that one unit, or as close as practicable where 12 inches outside is physically inaccessible. We believe that this is consistent with section 624(i), i.e., the loop-through home wiring is within the customer's premises, and with the cable demarcation point for non-loop-through configurations. We note that one of our prior concerns was that establishing a separate demarcation point for each subscriber on the loop was not feasible. Under the rules set forth herein, however, one entity will be purchasing the entire home wiring loop, making it unnecessary to set a demarcation point for each subscriber's unit.

46. We will apply the same rules with respect to compensation and technical standards that we apply to non-loop-through wiring systems as well. In other words, the loop-through wiring on the subscriber's side of the demarcation point may be purchased by the MDU

owner at the replacement cost as defined in § 76.802(a). The loop-through wiring outside the demarcation points up to the point at which the loop connects with the riser or feeder cable may be addressed pursuant to the procedures set forth above with regard to the disposition of home run wiring.

47. Despite the competitive drawbacks of loop-through wiring, we do not believe it necessary for the Commission to prohibit future installations of loop-through wiring configurations. We believe that such a prohibition would unduly restrict the configuration options available to building owners and service providers. We have found no evidence in the record that cable operators have installed loop-through wiring in order to evade our rules since they were implemented in 1993. Also, the application of our home wiring rules to loop-through systems where the MDU owner seeks to switch service providers should reduce any incentive cable operators may have to install loop-through configurations for anti-competitive reasons.

VII. Video Service Provider Access to Private Property

A. Federal Mandatory Access Requirements

48. While we believe that nondiscriminatory access for video and telephony service providers enhances competition, we will not adopt a federal mandatory access requirement at this time. We note that telecommunications carriers' access to telephone companies' facilities and rights-of-way under the 1996 Act are currently under reconsideration in *First Report and Order* in CC Docket No. 96–98 and CC Docket No. 95–185 (''*Interconnection Order*''). We do not believe that the record in this proceeding provides a sufficient basis for us to address these issues. We will defer decisions on these issues to that proceeding. Similarly, we do not decide herein whether under section 207 of the 1996 Act viewers living in rental properties, and those who need access to common property, have the right to receive certain video programming services over the property owner's objections. This issue will be addressed in IB Docket No. 95–59 (Preemption of Local Zoning Regulation of Satellite Earth Stations) and CS Docket No. 96–83 (Implementation of section 207 of the Telecommunications Act, Restrictions on Over-the-Air Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service).

49. In addition, commenters in this proceeding urged the Commission to construe section 621(a)(2) to prohibit a property owner from denying a franchised cable operator access to an easement on the property when the owner has already granted or is obligated to grant an easement to other utilities, whether public or private. Section 621(a)(2) provides that ''[a]ny franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses * * *.'' Numerous court decisions have interpreted the statutory language and legislative history of section 621(a)(2), several finding that this section does not provide cable operators access to purely private easements granted to utilities. We decline to address those rulings here, but will continue to examine these issues as we seek to ensure parity of access among all telecommunications and video services providers. Similarly, we decline at this time to adopt a mandatory access rule under section 706 of the 1996 Act, but may revisit this issue as we consider issues of service provider access in the broader competitive context.

50. We believe that whether an incumbent provider may use its existing easements or rights-of-way to provide new or additional services generally depends on state law interpretations of the terms of the easements or rights-of-way. While we decline at this time to decide as a general matter whether such easements and rights-of-way permit the provision of additional services, we believe that we do have the authority in certain instances to review restrictions imposed upon such use.

B. State Cable Mandatory Access Requirements

51. According to the record in this proceeding, some form of mandatory access law may exist in approximately 18 jurisdictions, including Connecticut, Delaware, the District of Columbia, Florida, Illinois, Iowa, Kansas, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, West Virginia and Wisconsin. The record also indicates that there may be local ordinances that provide similar access rights. We believe that the record in this proceeding does not support the preemption of state mandatory access laws at this time. While commenters opposing state mandatory access laws argue that these laws act as a barrier to entry, the record also indicates that property owners deny access for reasons unrelated to the state laws, including property damage, aesthetic considerations and space limitations. We believe that our rules regarding the building-by-building and unit-by-unit disposition of home run wiring adopted herein will lower many of these barriers to entry and may alleviate some of the advantages incumbent providers may have with respect to providing service to particular buildings.

52. We remain concerned, however, about disparate regulation of MVPDs that unfairly skews competition in the multichannel video programming marketplace. Despite our decision not to preempt state and local mandatory access laws at this time, we encourage these jurisdictions to evaluate present laws and circumstances to determine whether a nondiscriminatory and competitively neutral environment exists. We believe that establishing competitive parity under these statutes will promote competition among MVPDs and will expand consumer choice.

C. Exclusive Service Contracts

53. We recognize that there are significant competitive issues regarding exclusive contracts. We are concerned that long-term exclusive contracts may raise anti-competitive concerns because they ''lock up'' properties, preventing consumers from receiving the benefits of a newly competitive market. However, we also note that alternative providers cite the competitive benefits of exclusive contracts as a means of financing ''specialized investments.'' Without exclusive contracts to allow recovery over time on the cost of new installation, these parties assert that they will be unable to compete with the incumbent cable operator. We believe that the record would benefit from further comment on these issues. In the *Second Further Notice of Proposed Rulemaking*, summarized elsewhere in the **Federal Register**, we seek comment on various options, including: (1) adopting a maximum ''cap'' on the enforceability of all MVPDs' exclusive contracts; (2) limiting the ability of MVPDs with market power from entering into exclusive contracts; and (3) adopting a ''fresh look'' period for so-called ''perpetual'' exclusive contracts.

VIII. Customer Access to Cable Home Wiring Before Termination of Service

54. We will establish a rule allowing customers to provide and install their own cable home wiring within their premises, and to connect additional home wiring within their premises to

the wiring installed and owned by the cable operator prior to termination of service. Under this rule, customers will be able to select who will install their home wiring (e.g., themselves, the cable operator or a commercial contractor). In addition, customers may connect additional wiring, splitters or other equipment to the cable operator's wiring, or redirect or reroute the home wiring, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring remains intact. Subscribers will not be permitted to physically cut, improperly terminate, substantially alter or otherwise destroy cable operator-owned inside wiring. To protect cable operators' systems from signal leakage, electronic and physical harm and other types of degradation, we will permit cable operators to require that any home wiring (including any passive splitters, connectors and other equipment used in the installation of home wiring) meets reasonable technical specifications, not to exceed the technical specifications of such equipment installed by the cable operator. If, however, the subscriber's connection to, redirection of or rerouting of the home wiring causes electronic or physical harm to the cable system, the cable operator may impose additional technical specifications to eliminate such harm. We believe that subscriber access to home wiring is necessary to enhance competition, which will result in lower and more reasonable rates for services such as the installation of additional outlets. Indeed, where competition is introduced, consumers benefit from lower prices, greater technological innovation, and additional consumer choice.

55. We do not believe that the rule we are adopting will pose an undue risk of signal leakage or harm to the cable system. Many subscribers already own and control their home wiring—e.g., where the cable operator charges for it upon installation or where state law deems home wiring to be a ''fixture.'' Indeed, as many cable interests have pointed out in this proceeding, the marketplace has established the F-type connector as the de facto standard for connecting coaxial cable to CPE. Such connectors are readily available and, if properly used, provide adequate signal leakage protection. In addition, cable operators can provide guidance to subscribers who install their own wiring. Also, as stated above, we will permit cable operators to establish reasonable technical specifications for subscriber-installed home wiring (including passive splitters, connectors and other equipment used in the installation of home wiring), not to exceed the specifications of their own wiring and equipment. Furthermore, we will protect the cable system from electronic and physical harm by allowing the cable operator to impose additional technical specifications where such harm exists.

56. We will not modify our current requirement that cable operators monitor signal leakage and eliminate harmful interference while they are providing service, regardless of who owns the home wiring. We also will continue to require cable operators to discontinue service to a subscriber where signal leakage occurs, until the problem is corrected. *See* 47 CFR 76.617. A cable operator will not be held responsible for facilities over which it no longer provides service. We believe that the continuation of these requirements will appropriately balance the interests of subscribers with the interests of those engaged in licensed over-the-air communications and cable operators in maintaining the security and integrity of the cable systems.

57. Allowing subscribers to install their own cable home wiring prior to termination of service may raise concerns regarding physical and electronic harm to the cable system and degradation of signal quality, including interference with other customers' service. To the extent a customer's installations or rearrangements of wiring degrade the signal quality of or interfere with other customers' signals, or cause electronic or physical harm to the cable system, we will allow cable operators to discontinue service to that subscriber, as operators may do where a customer's wiring causes signal leakage, until the degradation or interference is resolved. We note, however, that cable operators are not responsible for degradation of signal quality to the subscriber where a subscriber has added outlets or owns and maintains his or her own wiring. While we recognize that theft of cable service is a legitimate concern, we do not agree that our rules granting customers pre-termination access to cable home wiring will promote theft of service. Some cable companies already provide customer pre-termination access to wiring, and there is no evidence in the record that these policies have resulted in increased theft of service. In addition, cable operators may take security measures, such as scrambling of their signals, to deter theft of service.

58. We will neither establish a presumption of ownership of cable home wiring nor deregulate home wiring rates at this time. These issues are beyond the scope of this proceeding. We believe that our rules allowing consumers to install, redirect and reroute their cable home wiring adequately promote the goals of expanded competition and consumer choice without the need to address ownership issues. We also note our obligation under section 623 to regulate the rates of equipment used by subscribers to receive the basic service tier. *See* 47 U.S.C. § 543.

IX. Signal Leakage

59. The purpose of the Commission's signal leakage rules is to protect licensed over-the-air communications, including aeronautical, police, and fire safety communications, from interference caused by signal leakage. Until now, the Commission rules governing signal leakage have been applied only to cable systems, which often deliver signals over the same frequency bands as many over-the-air licensees. Specifically, § 76.605(a)(12) establishes the maximum individual signal leakage limits for all cable operators using frequencies outside the broadcast television bands, while §§ 76.610–76.617 impose more stringent operating and monitoring requirements for cable systems operating in the bands that are used by aircraft for communications and navigation.

60. An increasing number of MVPDs are competing with cable operators in the provision of video programming and other services. Because these MVPDs often transmit signals over the same public safety and navigation frequencies as cable operators, they may be a source of potentially harmful signal leakage. The public safety concerns that underlie application of our signal leakage regulations to cable operators are equally present with respect to other MVPDs such as SMATV, MMDS and open video system operators and others. We will therefore modify our rules to extend existing cable signal leakage requirements to non-cable MVPDs. In light of the potential harm to public safety that may be caused by broadband signal leakage interfering with aeronautical, navigational and communications radio systems, we will not rely on labelling requirements, installation instructions or cable performance specifications.

61. Systems transmitting digitized signals may operate in the restricted aeronautical and public safety bands. Our signal leakage rules provide that systems operating in the restricted bands are only subject to the testing and monitoring requirements when they operate above a threshold power level.

Systems using digital transmissions normally operate below this power threshold. Systems using digital technology that operate below our threshold power level therefore would not generally be subject to the most rigorous sections of our signal leakage rules. For digital transmissions that may operate above the power threshold, the Commission shall continue to apply the same requirements as those for analog transmissions due to the potential harm to public safety. MVPDs using digital transmission will be subject to section 76.605(a)(12) which sets forth the maximum signal leakage limits for systems, regardless of the frequency band or power level in use.

62. We will require that all MVPDs comply with § 76.613 of our rules upon the effective date of the *Order*. Section 76.613 protects licensed over-the-air communications from harmful interference and requires prompt action to eliminate such interference. We believe that immediate compliance with § 76.613 is necessary because, unlike our other signal leakage rules that are designed to minimize the risk of interference by requiring that leakage be detected and repaired, § 76.613 provides that once harmful interference actually occurs it must be promptly eliminated. We recognize, however, that immediate compliance with many of our other signal leakage requirements may present hardships to existing MVPDs not previously subject to such rules. We will allow for a five-year transition period from the effective date of these rules to afford non-cable MVPDs time to comply with our signal leakage rules other than § 76.613. The five-year transition period will apply only to the systems of those non-cable MVPDs that have been substantially built as of January 1, 1998. We will define ''substantially built'' as having 75% of the distribution plant completed. The signal leakage requirements under Part 15 of the Commission's rules will continue to apply during the transition period.

63. Our rules require that each cable system perform an independent signal leakage test annually. 47 CFR 76.611. Based on the current record, we will not amend our rules to treat MDUs or different geographic areas connected by microwave link as separate systems for testing purposes. We believe that for the past six years our testing criteria have provided effective standards for monitoring and rectifying signal leakage in 31,000 cable communities nationwide. Cognizant of the changing technologies that may be used by MVPDs, we will continue to review specific systems' operations and designs that may warrant adjustments to our signal leakage testing criteria.

64. We will not establish any new signal leakage testing procedures such as tracking systems to identify the source of signal leakage. We believe that MVPDs are capable of devising and selecting the most appropriate methods for detecting signal leakage on their own systems. We encourage MVPDs to work together to develop methods that will permit them to accurately identify the source of any signal leakage.

65. While our signal leakage rules generally require cable operators to perform signal leakage monitoring and testing, § 76.615 requires cable operators to file specific information with the Commission. In particular, § 76.615(b)(7) requires that cable operators annually file with the Commission the results of signal leakage testing. The reporting requirements of § 76.615(b)(7) may impose undue burdens on small MVPDs. In the *Second Further Notice of Proposed Rulemaking,* we seek comment on whether certain MVPDs should be exempted from the reporting requirements of § 76.615(b)(7). Since § 76.615(b)(7) is one of the provisions covered by the five-year transition period, all non-cable MVPDs will have five years to comply with the filing requirements; the *Second Further Notice of Proposed Rulemaking* seeks comment on whether we should create a permanent exemption for certain types of MVPDs.

X. Signal Quality

66. By statute, the Commission is charged with promulgating regulations governing the quality of television signals delivered to cable subscribers. We believe that continued application of the Commission's signal quality standards to cable operators is necessary because, despite the recent entrance of other service providers into the video market, cable operators, in most areas of the country, still exercise significant market power. We do not believe at this time that market forces alone will ensure that cable subscribers receive the quality picture they are entitled to expect. With regard to non-cable broadband service providers, we believe that government regulation of signal quality would be unnecessary and unduly intrusive. These alternative providers do not exercise market power and virtually always compete with an incumbent cable operator. Head-to-head competition with a cable operator should ensure that alternative MVPDs deliver a good quality picture in order to attract and retain customers. We believe that, as cable operators become subject to vigorous competition, market forces will ensure that they, too, deliver a good quality picture. As competition develops and its effects become clearer, we expect to leave the issue of signal quality wholly to market forces.

XI. Means of Connection

67. Based on the record, we will not adopt uniform technical standards for jacks and connectors for broadband service. The F-type connector has emerged as the de facto broadband connection standard within the cable industry. We believe that, properly used, the F-type connector is an effective means of connecting coaxial cable to customer premises equipment while minimizing the potential for signal leakage. Non-cable video service providers also use the F-type connector to connect their services via coaxial cable to customer premises equipment. Further government action in this area is therefore unwarranted at this time. In addition, in light of the fact that we are extending our cable signal leakage rules to all broadband service providers, we believe that such providers will have the incentive and obligation to ensure that connections are properly made with high quality materials, without the Commission mandating a connection standard.

XII. Dual Regulation

68. We do not believe that the record before us provides sufficient information to address the issue of whether and how to harmonize the dual systems of regulation governing cable and telephone companies where broadband or multiple services are provided over a single wire or multiple wires. Based on the current record, it appears that service providers will continue to use separate inside wiring to provide cable and telephone service for at least the near future. If and when circumstances change, we will revisit this issue with the goal of creating a single set of inside wiring rules.

XIII. Regulation of Simple and Complex and of Residential and Non-Residential Wiring

69. We will not, at this time, establish common definitions in the common carrier and cable rules with regard to simple versus complex wiring and residential versus non-residential wiring. *See* 47 CFR 68.213, 68.215. In the telephone context, we believe that our distinction between simple and complex wiring has proven to be a workable and effective way to promote competition while ensuring network protection. Similarly, in the cable context, there may be substantial differences between residential and

commercial buildings which would make it difficult to adopt uniform rules for all kinds of property. We do not believe that the current record provides sufficient evidence to support the need for a modification of our rules, nor does it provide adequate guidance on the direction any such modification should take. We therefore will not modify our rules at this time.

XIV. Customer Premises Equipment

70. The issue of whether we should revise our rules regarding customer premises equipment will be addressed in a separate ongoing Commission rulemaking proceeding arising under new section 629 of the Communications Act.

XV. Final Regulatory Flexibility Act Analysis

71. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (''RFA''), Initial Regulatory Flexibility Analyses (''IRFAs'') were incorporated in the *Inside Wiring Notice, the Cable Home Wiring Further Notice,* and the *Inside Wiring Further Notice.* The Commission sought written public comments on the proposals in these notices, including comments on the IRFAs. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (''CWAAA''), Public Law 104–121, 110 Stat. 847 (1996). Title II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), codified at 5 U.S.C. § 601 *et seq.*

Need for Action and Objectives of the Rule

72.This *Order* adopts new procedural mechanisms to provide order and certainty regarding the disposition of MDU home run wiring upon termination of existing service. In addition, this *Order* promotes competition and consumer choice by establishing rules for the disposition of cable ''loop through'' wiring upon termination of service. This *Order* also permits consumers to provide or install their own cable home wiring, or redirect, reroute or connect additional wiring to the cable operator's home wiring. These rules will promote competition among MVPDs as well as cable wiring services, which will result in lower prices, greater technological innovation, and additional consumer choice. Finally, to protect public safety and navigation frequencies, this *Order* applies the cable signal leakage rules to all broadband service providers that pose a similar threat of interference with licensed over-the-air communications.

Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

73. In response to the IRFAs contained in the *Inside Wiring Notice* and the *Cable Home Wiring Further Notice,* Building Owners, et al., filed comments arguing that the proposed rules would have a significant effect on small residential and commercial building operators and that the Commission should exempt these entities from any final rules. In response to the IRFA contained in the *Inside Wiring Notice,* CATA filed comments and an ex parte submission requesting that the Commission rescind the *Inside Wiring Notice* and reissue it as a notice of inquiry or reissue it with specific proposed rules. CATA argues that the *Inside Wiring Notice* failed to propose specific rules, thereby preventing both the Commission staff and small entities from analyzing and commenting on the effects of proposed rules on small entities. RTE Group filed its comments and reply comments as ''a response by a small business pursuant to section 603 of the Regulatory Flexibility Act.'' The issues raised by RTE Group are addressed above. No comments were filed in response to the IRFA contained in the *Inside Wiring Further Notice.*

Description and Estimate of the Number of Small Entities Impacted

74. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' and the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one that: (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''). The rules we adopt in this *Order* will affect video service providers and MDU owners.

75. Small MVPDs: SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration). We will address each service individually to provide a more succinct estimate of small entities.

76. Cable Systems: The Commission has developed its own definition of a small cable company for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in the *Order.*

77. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that

would qualify as small cable operators under the definition in the Communications Act.

78. MMDS: The Commission refined the definition of ''small entity'' for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of the Commission's *Report and Order* concerning MMDS auctions has been approved by the SBA.

79. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas (''BTAs''). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. We believe that there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

80. ITFS: There are presently 1,989 licensed educational ITFS stations and 97 licensed commercial ITFS stations. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees and are unable to ascertain how many of the 97 commercial stations would be categorized as small under the SBA definition. Thus, we believe that at least 1,989 ITFS licensees are small businesses.

81. DBS: There are presently nine DBS licensees, some of which are not currently in operation. The Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

82. HSD: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by video service providers, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other video service providers; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

83. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small MSO. Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

84. OVS: The Commission has certified nine OVS operators. Because these services were introduced so recently and only one operator is currently offering programming to our knowledge, little financial information is available. Bell Atlantic (certified for operation in Dover) and Metropolitan Fiber Systems (''MFS,'' certified for operation in Boston and New York) have sufficient revenues to assure us that they do not qualify as small business entities. Two other operators, Residential Communications Network (''RCN,'' certified for operation in New York) and RCN/BETG (certified for operation in Boston), are MFS affiliates and thus also fail to qualify as small business concerns. However, Digital Broadcasting Open Video Systems (a general partnership certified for operation in southern California), Urban Communications Transport Corp. (a corporation certified for operation in New York and Westchester), and Microwave Satellite Technologies, Inc. (a corporation owned solely by Frank T. Matarazzo and certified for operation in New York) are either just beginning or have not yet started operations. Accordingly, we believe that three OVS licensees may qualify as small business concerns.

85. SMATVs: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

86. LMDS: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. An LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined above. A small radiotelephone entity is one with 1500 employees or less. For the purposes of this proceeding, we include only an estimate of LMDS video service providers. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, in the *LMDS Second Report and Order,* we defined a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than $40 million. We have not yet received approval by the SBA for this definition.

87. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules. We

tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

88. MDU Operators: The SBA has developed definitions of small entities for operators of nonresidential buildings, apartment buildings and dwellings other than apartment buildings, which include all such companies generating $5 million or less in revenue annually. According to the Census Bureau, there were 26,960 operators of nonresidential buildings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992. Also according to the Census Bureau, there were 39,903 operators of apartment dwellings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992. The Census Bureau provides no separate data regarding operators of dwellings other than apartment buildings, and we are unable at this time to estimate the number of such operators that would qualify as small entities.

Reporting, Recordkeeping, and Other Compliance Requirements

89. Disposition of MDU Home Run Wiring: The *Order* requires MVPDs to comply with a set of procedural timetables for the disposition of home run wiring upon termination of service when an MDU owner invokes the Commission's procedures. In addition, it requires MVPDs to include in future contracts with MDU owners a provision addressing the disposition of home run wiring upon the termination of the contract. It also requires the parties to cooperate to ensure as seamless a transition as possible for subscribers.

90. Sharing of Molding: The *Order* permits an MVPD to install home run wiring in an existing molding if the MDU owner determines that there is sufficient space, if the incumbent MVPD's ability to provide service is not impaired, and if the MDU owner gives its affirmative consent. If the MDU owner determines that there is not sufficient space, and the MDU owner will permit larger moldings, the MDU owner may install larger moldings at the alternative MVPD's expense.

91. Disposition of Cable Home Wiring: The *Order* requires MVPDs to implement their election to remove or abandon home wiring within seven days of learning that the home wiring will not be purchased.

92. Customer Access to Cable Home Wiring before Termination of Service: The *Order* requires cable operators to permit subscribers to provide or install their own cable home wiring, or redirect, reroute or connect additional wiring to the cable operator's home wiring, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring remains intact. The cable operator may choose to impose requirements that any home wiring meet reasonable technical specifications, not to exceed the technical specifications of such wiring installed by the cable operator; however, the cable operator may require additional technical specifications to eliminate electronic or physical harm.

93. Signal Leakage: The *Order* extends the Commission's cable signal leakage rules to all broadband service providers that pose a similar threat of interference with frequencies used for over-the-air communications. Section 76.615(b)(7) of the cable signal leakage rules requires cable operators to file annually with the Commission the results of their signal leakage tests conducted pursuant to section 76.611.

Significant Alternatives and Steps Taken To Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With the Stated Objectives

This section analyzes the impact on small entities of the regulations adopted, amended, modified, or clarified in this *Order.*

94. Disposition of MDU Home Run Wiring: We considered several alternatives for the disposition of MDU home run wiring, including: (1) Creating a single demarcation point for cable and telephony providers; (2) moving the cable demarcation point; and (3) maintaining our current rules. The record indicates that MDU owners often object to the installation of multiple home run wires for reasons including aesthetics, space limitations, the avoidance of disruption and inconvenience, and the potential for property damage. Small video service providers often are new entrants that will have to install new home run wiring (if they cannot use the existing wiring), while incumbent service providers often are established entities that may resist efforts by both new entrants and MDU operators to arrange for use of the existing wiring. By bringing order and certainty to the disposition of the home run wiring upon termination of service, the rules adopted herein advance the interests of both small video service providers and small MDU owners.

95. Transfer of Ownership of Home Run Wiring in Future Installations: We considered adopting a requirement that, for future installations, MVPDs transfer ownership of home run wiring to MDU owners. We instead decided to require MVPDs to include in future contracts with MDU owners a provision addressing the disposition of home run wiring upon termination of the contract. This requirement will provide all MDU owners, including small MDU owners, the flexibility to negotiate for ownership of the home run wiring.

96. Sharing of Molding: We considered not requiring the sharing of molding even when empty space exists. We concluded, however, that the ability to share molding often may assist small MVPDs, which frequently are new entrants, to gain access to MDUs. We considered Time Warner's proposal to allow affected MVPDs and the MDU owner to determine whether the molding contains adequate space. Our rule, however, does not require the concurrence of the affected MVPDs in the determination of whether adequate space exists.

97. Customer Access to Cable Home Wiring before Termination of Service: We believe that subscriber access to home wiring will advance the interests of small entities. As customers gain the ability to select who will install and maintain their home wiring, small entities will be able to compete with the incumbent cable operator to provide such services.

98. Signal Leakage: This *Order* extends the Commission's cable signal leakage rules to all broadband service providers that pose a similar threat of interference with frequencies used for over-the-air communications. Although this modification will impact small broadband service providers, we are exploring the possibility of exempting certain categories of broadband service providers from the reporting requirements of the signal leakage rules.

Report to Congress

99. The Commission shall send a copy of the *Order,* including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of the *Order* and the FRFA will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

XVI. Ordering Clauses

100. *It is Ordered* that, pursuant to sections 1, 4(i), 201–205, 214–215, 220, 303, 623, 624 and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, 214–215, 220, 303, 543, 544 and 552, the Commission's rules are hereby amended as set forth below.

101. *It is further ordered* that the amendments in 47 CFR 76.613, 76.802 and 76.804 impose information collection requirements, and will therefore not become effective until approved by the Office of Management and Budget (''OMB''). The amendments in 47 CFR 76.5, 76.620, 76.800, 76.805 and 76.806 will become effective 30 days following publication of this *Order* in the **Federal Register**. However, compliance with amendments in 47 CFR 76.5, 76.620, 76.800, 76.805 and 76.806 will not be required until OMB approval of the information collection requirements in 47 CFR 76.613, 76.802 and 76.804. The Commission will publish a document at a later date announcing the effective date of the amendments in 47 CFR 76.613, 76.802 and 76.804, and the date of compliance for the amendments in 47 CFR 76.5, 76.620, 76.800, 76.805 and 76.806.

102. *It is further ordered* that the Commission *shall send* a copy of the *Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.5 is amended by revising paragraph (mm)(2) and adding paragraphs (mm)(3) and (mm)(4), to read as follows:

§ 76.5 Definitions.

* * * * *

(mm) * * *

(2) For new and existing multiple dwelling unit installations with non-loop-through wiring configurations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's dwelling unit, or, where the wire is physically inaccessible at such point, the closest practicable point thereto that does not require access to the individual subscriber's dwelling unit.

(3) For new and existing multiple dwelling unit installations with loop-through wiring configurations, the demarcation points shall be at (or about) twelve inches outside of where the cable wire enters or exits the first and last individual dwelling units on the loop, or, where the wire is physically inaccessible at such point(s), the closest practicable point thereto that does not require access to an individual subscriber's dwelling unit.

(4) As used in this paragraph (mm)(3), the term ''physically inaccessible'' describes a location that:

(i) Would require significant modification of, or significant damage to, preexisting structural elements, and

(ii) Would add significantly to the physical difficulty and/or cost of accessing the subscriber's home wiring.

Note to paragraph (mm)(4): For example, wiring embedded in brick, metal conduit or cinder blocks with limited or without access openings would likely be physically inaccessible; wiring enclosed within hallway molding would not.

* * * * *

3. Section 76.613 is amended by revising the heading and by revising paragraphs (b), (c), and (d) to read as follows:

§ 76.613 Interference from a multichannel video programming distributor (''MVPD'').

* * * * *

(b) An MVPD that causes harmful interference shall promptly take appropriate measures to eliminate the harmful interference.

(c) If harmful interference to radio communications involving the safety of life and protection of property cannot be promptly eliminated by the application of suitable techniques, operation of the offending MVPD or appropriate elements thereof shall immediately be suspended upon notification by the District Director and/or Resident Agent of the Commission's local field office, and shall not be resumed until the interference has been eliminated to the satisfaction of the District Director and/or Resident Agent. When authorized by the District Director and/or Resident Agent, short test operations may be made during the period of suspended operation to check the efficacy of remedial measures.

(d) The MVPD may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

4. Section 76.620 is added to read as follows:

§ 76.620 Non-cable multichannel video programming distributors (''MVPDs'').

(a) Sections 76.605(a)(12), 76.610, 76.611, 76.612, 76.614, 76.615(b)(1–6), 76.616, and 76.617 shall apply to all non-cable MVPDs. However, non-cable MVPD systems that are substantially built as of January 1, 1998 shall not be subject to these sections until January 1, 2003. ''Substantially built'' shall be defined as having 75 percent of the distribution plant completed. As of January 1, 2003, § 76.615(b)(7) shall apply to all non-cable MVPDs.

(b) To comply with § 76.615(b)(2), a non-cable MVPD shall submit its Internal Revenue Service's Employer Identification (E.I.) number instead of an FCC identifier.

5. Subpart M is amended by revising the heading to read as follows:

Subpart M—Cable Inside Wiring

6. Section 76.800 is added to read as follows:

§ 76.800 Definitions.

(a) *MDU.* A multiple dwelling unit building (e.g., an apartment building, condominium building or cooperative).

(b) *MDU owner.* The entity that owns or controls the common areas of a multiple dwelling unit building.

(c) *MVPD.* A multichannel video programming distributor, as that term is defined in Section 602(13) of the Communications Act, 47 U.S.C. 522(13).

(d) *Home run wiring.* The wiring from the demarcation point to the point at which the MVPD's wiring becomes devoted to an individual subscriber or individual loop.

7. Section 76.802 is amended by revising paragraphs (a) and (g), and adding paragraph (l) to read as follows:

§ 76.802 Disposition of cable home wiring.

(a)(1) Upon voluntary termination of cable service by a subscriber in a single unit installation, a cable operator shall not remove the cable home wiring unless it gives the subscriber the opportunity to purchase the wiring at the replacement cost, and the subscriber declines. If the subscriber declines to purchase the cable home wiring, the cable system operator must then remove the cable home wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(2) Upon voluntary termination of cable service by an individual subscriber in a multiple-unit installation, a cable operator shall not be

entitled to remove the cable home wiring unless: it gives the subscriber the opportunity to purchase the wiring at the replacement cost; the subscriber declines, and neither the MDU owner nor an alternative MVPD, where permitted by the MDU owner, has provided reasonable advance notice to the incumbent provider that it would purchase the cable home wiring pursuant to this section if and when a subscriber declines. If the cable system operator is entitled to remove the cable home wiring, it must then remove the wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(3) The cost of the cable home wiring is to be based on the replacement cost per foot of the wiring on the subscriber's side of the demarcation point multiplied by the length in feet of such wiring, and the replacement cost of any passive splitters located on the subscriber's side of the demarcation point.

* * * * *

(g) If the cable operator adheres to the procedures described in paragraph (b) of this section, and the subscriber asks for more time to make a decision regarding whether to purchase the home wiring, the seven (7) day period described in paragraph (b) of this section will not begin running until the subscriber declines to purchase the wiring; in addition, the subscriber may not use the wiring to connect to an alternative service provider until the subscriber notifies the operator whether or not the subscriber wishes to purchase the wiring.

* * * * *

(l) The provisions of § 76.802, except for § 76.802(a)(1), shall apply to all MVPDs in the same manner that they apply to cable operators.

8. Section 76.804 is added to read as follows:

§ 76.804 Disposition of home run wiring.

(a) *Building-by-building disposition of home run wiring.* (1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the MDU owner, the MDU owner may give the MVPD a minimum of 90 days' written notice that its access to the entire building will be terminated to invoke the procedures in this section. The MVPD will then have 30 days to notify the MDU owner in writing of its election for all the home run wiring inside the MDU building: to remove the wiring and restore the MDU building consistent with state law within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first; to abandon and not disable the wiring at the end of the 90-day notice period; or to sell the wiring to the MDU building owner. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90-day notice period, the incumbent provider shall notify the MDU owner at the time of this election of the date on which it intends to terminate service. If the incumbent provider elects to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, which ever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider that has elected to abandon its home run wiring may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the MDU owner declines to purchase the home run wiring, the MDU owner may permit an alternative provider that has been authorized to provide service to the MDU to negotiate to purchase the wiring.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (a)(1) of this section, the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. If the parties are unable to agree on a price within that 30-day time period, the incumbent must elect: to abandon without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to binding arbitration by an independent expert. If the incumbent provider chooses to abandon or remove its wiring, it must notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment shall become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. If the incumbent elects at this point to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, which ever occurs first.

(3) If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring by the end of the 90-day notice period. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures. If the incumbent fails to comply with any of the deadlines established herein, it shall be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period.

(4) The MDU owner shall be permitted to exercise the rights of individual subscribers under this subsection for purposes of the disposition of the cable home wiring under § 76.802. When an MDU owner notifies an incumbent provider under this section that the incumbent provider's access to the entire building will be terminated and that the MDU owner seeks to use the home run wiring for another service, the incumbent provider shall, in accordance with our current home wiring rules: offer to sell to the MDU owner any home wiring within the individual dwelling units that the incumbent provider owns and intends to remove; and provide the MDU owner with the total per-foot replacement cost of such home wiring. This information must be provided to the MDU owner within 30 days of the initial notice that the incumbent's access to the building will be terminated. If the MDU owner declines to purchase the cable home wiring, the MDU owner may allow the alternative provider to purchase the home wiring upon service termination under the terms and conditions of § 76.802. If the MDU owner or the alternative provider elects to purchase the home wiring under these rules, it must so notify the incumbent MVPD provider not later than 30 days before the incumbent's termination of access to the building will become effective. If the MDU owner and the alternative provider fail to elect to purchase the home wiring, the incumbent provider must then remove the cable home wiring, under normal operating conditions, within 30 days of

actual service termination, or make no subsequent attempt to remove it or to restrict its use.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(b) *Unit-by-unit disposition of home run wiring:* (1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes, the MDU owner may permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit in the MDU. The MDU owner must provide at least 60 days' written notice to the incumbent MVPD of the MDU owner's intention to invoke this procedure. The incumbent MVPD will then have 30 days to provide a single written election to the MDU owner as to whether, for each and every one of its home run wires dedicated to a subscriber who chooses an alternative provider's service, the incumbent MVPD will: remove the wiring and restore the MDU building consistent with state law; abandon the wiring without disabling it; or sell the wiring to the MDU owner. If the MDU owner refuses to purchase the home run wiring, the MDU owner may permit the alternative provider to purchase it. If the alternative provider is permitted to purchase the wiring, it will be required to make a similar election within this 30-day period for each home run wire solely dedicated to a subscriber who switches back from the alternative provider to the incumbent MVPD.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (b)(1), the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. During this 30-day negotiation period, the parties may arrange for an up-front lump sum payment in lieu of a unit-by-unit payment. If the parties are unable to agree on a price during this 30-day time period, the incumbent must elect: to abandon without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to binding arbitration by an independent expert. If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring within 14 days. If subscribers wish to switch service providers after the expiration of the 60-day notice period but before the expert issues its price determination, the procedures set forth in paragraph (b)(3) of this section shall be followed, subject to the price established by the arbitrator. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures.

(3) When an MVPD that is currently providing service to a subscriber is notified either orally or in writing that that subscriber wishes to terminate service and that another service provider intends to use the existing home run wire to provide service to that particular subscriber, a provider that has elected to remove its home run wiring pursuant to paragraph (b)(1) or (b)(2) of this section will have seven days to remove its home run wiring and restore the building consistent with state law. If the subscriber has requested service termination more than seven days in the future, the seven-day removal period shall begin on the date of actual service termination (and, in any event, shall end no later than seven days after the requested date of termination). If the provider has elected to abandon or sell the wiring pursuant to paragraph (b)(1) or (b)(2) of this section, the abandonment or sale will become effective upon actual service termination or upon the requested date of termination, whichever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent shall inform the party requesting service termination, at the time of such request, of the date on which service will be terminated. The incumbent provider shall make the home run wiring accessible to the alternative provider within twenty-four (24) hours of actual service termination.

(4) If the incumbent provider fails to comply with any of the deadlines established herein, the home run wiring shall be considered abandoned, and the incumbent may not prevent the alternative provider from using the home run wiring immediately to provide service. The alternative provider or the MDU owner may act as the subscriber's agent in providing notice of a subscriber's desire to change services, consistent with state law. If a subscriber's service is terminated without notification that another service provider intends to use the existing home run wiring to provide service to that particular subscriber, the incumbent provider will not be required to carry out its election to sell, remove or abandon the home run wiring; the incumbent provider will be required to carry out its election, however, if and when it receives notice that a subscriber wishes to use the home run wiring to receive an alternative service. Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will apply where a subscriber's service is terminated without notifying the incumbent provider that the subscriber wishes to use the home run wiring to receive an alternative service.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(6) Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will continue to apply to the wiring on the subscriber's side of the cable demarcation point.

(c) The procedures set forth in paragraphs (a) and (b) of this section shall apply unless and until the incumbent provider obtains a court ruling or an injunction within forty-five (45) days following the initial notice enjoining its displacement.

(d) After the effective date of this rule, MVPDs shall include a provision in all service contracts entered into with MDU owners setting forth the disposition of any home run wiring in the MDU upon the termination of the contract.

(e) Incumbents are prohibited from using any ownership interest they may have in property located on or near the home run wiring, such as molding or conduit, to prevent, impede, or in any way interfere with, the ability of an alternative MVPD to use the home run wiring pursuant to this section.

(f) Section 76.804 shall apply to all MVPDs.

9. Section 76.805 is added to read as follows:

§ 76.805 Access to molding.

(a) An MVPD shall be permitted to install one or more home run wires within the existing molding of an MDU where the MDU owner finds that there is sufficient space to permit the installation of the additional wiring without interfering with the ability of an

existing MVPD to provide service, and gives its affirmative consent to such installation. This paragraph shall not apply where the incumbent provider has an exclusive contractual right to occupy the molding.

(b) If an MDU owner finds that there is insufficient space in existing molding to permit the installation of the new wiring without interfering with the ability of an existing MVPD to provide service, but gives its affirmative consent to the installation of larger molding and additional wiring, the MDU owner (with or without the assistance of the incumbent and/or the alternative provider) shall be permitted to remove the existing molding, return such molding to the incumbent, if appropriate, and install additional wiring and larger molding in order to contain the additional wiring. This paragraph shall not apply where the incumbent provider possesses a contractual right to maintain its molding on the premises without alteration by the MDU owner.

(c) The alternative provider shall be required to pay any and all installation costs associated with the implementation of paragraphs (a) or (b) of this section, including the costs of restoring the MDU owner's property to its original condition, and the costs of repairing any damage to the incumbent provider's wiring or other property.

10. Section 76.806 is added to read as follows:

§ 76.806 Pre-termination access to cable home wiring.

(a) Prior to termination of service, a customer may: install or provide for the installation of their own cable home wiring; or connect additional home wiring, splitters or other equipment within their premises to the wiring owned by the cable operator, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring remains intact.

(b) Cable operators may require that home wiring (including passive splitters, connectors and other equipment used in the installation of home wiring) meets reasonable technical specifications, not to exceed the technical specifications of such equipment installed by the cable operator; provided however, that if electronic or physical harm is caused to the cable system, the cable operator may impose additional technical specifications to eliminate such harm. To the extent a customer's installations or rearrangements of wiring degrade the signal quality of or interfere with other customers' signals, or cause electronic or physical harm to the cable system, the cable operator may discontinue service to that subscriber until the degradation or interference is resolved.

(c) Customers shall not physically cut, substantially alter, improperly terminate or otherwise destroy cable operator-owned home wiring.

[FR Doc. 97–29514 Filed 11–13–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–258; FCC 97–156]

Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission's amendments to 47 CFR Sections 76.701 and 76.702, which contained information collection requirements, became effective on October 29, 1997. These amendments, which were published in the **Federal Register** on May 23, 1997, relate to implementation of the cable television leased access and public, educational, and governmental access indecency provisions of the 1992 Cable Act.

EFFECTIVE DATE: The amendments to 47 CFR Sections 76.701 and 76.702, published at 62 FR 28371, became effective on October 29, 1997.

FOR FURTHER INFORMATION CONTACT: Meryl S. Icove, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION:

1. On May 7, 1997, the Commission released an order revising its indecency rules for leased access and public, educational and governmental access channels, a summary of which was published in the **Federal Register**. See 62 FR 28371, May 23, 1997. Because they imposed new or modified information collection requirements, 47 CFR Sections 76.701 and 76.702 could not become effective until approved by the Office of Management and Budget (''OMB''). OMB approved these rule changes on October 29, 1997.

2. The **Federal Register** summary stated that the Commission would publish a document confirming the effective date and notifying parties that these rules have become effective. The amendments to 47 CFR Sections 76.701 and 76.702 became effective on October 29, 1997.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29986 Filed 11–13–97; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 62, No. 220
Friday, November 14, 1997

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.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2411

Revision of Freedom of Information Act Regulations

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Federal Service Impasses Panel (FLRA) are proposing to amend their regulations relating to the Freedom of Information Act to implement certain changes mandated by the Electronic Freedom of Information Act Amendments of 1996, (EFOIA). The regulatory changes proposed in this notice will provide for expedited processing of information requests, as required by the EFOIA.

DATES: Comments must be received on or before December 15, 1997.

ADDRESSES: Mail or deliver written comments to Peter Constantine, Office of Case Control, Federal Labor Relations Authority, 607 14th Street, N.W., Room 415, Washington, D.C. 20424–0001.

FOR FURTHER INFORMATION CONTACT: Shari Polur (202) 482–6695 ext. 340.

SUPPLEMENTARY INFORMATION: Through the EFOIA, Pub. L. 104–231, 110 Stat. 3048 (1996), Congress amended the FOIA 5 U.S.C. 552 *et seq.*, to address, among other things, the expedited processing of requests for information. Specifically, Congress required agencies to promulgate regulations under which requests for expedited processing would be considered. In addition, Congress mandated that agencies grant such requests upon a showing of compelling need.

Written comments are solicited at the address given above. Copies of all written comments will be available for inspection and photocopying during normal business hours, in the Office of Case Control.

The FLRA proposes to amend part 2411, *Availability of Official Information*. The EFOIA requires agencies to promulgate, through notice and comment rulemaking, regulations providing for expedited processing of initial requests that demonstrate a *compelling need*. In addition, the regulations must provide for expedited processing in other cases when the agency determines it is warranted. *Compelling need* is defined as cases where ''a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.'' 5 U.S.C. 552(a)(6)(E)(v). A requester seeking expedited processing can demonstrate a *compelling need* by submitting a statement certified by the requester ''to be true and correct to the best of such person's knowledge and belief'' that satisfies the statutory and regulatory definitions of *compelling need*. 5 U.S.C. 552(a)(6)(E)(vi). FOIA officers must notify the requester within ten (10) calendar days whether or not expedited processing has been granted. If denied, any appeals made must be processed expeditiously. The proposed regulations would reflect these changes through modifications to § 2411.8, including a retitling of the section and the addition of a new paragraph (b).

Executive Order 12886

This final regulation has been reviewed in accordance with Executive Order 12886. It is not classified as significant because it does not meet the criteria for significant regulatory action established by the E.O.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The amendments are procedural in nature and are required to implement EFOIA.

Paperwork Reduction Act of 1995

The proposed regulations contain no additional information collection or record keeping requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2411

Administrative practice and procedure, Freedom of information, Government employees.

For the reasons stated in the preamble, the FLRA is proposing to adopt the following amendments to 5 CFR part 2411, Freedom of Information Act Regulations:

1. The authority citation for Part 2411 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Revise § 2411.8 to read as follows:

§ 2411.8 Modification of time limits.

(a) In unusual circumstances as specified in this section, the time limits prescribed with respect to initial determinations or determinations on appeal may be extended by written notice from the officer handling the request (either initial or on appeal) to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in a total extension of more than ten (10) working days. As used in this section, *unusual circumstances* means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(b) Expedited processing of a request for records, or an appeal of a denial of a request for expedited processing, shall be provided when the requester demonstrates a compelling need for the information and in other cases as determined by the officer processing the request. A requester seeking expedited

processing can demonstrate a compelling need by submitting a statement certified by the requester to be true and correct to the best of such person's knowledge and belief and that satisfies the statutory and regulatory definitions of compelling need. Requesters shall be notified within ten (10) calendar days after receipt of such a request whether expedited processing, or an appeal of a denial of a request for expedited processing, was granted. As used in this section, *compelling need* means:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

Dated: November 7, 1997.

Solly Thomas,

Executive Director.

[FR Doc. 97–29914 Filed 11–13–97; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–086–1]

Changes in Disease Status of Belgium, France, Greece, Luxembourg, Portugal, and Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare Luxembourg and Portugal free of rinderpest and foot-and-mouth disease; Greece free of rinderpest; France, Greece, Luxembourg, and Spain free of exotic Newcastle disease; Portugal free of African swine fever; and Belgium, France, and Portugal free of swine vesicular disease. These proposed actions are based on a request from the European Commission's Directorate General for Agriculture and on our review of the supporting documentation supplied with that request. These proposed actions would relieve some restrictions on the importation into the United States of certain animals and animal products from those countries. However, because of the status of those countries with respect to other diseases, and because of other factors that could result in a risk of introducing animal diseases into the United States, the importation into the United States of animals and animal products from those countries would continue to be subject to certain restrictions.

DATES: Consideration will be given only to comments received on or before January 13, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–086–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–086–1. 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: Dr. John Cougill, Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–8695; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases, including foot-and-mouth disease (FMD), rinderpest, exotic Newcastle disease (END), African swine fever (ASF), hog cholera, swine vesicular disease (SVD), and bovine spongiform encephalopathy (BSE). These are dangerous and destructive communicable diseases of ruminants, swine, and poultry.

In this document, we are proposing to declare Luxembourg and Portugal free of FMD and rinderpest; Greece free of rinderpest; France, Greece, Luxembourg, and Spain free of END; Portugal free of ASF; and Belgium, France, and Portugal free of SVD. We are proposing these actions in response to a request submitted to the Animal and Plant Health Inspection Service (APHIS) in July 1997 by the European Commission's (EC's) Directorate General for Agriculture. With its request, the EC's Directorate General for Agriculture provided supporting documentation that included information about the capability of each country's veterinary services, laboratory and diagnostic procedures, vaccination practices, and the administration of laws and regulations to ensure against the introduction of the diseases of concern into each country through the importation of live animals, meats, and animal products.

Since this request was received and reviewed by APHIS, we have published a final rule and policy statement in the **Federal Register** that establish procedures for recognizing regions, rather than only countries, for the purpose of importing animals and animal products into the United States, and that establish procedures by which regions may request permission to export animals and animal products to the United States under specified conditions, based on the regions' disease status (see 62 FR 56000–56033, October 28, 1997, Dockets 94–106–8 and 94–106–9). The final rule is scheduled to become effective on November 28, 1997. The request from the EC addressed by this proposed rule is not a request to recognize regions, rather than countries, nor a request to establish new import conditions based the disease status of any region. Therefore, as we explained we would do in our final rule and policy statement on regionalization, we have handled and evaluated this request in the traditional framework of recognizing a country as free or not free of a specified disease. If this proposed rule is adopted, the current regulations regarding importation of animals and animal products from regions ''free'' of a specified disease will apply.

Luxembourg and Portugal Free of Rinderpest and FMD

Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all regions of the world except those listed in § 94.1(a)(2), which have been declared to be free of those diseases. The regulations in § 94.1(b) prohibit, with certain specific exceptions, the importation into the United States of any ruminant or swine, or any fresh, chilled, or frozen meat of any ruminant or swine, that is from any region where rinderpest or FMD exists, or that has entered a port in or otherwise transited a region where rinderpest or FMD exists. Furthermore, the regulations in § 94.2 restrict the importation of fresh, chilled, or frozen products other than meat, and milk and milk products, of ruminants or swine that originate in or transit a region where rinderpest or FMD exists. Additionally, the importation of organs, glands, extracts, and secretions of ruminants or swine originating in a region where rinderpest

or FMD exists is restricted under the regulations in § 94.3, and the importation of cured or cooked meat from a region where rinderpest or FMD exists is restricted under the regulations in § 94.4. Finally, the regulations in 9 CFR part 98 restrict the importation of ruminant and swine embryos and animal semen from a region where rinderpest or FMD exists.

We will consider declaring a region to be free of rinderpest and FMD if, among other things, there have been no cases of those diseases reported there for at least the previous 1-year period and no vaccinations for rinderpest or FMD have been administered to swine or ruminants in that region for at least the previous 1-year period. There has never been a reported case of rinderpest in Luxembourg or Portugal, and the last reported cases of FMD in Luxembourg and Portugal occurred in 1964 and 1984, respectively. Both Luxembourg and Portugal have prohibited vaccinations for rinderpest and FMD since 1991.

We have reviewed the documentation submitted by the EC's Directorate General for Agriculture in support of its request that Luxembourg and Portugal be declared free of rinderpest and FMD. Based on that documentation, we believe that Luxembourg and Portugal qualify to be designated as free of rinderpest and FMD. Therefore, we are proposing to add Luxembourg and Portugal to the list in § 94.1(a)(2) of regions declared free of rinderpest and FMD. This proposed action would remove the rinderpest- and FMD-based prohibition on the importation from Luxembourg and Portugal of live ruminants and fresh, chilled, or frozen meat from ruminants and would relieve restrictions on the importation, from these two countries, of milk and milk products from ruminants. However, the importation of fresh, chilled, or frozen meat and edible products other than meat (excluding gelatin, milk, and milk products) from ruminants that have been in Portugal would continue to be restricted under § 94.18 because Portugal is listed in § 94.18 as a region in which BSE exists. Additionally, the importation from Luxembourg and Portugal of live swine and fresh, chilled, or frozen meat from swine would continue to be restricted under § 94.9 of the regulations because these countries have not been declared free of hog cholera.

We are also proposing to add Luxembourg and Portugal to the list in § 94.11(a) of regions declared free of rinderpest and FMD that are subject to special restrictions on the importation of their meat and other animal products into the United States. The regions listed in § 94.11(a) are subject to these special restrictions because they: (1) Supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from regions that are designated in § 94.1(a) as infected with rinderpest or FMD; or (2) have a common land border with regions designated as infected with rinderpest or FMD; or (3) import ruminants or swine from regions designated as infected with rinderpest or FMD under conditions less restrictive than would be acceptable for importation into the United States.

Both Luxembourg and Portugal supplement their national meat supplies by the importation of fresh, chilled, or frozen meat of ruminants and swine from regions designated in § 94.1(a)(1) as regions in which rinderpest or FMD exists. Furthermore, both Luxembourg and Portugal import live ruminants and swine from regions not recognized as being free of FMD under conditions less restrictive than would be acceptable for importation into the United States. As a result, even though we propose to designate Luxembourg and Portugal as being free of rinderpest and FMD, the meat and other animal products produced in these countries may be commingled with the fresh, chilled, or frozen meat of animals from a region in which rinderpest or FMD exists, resulting in an undue risk of introducing rinderpest or FMD into the United States.

Therefore, we are proposing that meat and other animal products of ruminants and swine and the ship stores, airplane meals, and baggage containing these meat or animal products imported into the United States from Luxembourg and Portugal be subject to the restrictions specified in § 94.11 of the regulations, in addition to other applicable requirements of the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) at 9 CFR Chapter III. Section 94.11 generally requires that the meat and other animal products of ruminants and swine be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by an additional certificate, issued by a full-time salaried veterinary official of the national government that is responsible for the health of the animals within the exporting region, assuring that the meat or other animal products have not been commingled with or exposed to meat or other animal products originating in, imported from, or transported through a region where rinderpest or FMD exists.

Greece Free of Rinderpest

Although Greece does not appear to qualify to be declared free of both rinderpest and FMD, the EC's Directorate General for Agriculture has requested that Greece be declared free of rinderpest. As noted above with regard to both rinderpest and FMD, we will consider declaring a region to be free of rinderpest if, among other things, there have been no cases of the disease reported there for at least the previous 1-year period and no vaccinations for rinderpest have been administered to swine or ruminants in that region for at least the previous 1-year period. There has not been a reported case of rinderpest in Greece since 1926, and vaccinations for that disease have been prohibited in Greece since 1991.

We have reviewed the documentation submitted by the EC's Directorate General for Agriculture in support of its request that Greece be declared free of rinderpest. Based on that documentation, we believe that Greece qualifies to be designated as free of rinderpest. We are, therefore, proposing to amend § 94.1(a) to designate Greece as a region free of rinderpest. To do so, we are proposing to add a new paragraph § 94.1(a)(3) in which Greece's status as a region free of rinderpest would be designated.

However, because Greece would be declared free of rinderpest only, and not FMD, the prohibitions and restrictions found in §§ 94.1(b), 94.2, 94.3, and 94.4 on the importation from Greece of ruminants and swine, and fresh, chilled, or frozen meat of ruminants and swine; products other than meat; milk and milk products; organs, glands, extracts, and secretions; and cured or cooked meat of ruminants or swine would continue to apply.

France, Greece, Luxembourg, and Spain Free of END

Section 94.6(a)(1) of the regulations provides that END is considered to exist in all regions of the world except those listed in § 94.6(a)(2), which have been declared to be free of END. The importation into the United States of any carcasses, or parts or products of carcasses, of poultry, game birds, or other birds that are from a region where END is considered to exist, or that have been imported from or moved into or through any region where END is considered to exist, is subject to the restrictions contained in § 94.6(c). In addition, the importation into the United States of eggs (other than hatching eggs) laid by poultry, game birds, or other birds that are from a region where END or *Salmonella*

enteritidis (SE) phage-type 4 is considered to exist or that have been imported from or moved into or through any region where END or SE phage-type 4 is considered to exist is subject to the restrictions contained in § 94.6(d). Poultry eggs for hatching imported from a region where END exists must be quarantined in accordance with § 93.209(b).

We will consider declaring a region to be free of END if there have been no reported cases of the disease in that region for at least the previous 1-year period. There has been no documented case of END in France, Greece, or Spain during the reporting period that began in 1994, and there has been no reported case of END in Luxembourg since 1995.

APHIS has reviewed the documentation submitted by the EC's Directorate General for Agriculture in support of its request that France, Greece, Luxembourg, and Spain be declared free of END. Based on that documentation, we believe that France, Greece, Luxembourg, and Spain qualify to be designated as free of END. Therefore, we are proposing to amend § 94.6(a)(2) by adding France, Greece, Luxembourg, and Spain to the list of regions declared free of END. This proposed action would relieve the restrictions of § 94.6(c) on the importation of carcasses, or parts or products of carcasses, of poultry, game birds, or other birds from those countries, and would relieve the END-specific restrictions of § 94.6(d)(1)(ix) on the importation of eggs (other than hatching eggs) laid by poultry, game birds, or other birds from those countries. This proposed action would also relieve the quarantine requirements of § 93.209(b) for poultry hatching eggs imported from France, Greece, Luxembourg, and Spain.

Portugal Free of ASF

Section 94.8 of the regulations states that ASF exists or is reasonably believed to exist in all the regions of Africa; in Brazil, Cuba, Haiti, Malta, and Portugal; and on the island of Sardinia, Italy. Paragraph (a) of § 94.8 provides that no pork or pork products may be imported into the United States from a region where ASF exists unless the pork or pork product meets certain specified conditions. Also, § 94.17 provides, in part, that dry-cured pork products may be imported into the United States from a region where ASF exists if the dry-cured pork products meet the conditions specified in that section.

In addition to the restrictions on pork and pork products contained in the regulations in part 94, live domestic swine from a region where ASF exists may not be imported into the United States because the regulations in 9 CFR 93.505(a) require, among other things, that live domestic swine be accompanied by a certificate showing that the entire region of origin of the swine is free of ASF and other specified diseases. The importation of swine casings from regions where ASF exists is likewise prohibited by 9 CFR 96.2(a) unless the swine casings originated in a region free of ASF and were processed in the region where ASF exists at a facility that meets the criteria of § 94.8(a)(3)(iv) of the regulations.

We will consider declaring a region free of ASF if there have been no reported cases of the disease in that region for at least the previous 1-year period. The last case of ASF in Portugal occurred in 1993.

APHIS has reviewed the documentation submitted by the EC's Directorate General for Agriculture in support of its request that Portugal be declared free of ASF. Based on that documentation, we believe that Portugal qualifies to be designated as free of ASF. Therefore, we are proposing to amend § 94.8 by removing Portugal from the list of regions in which ASF exists or is reasonably believed to exist. This proposed action would result in the importation of pork and pork products from Portugal no longer being subject to the restrictions found in § 94.8 of the regulations. Another effect of this proposed action would be that the importation of swine casings that originated in or were processed in Portugal would no longer be subject to the restrictions in 9 CFR 96.2(a).

However, Portugal is still considered to be affected with hog cholera, so the importation of pork and pork products from Portugal would remain subject to the restrictions in § 94.9 for hog cholera. Similarly, the importation of dry-cured pork products from Portugal would continue to be subject to the regulations in § 94.17 due to hog cholera. In addition, the importation of pork and pork products from Portugal would continue to be subject to the restrictions in § 94.11 because, as discussed above with respect to our proposal to declare Portugal free of rinderpest and FMD, Portugal would be listed in § 94.11(a) as a region that has been declared free of rinderpest and FMD, but from which the importation of all meat and other animal products is restricted due to the nature of its requirements for importing animal products from with regions affected with rinderpest or FMD or because they have a common land border with a region affected with rinderpest or FMD. Finally, declaring Portugal free of ASF would not relieve any of the current restrictions in 9 CFR part 93 on the importation into the United States of live swine from Portugal because Portugal remains affected with hog cholera.

Belgium, France, and Portugal Free of SVD

Section 94.12(a) of the regulations provides that SVD is considered to exist in all regions of the world except those listed in § 94.12(a), which have been declared to be free of SVD. Paragraph (b) of § 94.12 provides that no pork or pork products may be imported into the United States from a region where SVD exists unless the pork or pork product meets certain specified conditions and is not otherwise prohibited importation into the United States by the regulations.

We will consider declaring a region to be free of SVD if there have been no reported cases of the disease in that region for at least the previous 1-year period. The last cases of SVD in Belgium, France, and Portugal were reported in 1993, 1983, and 1995, respectively.

APHIS has reviewed the documentation submitted by the EC's Directorate General for Agriculture in support of its request that Belgium, France, and Portugal be declared free of SVD. Based on that documentation, we believe that Belgium, France, and Portugal qualify to be designated as free of SVD. Therefore, we are proposing to amend § 94.12(a) by adding Belgium, France, and Portugal to the list of regions declared free of SVD. This proposed action would relieve certain restrictions on the importation of pork and pork products from those countries.

However, Belgium, France, and Portugal are still considered to be affected with hog cholera, so pork and pork products from those countries offered for importation into the United States would remain subject to the restrictions in § 94.9 for hog cholera. The importation of live swine, except for wild swine, from Belgium, France, and Portugal would likewise continue to be prohibited due to hog cholera in accordance with § 94.10. Similarly, dry-cured pork products from Belgium, France, and Portugal would continue to be subject to the regulations in § 94.17 due to hog cholera. In addition, pork and pork products from Belgium, France, and Portugal would continue to be subject to the restrictions in § 94.11 because Belgium, France, and Portugal are among the regions listed (or, in the case of Portugal, would be listed) in § 94.11(a) that have been declared free of rinderpest and FMD, but from which the importation of all meat and other

animal products is restricted due to the nature of their requirements for importing animal products from regions affected with rinderpest or FMD or because they have a common land border with a region affected with rinderpest or FMD. (Portugal is not currently on the list in § 94.11(a), but, as discussed above, we are proposing to add Portugal to that list as part of our proposal to declare Luxembourg and Portugal free of rinderpest and FMD.)

We are also proposing to amend § 94.13 by adding Belgium, France, and Portugal to the list of regions that have been declared free of SVD, but from which the importation of pork and pork products is restricted. The regions listed in § 94.13 are subject to these restrictions because they: (1) Supplement their national pork supply by importing fresh, chilled, or frozen pork from regions where SVD is considered to exist; (2) have a common border with regions where SVD is considered to exist; or (3) have certain import requirements that are less restrictive than are acceptable to the United States.

Belgium, France, and Portugal all supplement their national pork supplies by importing fresh, chilled, or frozen pork from regions where SVD is considered to exist. In addition, France has a common land border with Italy, which is designated in § 94.12(a) as a region where SVD exists. Furthermore, Belgium, France, and Portugal have certain import requirements that are less restrictive than are acceptable to the United States. As a result, even though Belgium, France, and Portugal appear to qualify for designation as regions free of SVD, there is potential for pork and pork products produced in Belgium, France, and Portugal to be commingled with fresh, chilled, or frozen pork from a region where SVD exists. This potential for commingling constitutes an undue risk of introducing SVD into the United States.

Therefore, we are proposing that pork and pork products, as well as any ship's stores, airplane meals, and baggage containing such pork, offered for importation into the United States from Belgium, France, or Portugal be subject to the restrictions specified in § 94.13 of the regulations and to the applicable requirements contained in the FSIS regulations at 9 CFR chapter III. Section 94.13 requires, in part, that pork and pork products, except those treated in accordance with § 94.12(b), be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by a foreign meat inspection certificate and a certification issued by a full-time salaried veterinary official of the national government that is responsible for the health of the animals within the exporting region, stating that certain precautions have been taken so that the pork or pork product has not been commingled with or exposed to animals, pork, or pork products originating in, or transported through, a region in which SVD is considered to exist.

Miscellaneous

In §§ 94.3 and 94.4, reference is made to articles ''originating in any region designated in § 94.1.'' Although the intent of those sections is to restrict the importation of certain articles from regions where rinderpest or FMD exists, the phrase ''designated in § 94.1'' could also be interpreted as referring to those regions declared free of rinderpest and FMD, since those regions are listed in § 94.1(a)(2). To make the intent of those two sections clear, we are proposing to amend those sections so that they refer to ''regions where rinderpest or foot-and-mouth disease exists, as designated in § 94.1.'' We would also amend §§ 94.1(c) and 94.11(a), where reference is made to § 94.1(a); for the sake of accuracy, those paragraphs should specifically refer to § 94.1(a)(2).

Executive Order 12866 and Regulatory Flexibility Act

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

This proposed rule would amend the regulations in part 94 by declaring Luxembourg and Portugal free of rinderpest and FMD; Greece free of rinderpest; France, Greece, Luxembourg, and Spain free of END; Portugal free of ASF; and Belgium, France, and Portugal free of SVD.

Pork and Pork Products and Swine

Although this proposed rule would declare Luxembourg and Portugal free of rinderpest and FMD; Greece free of rinderpest; Belgium, France, and Portugal free of SVD; and Portugal free of ASF, all those countries are still considered affected with hog cholera, and Greece is still considered to be affected with FMD. Because of this, this proposed rule would not lead to any substantive relaxation of restrictions imposed on the importation of pork and pork products and live swine from those countries, as these products would continue to be restricted based on the presence of hog cholera and, in the case of Greece, FMD. Therefore, the effect of this proposed rule on the importation of pork and pork products and live swine would be minimal, and thus the potential impact on the domestic producers of pork and pork products and swine would be minimal.

Ruminants and Ruminant Products

This proposed rule would declare Greece free of rinderpest, but that country is still considered to be affected with FMD. Similarly, Portugal would be declared free of rinderpest and FMD, but that country is still considered to be affected with BSE. Because imports of ruminants and ruminant products from regions with FMD and BSE are restricted, this proposed rule would not lead to a substantive change in the restrictions imposed on the importation of ruminants and ruminant products from Greece and Portugal.

By declaring Luxembourg free of rinderpest and FMD, this proposed rule would reduce the restrictions placed on the importation of ruminants and ruminant products from Luxembourg. However, that proposed change in disease status should have a minimal effect on the amount of ruminants and ruminant products imported into the United States from Luxembourg.

The cattle industry in Luxembourg is very small relative to the U.S. domestic market. Cattle and buffalo inventories for 1996 were more than 103 million head in the United States (''Agricultural Statistics,'' 1997), compared to fewer than 3.4 million in Belgium and Luxembourg (those two nations are reported collectively in the United Nations' Food and Agriculture Organization (FAO) Yearbook). Also, of the 2 million cattle and calves that were imported into the United States in 1996, more than 99 percent were from Canada and Mexico. Sheep and goat inventories are also much smaller in Luxembourg than in the United States. According to the FAO, there were 8.9 million sheep and 2 million goats in the U.S. in 1995, as opposed to 150,000 sheep and 9,000 goats in Belgium and Luxembourg. The United States is also a strong net exporter of sheep and goats, with 48,792 head imported and 397,395 head exported in 1996 (''World Trade Atlas,'' June 1997). Of the sheep that the United States does import, more than 99 percent are from Canada and Mexico (''World Trade Atlas,'' June 1997). Luxembourg exported no live ruminants to the United States in 1996. In fact, there were fewer than 100 cattle, sheep and goats imported from the European Union in 1996. Western Europe is not a significant source of live ruminants for the United States, and any importation of live ruminants from Luxembourg as

a result of this proposed rule likely would be negligible.

The effect of this proposed rule on the importation of ruminant meat and meat products should also be minimal. The 1995 production of beef, veal, mutton, lamb and goat meat for Belgium and Luxembourg was approximately 3 percent of the U.S. production of 11.6 million metric tons for that year (''FAO Yearbook,'' 1995). The United States imports only a small portion of its overall supply of these products, an amount equal to about 6 percent of production. In addition, the United States imports very little ruminant meat and meat products from Luxembourg or from Western Europe in general. Moreover, nearly 85 percent of the imports that come into the United States are from Australia, Canada, and New Zealand. Because we believe that it is unlikely that Luxembourg would export a significant portion of its comparatively small meat production exclusively to the United States, any effect on domestic prices or supplies would likely be negligible.

The importation of dairy products from Luxembourg into the United States should be at most minimally affected by this proposed rule. Dairy product production in Luxembourg is small relative to that of the United States. Milk production in Belgium and Luxembourg was less than 5 percent the size of U.S. production in 1995 (''FAO Yearbook,'' 1995). For dairy products in general, we believe that it is unlikely that Luxembourg would redirect a significant portion of its production exclusively to the United States, which is a significant net exporter of those products. Belgium and Luxembourg do export significant quantities of butter and dried milk, but those products may currently be exported to the United States under the current regulations. Therefore, the impact on domestic dairy producers should be minimal.

The potential effect of this proposed rule on the importation into the United States of ruminant embryos and animal semen would also likely be minimal. The United States is a net exporter of both bovine semen and cattle embryos. In 1996, the value of U.S. bovine semen and cattle embryo imports was $7.7 million and $701,000, respectively, while the value of U.S. exports of bovine semen and cattle embryos was $63.1 million and $12.6 million respectively (''World Trade Atlas,'' June 1997). Given this trade balance and the size difference between the cattle industries of the United States and Luxembourg, the amount imported of each will likely be minimal.

Bird and Poultry Products

The proposed rule would declare France, Greece, Luxembourg, and Spain free of END. This proposed action would relieve restrictions on the importation of carcasses, or parts or products of carcasses, of poultry, game birds, or other birds from those countries, and would relieve certain restrictions on the importation of eggs (other than hatching eggs) laid by poultry, game birds, or other birds from those countries. This proposed action would also relieve the quarantine requirements for poultry hatching eggs imported from France, Greece, Luxembourg, and Spain.

Egg production in those four countries is considerable: In 1995, the reported egg production in Belgium and Luxembourg was 3,858 million; in France, 16,911 million; in Greece, 2,600 million; and in Spain, 9,983 million (''Agriculture Statistics,'' 1997). U.S. production is also large, 74,280 million in 1995. In addition, the U.S. imports few eggs, with the total amount being equal to less than 0.1 percent of U.S. production. We believe that it is unlikely that these countries would redirect a significant portion of their production toward such a small U.S. import market.

Total poultry meat production in France, Greece, Luxembourg, and Spain in 1995 was about 3.5 million metric tons, or about 26 percent the size of U.S. production of 13.8 million metric tons. However, the United States is a very strong net exporter of poultry meat, with imports of only 3,546 metric tons and exports of more than 2 million metric tons in 1996 (''World Trade Atlas,'' June 1997). Very few of the imports are from western Europe. Moreover, more than 99 percent of U.S. poultry meat imports originated in Canada. We do not expect that these countries would redirect a significant amount of poultry meat toward such a small U.S. import market.

Impact on Small Entities

The Regulatory Flexibility Act requires that the Agency specifically consider the economic impact associated with the proposed rule on small entities. Those likely to be affected by this proposed rule are those entities engaged in the production of live swine, pork and pork products, live ruminants, meat, meat products, and dairy products derived from ruminants, and poultry products.

The Small Business Administration's (SBA's) definition of a ''small'' cattle, swine, or poultry farm is one whose total sales is less than $0.5 million annually. In 1992, 97.8 percent of cattle and calf farms would be considered small entities. The vast majority of the domestic hog and pig farms qualify as small entities (96.3 percent in 1992). Eighty-seven percent of poultry farms would be considered small entities in 1992 (''1992 Census of Agriculture,'' U.S. Department of Commerce, 1993).

The SBA's guidelines state that a ''small'' producer of poultry meat (Standard Industrial Classification (SIC) 2015, poultry slaughtering and processing) is one employing fewer than 500 workers. In 1992, 74 percent of 591 poultry slaughtering and processing establishments were considered small entities. These small entities accounted for approximately 30 percent of the total value of shipments of the industry, $7.2 billion.

The SBA's guidelines state that a ''small'' producer of pork and ruminant products (part of SIC 2011 or 2013, meat packing plants) is one employing fewer than 500 workers. In 1992, 97 percent of the 1,367 meat packing establishments in SIC 2011 were considered small entities. These small establishments accounted for approximately 40 percent of the total value of shipments of the industry, $50.4 billion. Ninety-eight percent of the 1,264 establishments in SIC 2013 were considered small entities in 1992. These producers accounted for 84 percent of the total value of shipments of the industry, $19.97 billion.

Although the majority of the domestic entities potentially affected by this proposed rule are small, there should be only a minimal change in the level of imports that may compete with the output of these small entities, and thus there would be a minimal impact on any domestic producer of these products, whether small or large.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 94.1 would be amended as follows:

a. In paragraph (a)(1), the words ''or (a)(3)'' would be added immediately after the words ''paragraph (a)(2)''.

b. In paragraph (a)(2), the word ''Luxembourg,'' would be added immediately after the word ''Japan,'' and the word ''Portugal,'' would be added immediately after the word ''Poland,'';

c. A new paragraph (a)(3) would be added to read as set forth below.

d. In the introductory text of paragraph (c), the words ''paragraph (a) of'' would be removed and the words ''paragraph (a)(2) of'' would be added in their place.

§ 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.

(a) * * *

(3) The following regions are declared to be free of rinderpest: Greece.

* * * * *

§ 94.3 [Amended]

3. Section 94.3 would be amended by adding the words ''where rinderpest or foot-and-mouth disease exists, as'' immediately before the word ''designated''.

§ 94.4 [Amended]

4. In § 94.4(a), the introductory text of the paragraph would be amended by adding the words ''where rinderpest or foot-and-mouth disease exists, as'' immediately before the word ''designated''.

§ 94.6 [Amended]

5. In § 94.6, paragraph (a)(2) would be amended by adding the words ''France, Greece,'' immediately after the word ''Finland,''; by adding the word ''Luxembourg,'' immediately after the word ''Iceland,''; and by adding the word ''Spain,'' immediately after the words ''Republic of Ireland,''.

§ 94.8 [Amended]

6. In § 94.8, the introductory text of the section would be amended by removing the words ''Malta, and Portugal'' and adding in their place the words ''and Malta''.

§ 94.11 [Amended]

7. In § 94.11, paragraph (a), the first sentence would be amended by adding the word ''Luxembourg,'' immediately after the word ''Japan,''; by adding the word ''Portugal,'' immediately after the word ''Poland,''; and by removing the reference ''§ 94.1'' and adding the reference ''§ 94.1(a)(2)'' in its place.

§ 94.12 [Amended]

8. In § 94.12, paragraph (a) would be amended by adding the word ''Belgium,'' immediately after the words ''The Bahamas,''; by adding the word ''France,'' immediately after the word ''Finland,''; and by adding the word ''Portugal,'' immediately after the word ''Panama,''.

§ 94.13 [Amended]

9. In § 94.13, the introductory text of the section would be amended by adding the word ''Belgium,'' immediately after the words ''The Bahamas,''; by adding the word ''France,'' immediately after the word ''Denmark,''; and by adding the word ''Portugal,'' immediately after the words ''Northern Ireland,''.

Done in Washington, DC, this 12th day of November 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30105 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 77N–094W]

RIN 0910–AA01

Over the-Counter Drug Products Containing Analgesic/Antipyretic Active Ingredients for Internal Use; Required Alcohol Warning

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would establish alcohol warnings for all over-the-counter (OTC) drug products containing internal analgesic/antipyretic active ingredients labeled for adult use. The proposed warning statements advise consumers who have a history of heavy alcohol use or abuse to consult a physician for advice about the use of OTC internal analgesic/antipyretic drug products. A warning would be required for all OTC internal analgesic/antipyretic drug products marketed under an OTC drug monograph or an approved new drug application (NDA). FDA is issuing this notice of proposed rulemaking after considering the reports and recommendations of its Nonprescription Drugs Advisory Committee (NDAC) and Arthritis Drugs Advisory Committee (ADAC), public comments on the proposed rule for OTC internal analgesic, antipyretic, and antirheumatic drug products, and other available information.

DATES: Written comments by January 28, 1998. Written comments on the agency's economic impact determination by January 28, 1998. The agency is proposing that any final rule based on this proposal be effective 6 months after the date of its publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Debbie L. Lumpkins, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2241.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 8, 1977 (42 FR 35346), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, together with the recommendations of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products (the Panel), which was the panel responsible for evaluating data on the active ingredients in these drug products. In that notice, the Panel discussed the effects of alcohol ingestion on the safe use of OTC internal analgesic, antipyretic, and antirheumatic drug products containing aspirin and acetaminophen (42 FR 35346 at 35395).

Based on the data evaluated, the Panel found evidence of a possible synergism between alcohol and aspirin's ability to cause gastrointestinal (GI) bleeding (42 FR 35346 at 35395). The Panel stated that the data supported the hypothesis that aspirin may enhance or potentiate bleeding from GI lesions, even though aspirin alone may not initiate the lesion. However, the Panel stopped short of recommending a warning concerning the use of aspirin with alcohol.

The Panel did not receive data on the effect of alcohol use with other salicylates. However, based on its evaluation of the available data, the Panel concluded that carbaspirin calcium, choline salicylate, magnesium salicylate, and sodium salicylate all have safety profiles similar to aspirin and should bear similar labeling (42 FR 35346 at 35417 through 35422).

In evaluating the safety of acetaminophen (42 FR 35346 at 35413 to 35415), the Panel considered data on the metabolism of acetaminophen in the presence of various types of liver disease, including alcoholic liver cirrhosis. The Panel determined that the decreased metabolism of acetaminophen by the usual principal mechanisms (glucuronidation and sulfation) observed in some people with chronic liver disease could potentially increase the toxicity of acetaminophen by increasing the relative fraction metabolized through the other pathway(s) leading to the toxic metabolite. The Panel found that the evidence suggested that the overall elimination of acetaminophen by conjugation is decreased in alcohol abusers and is similar to that observed in cases of decreased liver function. The Panel suggested, however, that this decreased conjugation and the increased susceptibility of chronic alcohol abusers to the hepatotoxicity of acetaminophen was not necessarily due to liver cirrhosis but resulted from the induction of microsomal enzymes by the chronic use of alcohol. However, the Panel did not recommend a warning concerning the use of normal doses of acetaminophen by individuals with a history of liver disease or chronic alcohol abuse. The Panel's recommended label warning on liver damage referred only to the well-documented injury that can occur with overdose. The Panel recommended the following warning: ''Do not exceed recommended dosage because severe liver damage may occur.''

In the **Federal Register** of November 16, 1988 (53 FR 46204), the agency published a proposed rule (tentative final monograph) for OTC internal analgesic, antipyretic, and antirheumatic drug products. In the preamble to the proposed rule, the agency responded to a number of comments concerning the Panel's recommended liver warning for acetaminophen and the need for a warning on the increased risk of liver toxicity when acetaminophen is taken with substances or drugs that induce microsomal enzyme activity, i.e., alcohol, barbiturates, or prescription drugs for epilepsy (53 FR 46204 at 46213 through 46218). The agency found that the available data did not provide a sufficient basis to require such a warning.

The agency also received a number of comments opposed to warnings that cite organs of the body as possible cites for damage from acute overdoses of internal analgesic/antipyretic drug products. The agency agreed with the comments and determined that warnings for acetaminophen need not specify the toxic effects on particular organs of the body that can be caused by acute overdose of a drug, as in a suicide attempt. However, the agency further stated (53 FR 46204 at 46213):

> * * * the warnings should include specific information on the known side effects or adverse reactions that may occur from use of the drug according to labeled directions, as well as potential dangers that may occur if the labeled directions are exceeded.
>
> The agency concludes that when medical evidence shows that toxicity is associated with the use of an OTC drug, either within its recommended dosage or when used beyond its recommended time limit or dosage (except for acute overdose), it is appropriate to warn consumers of the potential toxicity. In some cases it may be necessary to include organ-specific warnings as well as general labeling statements.

The agency received no comments concerning the Panel's comments about a possible synergism between alcohol and aspirin's ability to cause GI bleeding or the lack of a reference to such effect in labeling.

II. Summary of the Comments Received

In response to the proposed rule, the agency received comments concerning the need for an alcohol warning for acetaminophen. One comment recommended that the labeling of OTC drug products containing acetaminophen include the following warning: ''Do not drink alcoholic beverages while taking acetaminophen. To do so may increase the chance of liver damage, especially if you drink large amounts of alcoholic beverages regularly.'' Citing 75 incidences of liver damage in alcohol abusers who consumed acetaminophen for therapeutic reasons (Refs. 1 through 27), the comment asserted that the reports strongly suggest that alcohol abuse potentiates acetaminophen's liver toxicity.

The comment stated that the clinical observation of increased liver toxicity of acetaminophen in alcohol abusers has been confirmed by experimental data in animals and humans (Refs. 22 and 28 through 46). In the comment's view, these experimental data demonstrate that: (1) Alcohol has a significant effect on acetaminophen metabolism; (2) chronic alcohol ingestion has been shown to induce microsomal enzymes, thereby increasing the formation of the toxic intermediate metabolite of acetaminophen, known as *N*-acetyl-*p*-benzoquinoneimine (NAPQI); and (3) chronic alcohol ingestion interferes with the detoxification of NAPQI by depleting hepatic glutathione (GSH).

Citing information indicating that alcohol is consumed by two-thirds of the American population (12 percent of this population considered to be heavy drinkers (Ref. 47) and that acetaminophen is widely available (present in over 200 OTC drug products), the comment asserted that the concurrent use of alcohol and acetaminophen can be predicted to be extraordinarily common. The comment suggested that the use of acetaminophen with alcohol may be even greater because heavy promotion stating that acetaminophen causes less stomach irritation than aspirin has made it the preferred OTC internal analgesic/antipyretic used in the presence of alcohol-related gastric upset. The comment asserted that these new data suggest that alcohol abusers appear to be at greater risk of hepatotoxicity from the therapeutic use of acetaminophen. Accordingly, the comment recommended that the labeling of these OTC drug products be strengthened to

ensure that consumers who abuse alcohol are not exposed to unnecessary daily use of acetaminophen. The comment added that warnings concerning the use of acetaminophen by alcohol abusers are included in the United States Pharmacopeial Dispensing Information (Refs. 48 and 49).

In addition to its proposed warning, the comment suggested that the maximum daily dose of acetaminophen be reduced from 4 to 2 grams (g) per day for this segment of the population. However, the comment did not provide data to support the reduced maximum daily dose. The comment recommended the following revision to the dosing directions proposed for acetaminophen in § 343.50(d)(2) (21 CFR 343.50(d)(2)) of the tentative final monograph: ''If you drink large amounts of alcoholic beverages regularly, do not exceed 2 grams of acetaminophen (4 to 6 tablets) a day.''

The comment subsequently submitted additional data to support its recommendations that included the following: (1) Reports of acetaminophen hepatotoxicity in alcohol abusers or associated with Psittacosis (Refs. 50 through 53), (2) a retrospective study of the effects of chronic alcohol intake on the prognosis and outcome of acetaminophen overdose (Ref. 54), and (3) a study of acetaminophen metabolism in alcohol abusers (Ref. 55).

Two comments disagreed with the need for the proposed warning, arguing that the existing data provide no rational basis for a warning. Citing its review of the scientific literature (Ref. 56), one comment questioned the number of cases of acetaminophen-induced liver toxicity due to the ingredient's therapeutic use by alcohol abusers. The comment stated that the majority of the reports involved subjects with a history of alcohol abuse and use of amounts of acetaminophen far in excess of the maximum daily therapeutic dose. The comment contended that the reliability of the history of acetaminophen use and the regularity of dosing included in these reports was questionable. The comment cited six additional published articles (Refs. 57 through 62) containing reports of acetaminophen-induced liver toxicity in alcohol abusers and contended that none of these reports supports an alcohol warning.

One of the comments disagreed with the assertion that experimental data in animals and humans have demonstrated chronic microsomal induction or increased NAPQI production in association with acetaminophen-alcohol use. The comment cited studies by Critchley et al. (Refs. 63 and 64) and Lauterberg and Velez (Ref. 65) in which no evidence of microsomal induction was found in heavy drinkers. Moreover, the comment cited additional studies (Refs. 66, 67, and 68) that it asserted demonstrated a reduction of microsomal enzyme activity in subjects with liver disease (including alcoholic hepatitis). The comment noted the results of a study in mice by Mitchell et al. (Ref. 35) that demonstrated for covalent binding or hepatic necrosis to occur GSH levels need to be reduced to approximately 20 to 30 percent of normal. The comment asserted that a reduction of such magnitude is unlikely except in severe malnutrition. Concerning the cited animal data, the comment noted that in the vast majority of studies the amounts of acetaminophen ingested would correspond to overdose amounts in humans.

The comment concluded by stating that the safety profile of acetaminophen in alcohol abusers should be evaluated in the context of their inclination to develop gastritis, gastroduodenal ulceration, hepatic cirrhosis, impairment of coagulation mechanisms, portal hypertension, and GI hemorrhage. Citing the fact that doctors frequently recommend acetaminophen to their alcohol abusing patients because it does not cause GI irritation or have platelet inhibiting effects, the comment asserted that an alcohol warning for OTC drug products containing acetaminophen would be contrary to the public interest. The comment suggested that such a warning might encourage individuals who abuse alcohol to use other OTC internal analgesic/antipyretic drug products containing ingredients that carry a greater risk of injury.

III. The Advisory Committees Meetings

The agency subsequently asked NDAC for advice on the need for an alcohol warning for OTC drug products containing acetaminophen. On June 29, 1993, NDAC met to consider the issue. The agency provided NDAC the following data and information: (1) The history of the agency's evaluation of the issue, (2) a summary of issues raised by comments in response to the tentative final monograph, (3) published reports of acetaminophen-induced liver toxicity in alcohol users at various acetaminophen doses, (4) data on the pharmacokinetics of acetaminophen metabolism in alcohol abusers, (5) data on microsomal enzyme induction in subjects with liver disease, (6) epidemiological data on the effect of alcohol abuse on acetaminophen overdose, (7) animal data on the effects of ethanol on acetaminophen metabolism, and (8) animal studies of the effect of diet on glutathione levels. A copy of this information is on file in the Dockets Management Branch (Ref. 69). Interested parties were also given the opportunity to present their positions.

The agency asked NDAC to consider: (1) Whether the data supported the need for an alcohol warning for OTC drug products containing acetaminophen; (2) the population at risk in terms of alcohol consumption, e.g., people who rarely drink, social drinkers, or alcohol abusers, and the acetaminophen dose ingested; (3) any special benefit/risk considerations concerning the use of an alcohol warning in the population at risk, e.g., will alcohol abusers switch to other OTC internal analgesic/antipyretic ingredients that have equivalent or greater risks; (4) the type of information that should be included in an alcohol warning, e.g., organ-specific information, description of alcohol amount, or other information; (5) whether the data are sufficient to support a reduced maximum daily acetaminophen dose for alcohol abusers; and (6) if so, what the reduced maximum daily dose should be.

NDAC concluded that alcohol abusers or heavy drinkers are at increased risk for developing liver toxicity when using acetaminophen. Based on this conclusion, NDAC recommended that an alcohol warning informing heavy alcohol users or abusers of their increased risk from the use of acetaminophen be included in the labeling of such products. Recommending that the exact wording of such a warning be developed by the agency, NDAC advised that the warning should specifically refer to possible liver damage. However, NDAC did not recommend a reduced maximum daily dose of acetaminophen for alcohol abusers. NDAC was concerned that an alcohol warning on OTC drug products containing acetaminophen in the absence of a similar warning on products containing other internal analgesic/antipyretic ingredients would cause alcohol abusers to switch to products containing those other ingredients, which may have equivalent or greater risks. Therefore, NDAC recommended that the agency not implement an alcohol warning for OTC drug products containing acetaminophen until NDAC had a chance to consider data on the risk of alcohol use with other internal analgesic/antipyretic ingredients (Ref. 70).

On September 8, 1993, NDAC and ADAC (the Committees) met jointly to consider data on the risk of the use of aspirin and other OTC analgesics by

heavy alcohol users or abusers. The agency provided the Committees the following data and information: (1) Published and unpublished epidemiological data on the risk of upper GI bleeding associated with the use of alcohol and aspirin, ibuprofen, and naproxen sodium; (2) data on the additive effects of these ingredients and alcohol on the GI tract; (3) data on the ability of alcohol to potentiate aspirin-prolonged bleeding times; (4) data on the effect of aspirin on ethanol pharmacokinetics; and (5) the Panel's conclusions on the safety of the OTC use of acetaminophen, aspirin, carbaspirin calcium, choline salicylate, magnesium salicylate, and sodium salicylate. A copy of this information is on file in the Dockets Management Branch (Ref. 71). Interested parties were also given the opportunity to present their positions.

The agency asked the Committees to consider the following in evaluating the data: (1) Whether the data are sufficient to support an alcohol warning for OTC drug products containing aspirin, ibuprofen, and naproxen sodium; (2) whether the data are sufficient to support an alcohol warning for other salicylates (carbaspirin calcium, choline salicylate, magnesium salicylate, or sodium salicylate); (3) the type of information an alcohol warning should include, i.e., organ specific information or statement of risk; and (4) the type of information that should appear in the labeling of combination drug products containing aspirin and acetaminophen.

The Committees concluded that the use of aspirin, ibuprofen, and naproxen sodium increases the risk of upper GI bleeding in heavy alcohol users or abusers. Concerning whether the data support an alcohol warning for OTC drug products containing these ingredients, the Committees voted 12 yes, 2 no for aspirin; 12 yes, 2 no for ibuprofen, and 12 yes, 1 no, and 1 abstention for naproxen sodium. The Committees further concluded that there are no data to support a warning for nonaspirin salicylates and, therefore, a recommendation on the need for an alcohol warning for these OTC drug products was outside their advisory scope. Regarding the type of information that should be included in an alcohol warning, the Committees recommended that the warning not mention a specified level of alcohol consumption, but were unable to reach a consensus whether the warning should be general or organ-specific (Ref. 72).

IV. Summary of Comments on the Committees' Recommendations

In response to the Committees' recommendations, the agency received 11 comments. Several comments from a manufacturers' association urged the agency to reject the Committees' recommendation for an alcohol warning for OTC aspirin drug products. One comment suggested that such a warning may jeopardize the compliance of individuals on low-dose aspirin regimens for cardiovascular indications. Other comments contended that the recommendation was not supported by reliable scientific data, but reflected concerns about unsubstantiated risks from the use of aspirin by individuals with a history of alcohol use. These concerns, the comments asserted, were based on submissions that included inaccurate summaries of studies without raw data and erroneous projections of morbidity and mortality based on incorrect assumptions. The comment suggested that these distortions had a significant impact on the Committees' recommendations.

In support of its contentions, the comment noted: (1) Criticisms of the available published data made by some Committee members during deliberations, and (2) specific comments made by an agency reviewer concerning unpublished epidemiological data presented to the Committees (Ref. 73). The comment pointed out that most of the studies were uniformly rejected by the Committees' members or the agency's reviewer, and thus the meeting produced no reliable evidence on which to justify a label warning regulation.

The comments also included critical assessments of the unpublished epidemiological data presented to the Committees: (1) A prospective observational study (Ref. 74), (2) a retrospective study of adverse drug reaction reports (Ref. 75), (3) a study conducted at the SUNY-Health Science Center (Ref. 76), (4) a study conducted at the Sloane Epidemiology Unit (Ref. 77), (5) a study conducted by Strom (Ref. 78), and (6) a study conducted at the University of Newcastle (Ref. 79). The comments contended that, based on these criticisms, the data from these studies could not be relied upon to support the need for an alcohol warning for OTC aspirin drug products. The comments asserted that an independent analysis of the data from two of the epidemiological studies (Refs. 77 and 79) is necessary to verify the studies' conclusions and requested that the agency obtain the raw data from the studies.

The comments asserted that the Committees misunderstood the agency's proposed warning in § 343.50(c)(1)(v)(B) that advises against the use of aspirin by persons that have stomach problems that persist or recur, or have ulcers, or bleeding problems, without consulting a doctor. The comments noted that most of the data submitted related to upper GI bleeding by persons with existing GI disease. The comments advised FDA to base its decision on the available scientific data and concluded that those data do not demonstrate that heavy alcohol users or abusers, with no preexisting ulcers or recurrent stomach or bleeding problems, are at an increased risk of upper GI bleeding from the use of OTC aspirin drug products.

In response to the comments' assertions, the agency received reply comments from members of the Committees (Ref. 80). One member stated that the Committees' final decision was based on the information available and was justified. Another member contended that if acetaminophen is to have a warning, then all OTC internal analgesic/antipyretic drug products should have a warning, preferably the same for all products. A third member expressed disagreement with the Committees' recommendation, explaining that a test of enhanced risk should be an odds ratio substantially greater than one. The member further recommended that an odds ratio of two or greater should be required, and the difference from one should be statistically significant.

A number of comments from the investigators for three of the unpublished epidemiological studies presented to the Committees addressed point by point the criticisms raised about the studies. These comments concluded that the data from these studies support the need for an alcohol warning. Another comment concluded that the data from these studies show that: (1) There is an increased risk of major upper GI bleeding in aspirin users that is independent of alcohol use, (2) there is an increased risk of major upper GI bleeding in alcohol users that is independent of aspirin use, and 3) aspirin further increases this risk in alcohol users.

V. The Agency's Tentative Conclusions on the Committees' Recommendations

A. Acetaminophen

After considering NDAC's recommendations and all available data and information, the agency has determined that the data are sufficient to warrant an alcohol warning for OTC drug products containing

acetaminophen. Based on an evaluation of the scientific literature, the agency has determined that individuals with a history of heavy alcohol use or abuse have an increased risk from the hepatotoxic effects of acetaminophen. In order to advise consumers with such a history to consult a physician for advice on the use of OTC acetaminophen drug products, the agency is proposing that OTC analgesic/antipyretic drug products containing acetaminophen bear an alcohol warning.

Acetaminophen is considered a dose dependent hepatotoxin (Ref. 81). Acute doses of acetaminophen of 15 g or more in adults have been associated with hepatotoxicity (Refs. 81 and 82). However, the scientific literature from 1966 to the present contains at least 97 reports of hepatotoxicity attributed to the ingestion of less than 15 g of acetaminophen (Refs. 1 through 27, 51, 52, 53, 57 through 62, and 83 through 93). With few exceptions, these case reports describe a clinical and laboratory picture consistent with acetaminophen overdose: Nausea, vomiting, hematemesis (bloody vomitus), jaundice, markedly elevated liver enzymes (aspartate aminotransferase (AST) and alanine aminotransferase (ALT)), elevated bilirubin, prolonged prothrombin time, and liver biopsy results (when obtained) demonstrating centrilobular necrosis.

Seventy-one of the 97 cases (73 percent) involve a history of heavy alcohol use or abuse (Refs. 1, 2, 3, 5 through 20, 22 through 26, 52, 53, 57 through 62, 86, 87, and 93). While a number of these reports lack sufficient information to permit a detailed assessment, the long history of the reports, their diverse countries of origin, consistent presentation and pattern of usage suggest that individuals with a history of heavy alcohol use or abuse are more susceptible to acetaminophen's hepatotoxic effects. Further, a majority of the 71 cases (41 cases or 58 percent) are associated with acetaminophen doses at or below the currently proposed maximum daily OTC dose (4 g per day) or moderate overdoses of approximately 6 g (Refs. 7, 12 through 18, 20, 22, 23, 24, 26, 52, 53, 57, 58, 60, 61, 62, 86, 87, and 93).

A number of these cases provide sufficient detail to suggest acetaminophen induced hepatotoxicity in heavy alcohol users or abusers at acetaminophen doses of 6 g or below. Bell, Schonsby, and Raknerud (Ref. 57) reported a 32-year-old male ''periodic alcoholic'' (patient 3) who began drinking after a period of abstinence, used acetaminophen to treat withdrawal symptoms, and took 3.4 g acetaminophen per day for 5 days prior to hospital admission. On the day of admission, the patient developed nausea and hematemesis. Jaundice and bruising were also observed.

Laboratory tests revealed elevated liver enzymes (AST 13,420 International Units/Liter (IU/L) and ALT 7,510 IU/L (reference AST and ALT 10 to 40 IU/L)) and hyperbilirubinemia (297 micromole/liter (µmole/L) or 17.4 milligrams (mg)/deciliter (dL) (reference bilirubin 3 to 25 µmole/L or 0.2 to 1.5 mg/dL)). Tests for hepatitis C surface antigen, hepatitis A and cytomegalovirus antibody, and Monospot were negative. The serum acetaminophen level 2 days after the last dose was 2.5 micrograms/milliliter (µg/mL). No liver biopsy was done. N-acetylcysteine (NAC) was not administered. The patient improved with supportive treatment and was discharged. At outpatient followup, 5 weeks after admission, all laboratory tests were normal.

Bell, Schonsby, and Raknerud (Ref. 57) also reported a 57-year-old woman (patient 4) with a history of gout who ingested 40 to 50 g of alcohol a day. For several years, she had taken 400 mg acetaminophen and 5 mg prednisone per day. In response to an increase in leg pain, she increased her intake to 2.4 to 3.2 g acetaminophen per day for several days. On the day of hospital admission, she vomited blood and developed symptoms compatible with hepatic encephalopathy (jaundice, somnolence, and bruising).

Laboratory tests revealed elevated aminotransferases (AST 16,180 IU/L and ALT 8,950 IU/L). Bilirubin was 123 µmole/L or 7.2 mg/dL. NAC was not administered. The patient died the day following admission with massive hematemesis and hypotension. Autopsy revealed abundant blood in the stomach and intestines but no sign of an ulcer. Microscopically, a marked centrilobular liver cell necrosis was seen.

Floren, Thesleff, and Nilsson (Ref. 7) described hepatotoxicity in a 58-year-old woman (patient 1) who regularly consumed a bottle of red wine a day. The patient was hospitalized due to a slight intoxication. Before admission, she admitted to ingesting 1 to 1.5 g acetaminophen, sedatives (oxazepam), and antidepressants (lorazepam) for an unspecified period of time. The patient was transferred from the psychiatric ward to the medical clinic due to elevated liver enzymes (AST 14.3 microkatal/L (µkat/L) and ALT 14.0 µkat/L). Reference levels for AST and ALT were less than 0.7 µkat/L.

At the time of transfer, the concentration of acetaminophen in serum was not measurable and NAC was not administered. Tests for hepatitis B surface antigen and hepatitis A were negative. A liver biopsy demonstrated centrilobular necrosis with normal portal zones. The biopsy revealed no evidence of steatosis, fibrosis, or cirrhosis. The patient recovered uneventfully.

Licht, Seeff, and Zimmerman (Ref. 20) reported a 53-year-old man who ingested 2.6 to 3.9 g acetaminophen daily for an undisclosed period of time. He admitted to a 15-year history of excessive alcohol intake with a recent intake of 2 quarts of whiskey daily. He entered the hospital after 3 days of weakness, abdominal discomfort, and jaundice.

Laboratory values at the time of admission indicated markedly elevated liver enzymes (AST 19,710 milliunits (mU)/mL) and ALT 4,560 mU/mL), a bilirubin of 13 mg/dL, and a prolonged prothrombin time of 22 seconds (control 10 seconds). A serum acetaminophen level obtained 12 hours after ingestion was in the nontoxic range (2 µg/mL). A test for hepatitis B surface antigen was negative. No liver biopsy was obtained. NAC was not administered. The patient recovered.

Luquel et al. (Ref. 60) described a 49-year-old man who was admitted to the hospital with confusion, hematemesis, and decreased urine output. In addition to increasing his beer intake, he also took 1.2 g acetaminophen and 25 mg ethyl loflazepate for 2 days prior to hospitalization. Laboratory values were AST 1,870 IU/L, ALT 640 IU/L, total bilirubin 39 µmole/L or 2.3 mg/dL, and a prothrombin rate of 75 percent. No serum acetaminophen was detected, and NAC was not administered. The results of a liver biopsy performed on the third day of hospitalization revealed centrilobular necrosis. The patient recovered uneventfully.

Seeff et al. (Ref. 26) reported six cases of acetaminophen hepatotoxicity in alcohol abusers. Three cases (patients 2, 3, and 6) involved doses of approximately 4 g acetaminophen. Patient 2 was a 30-year-old male chronic alcohol abuser who ingested 12.5 g acetaminophen over a 3-day period for pain related to a dental abscess. (Assuming that the doses were evenly distributed over the 3 days, he ingested approximately 4.2 g acetaminophen per day.) His laboratory values showed elevated liver enzymes (AST greater than 10,000 IU/L and ALT 7,610 IU/L), a bilirubin of 2.4 mg/dL, and a prothrombin time 9.3 seconds longer than control. A test for hepatitis B surface antigen was negative. Serum acetaminophen level and liver biopsy

were not done. The patient was treated with NAC, improved, and was released from the hospital.

Patient 3 was a 39-year-old man who was hospitalized for a submandibular infection following a fracture. Over a 1-week period, he had taken approximately 3.8 g acetaminophen per day. On admission, his laboratory values revealed elevated liver enzymes (AST 5,640 IU/L and ALT 354 IU/L), bilirubin 16.5 mg/dL, and a prothrombin time twice the control. Serum acetaminophen levels were not determined, nor was a liver biopsy performed. NAC was not administered. The patient improved over the next few weeks and was discharged.

Patient 6 was admitted to the hospital for acute alcohol withdrawal syndrome. During the 3 days prior to admission, she took approximately 3.7 g acetaminophen a day for headache. Laboratory values included AST 6,888 IU/L, ALT 2,480 IU/L, total bilirubin 6.6 mg/dL, and a prothrombin time 10 seconds longer than control. Serum acetaminophen level, liver biopsy, and viral screening were not performed. NAC was not administered and with supportive treatment, the patient recovered.

Edwards and Oliphant (Ref. 86) described a 46-year-old man who presented to the hospital with a 2-hour history of epigastric pain with hematemesis. The patient gave a history of regular alcohol consumption. In the week prior to admission, he had consumed two 1,250 mL spirits over the week and 12 cans of beer daily and concurrently taken not more than 3 g of acetaminophen daily for hangover, up to a total dosage of 18 g. He took an additional 3 g of acetaminophen 6 hours prior to his admission to the hospital.

Liver function tests conducted on day 2 of hospitalization showed markedly abnormal aminotransferases (AST 30,000 IU/L and ALT 9,750 IU/L) and a bilirubin of 86 µmole/L or 5 mg/dL. At 6 hours post ingestion, the serum acetaminophen level was 0.04 µg/mL. On day 2 the level was 0.005 µg/mL. Hepatitis serology was negative for hepatitis A, B, and C. No liver biopsy was performed. NAC was not administered. The patient's convalescence was slow but uneventful.

Johnson, Friedman, and Mitch (Ref. 12) described a 23-year-old female alcohol abuser who developed acute hepatitis and renal failure 3 days after ingesting a bottle of cold medication containing 6 g acetaminophen in 25 percent alcohol. The patient's medical history included a previous hepatitis infection. Laboratory values at admission were AST 4,320 IU/L, ALT 1,130 IU/L, total serum bilirubin 10 mg/dL, and a prothrombin time of 13.1 seconds (control 12 seconds). Serum acetaminophen was undetectable 6 days after acetaminophen ingestion. A test for hepatitis B surface antigen was negative. Antibodies to hepatitis B surface antigen were detected. No liver biopsy was conducted. NAC was not administered. Hepatic function gradually improved and the patient was discharged.

Kartsonis, Reddy, and Schiff (Ref. 13) reported a 39-year-old male alcohol abuser who developed vague inguinal discomfort and began self-medicating with 5 g acetaminophen per day over a 6-day period. He presented to the hospital with nausea, vomiting, and abdominal pain. Laboratory tests revealed elevated aminotransferases (AST more than 8,270 IU/L and ALT 6,494 IU/L), total bilirubin 4.2 mg/dL, and an extended prothrombin time of 21 seconds (control 12 seconds). Acetaminophen was not detectable in the blood. Neither a liver biopsy nor viral screening were done. NAC was not administered. The man had an uneventful recovery with supportive care and was discharged from the hospital after 7 days.

O'Dell, Zetterman, and Burnett (Ref. 24) reported a 38-year-old woman who took 6 g acetaminophen for 5 days for stomach pain. She had a history of chronic pancreatitis and chronic alcoholism (approximately 200 g ethanol a day for 10 years). She presented to the hospital with nausea, vomiting, and abdominal pain. Liver enzymes on admission were AST 1,512 IU/L and ALT 554 IU/L. Bilirubin levels and prothrombin times were normal. Acetaminophen blood levels were not determined. A liver biopsy revealed centrilobular necrosis without signs of alcoholic hepatitis or centrilobular fibrosis.

Acetaminophen administration was discontinued and liver enzymes returned to normal. The patient was counseled about acetaminophen and alcohol toxicity, and discharged. Subsequently, she was readmitted to the hospital with abdominal pain of 2 weeks duration for which she had taken 6 g acetaminophen a day.

On admission, her liver enzymes were AST 5,210 IU/L and ALT 1,580 IU/L, and total bilirubin was 1.1 mg/dL. A serum acetaminophen level was not determined. A second biopsy showed extensive centrilobular fibrosis. Alcoholic hyalin and polymorphonuclear leukocyte inflammation were not observed. The periportal regions were normal and there was no portal fibrosis. The patient recovered and was discharged from the hospital.

Seeff et al. (Ref. 26) reported a 58-year-old male chronic alcohol abuser hospitalized for alcoholic hepatitis and cervical neck pain. The patient's history included a recent increase in alcohol consumption and chronic ingestion of 4 to 6 g acetaminophen daily for an unspecified period of time. On admission, AST was 2,870 IU/L, bilirubin was 3.6 mg/dL, and prothrombin time was 14 seconds (control 11.3 seconds). ALT was not reported, and serum acetaminophen levels were not determined. NAC was not administered. Laboratory values on the next day included an AST level of 790 IU/L and an ALT level of 2,300 IU/L. Serologic tests for hepatitis B were negative. No liver biopsy was done. Serum aminotransferases and prothrombin time returned to normal, and the patient was discharged 12 days after admission.

Kumar and Rex (Ref. 52) reported six cases of hepatotoxicity, four of which involved acetaminophen doses of 5 to 6 g. Case 2 was a 65-year-old female alcohol abuser admitted to the hospital after 1 day of vomiting. Her admitting AST and ALT levels were 3,199 IU/L and 1,270 IU/L, respectively. Her total bilirubin level peaked at 41 µmole/L or 2.4 mg/dL. After 2 days of observation and improvement, it was discovered that she had been taking about 6 g/day acetaminophen for back pain. Serum acetaminophen level, liver biopsy, and viral screening were not done. She was discharged in stable condition with near normal liver test results.

Case 3 was a 43-year-old woman admitted to the hospital with a 6-day history of fatigue, malaise, nausea, and vomiting. Peak laboratory values included elevated liver enzymes (AST 14,920 IU/L and ALT 3,304 IU/L), total bilirubin 126 µmole/L or 7.4 mg/dL, and a prothrombin time of 46 seconds (no control reported). No serum acetaminophen levels, liver biopsy, or viral screening was performed. Initially, the woman denied alcohol or acetaminophen use. However, a friend subsequently reported that she was a heavy drinker and had been taking 5 g acetaminophen daily for an unspecified period of time. NAC was not administered, and she was discharged in stable condition.

Kumar and Rex (Ref. 52) also described a 55-year-old man (case 4) with a history of heavy alcohol use who was hospitalized after 3 to 4 weeks of nausea and vomiting. On admission, laboratory values included elevated liver enzymes (AST 1,240 IU/L and ALT 252 IU/L), total bilirubin 35 µmoles/L,

and a prothrombin time of 15 seconds (no control reported). His liver enzyme levels peaked on day 2 (AST 7,225 IU/L and ALT 1,280 IU/L). It was later determined that he had ingested 6 g acetaminophen daily for an unspecified period of time for headaches and arthritic pain. Serum acetaminophen level, viral screening, and liver biopsy were not done. The patient was discharged after 20 days with normal liver function tests.

Another case reported by Kumar and Rex (Ref. 52) was a 59-year-old male alcohol abuser (case 5) who was admitted to the hospital with dizziness and orthostatic hypotension. He reported ingesting 5 g acetaminophen daily for 1 month for hip pain. Peak liver test abnormalities were present on the day of admission (AST 3,000 IU/L, ALT 290 IU/L, total bilirubin 133 µmole/L, and prothrombin time 19 seconds, no control reported). Serum acetaminophen levels, liver biopsy, and viral screening were not done. NAC was not administered. The patient subsequently developed sepsis and GI bleeding and died 2 weeks after hospitalization.

The agency subsequently received an additional 19 reports of acetaminophen liver toxicity (Ref. 94). Fifteen of these reports involved acetaminophen doses of less than 6 g daily in individuals with a history of moderate to heavy alcohol use. Five of the reports (case numbers 9, 11, 12, 13, and 19) provided sufficient detail to suggest acetaminophen-induced hepatotoxicity.

Case number 9 was a 45-year-old woman with a history of alcohol abuse who, at the time of admission, had a history of ingesting one to two glasses of wine daily (only at night). The patient had a history of acetaminophen use along with alcohol. For approximately 5 days prior to admission, the patient reportedly took acetaminophen at the recommended dose (4 g per day) for flu-like symptoms. The patient vomited (some ''coffee ground'' emesis) for 5 days prior to admission, and for 2 days had a progressive deterioration of mental status. On the night prior to admission, she became delirious and was brought to the emergency room.

Laboratory values showed grossly elevated liver enzymes (AST 15,205 IU/L and ALT 4,051 IU/L), a prothrombin time of 63.7 seconds (no control reported), and a total bilirubin of 3.8 mg/dL. The serum acetaminophen level was 12 µg/mL (time after last dose unknown). No record of hepatitis screening was provided. During the hospital stay, an upper endoscopy showed bleeding secondary to diffuse gastritis and portal gastropathy. The patient continued to deteriorate and died 1 month after hospital admission. Autopsy findings included diffuse hepatic necrosis with micro vesicular fat and bile stasis.

Case number 11 was a 43-year-old man with a long-standing history of alcohol abuse (at least 12 cans of beer daily for 16 years). He developed lower abdominal pain and fever, followed 2 days later by nausea and vomiting, for which he took two medications containing acetaminophen (estimated dose less than 4 g per day) for at least 1 day. He was admitted to the hospital 2 days later with hypotension and abnormal liver and renal function.

Laboratory values showed elevated liver enzymes (AST 5,450 IU/L and ALT 2,251 IU/L) a prothrombin time of 55.9 seconds (no control reported), and a total bilirubin of 89 µmole/L. The serum acetaminophen level was 5 µg/mL (time after last dose unknown). The patient died 10 days after admission to the hospital. No record of hepatitis screening was provided. Post-mortem findings included centrilobular necrosis and widespread mucosal hemorrhages consistent with coagulopathy. The autopsy report noted that while there was no evidence of cirrhosis, the presence of ascites, muscle wasting, and testicular wasting was consistent with the effect of chronic liver disease.

Case number 12 was a 41-year-old man who had taken acetaminophen-containing drugs for 2 days (4 to 5 g/day) to alleviate the pain of fractured ribs. He had a history of alcohol abuse and had recently been drinking 12 beers a day. He was admitted to the hospital with complaints of shortness of breath and left-side chest pain. On examination, he was found to have greater than an 80-percent pneumothorax of the left lung and was also deeply jaundiced. A blood alcohol level done at time of admission was reported as ''0.''

Laboratory findings included AST 21,900 IU/L, ALT 11,200 IU/L, total bilirubin 17.8 mg/dL, and a prothrombin time of 40 seconds (no control reported). The serum acetaminophen level was 2.1 µg/mL 4 days after the last acetaminophen ingestion. The results of screening for hepatitis A antibody, hepatitis B surface antigen and antibody, and hepatitis B core antibody were negative. Screening for Epstein-Barr surface antigen was also negative. A liver biopsy showed fulminant hepatic necrosis with mild to moderate evidence of alcohol-related liver disease. A diagnosis of acute toxic liver failure was made, and the patient was transferred to a second hospital for a liver transplant, which was done within 72 hours of transfer. Following the transplant, the patient was discharged in stable condition. Sections of the removed liver showed extensive centrilobular necrosis, with up to 50 or 60 percent necrosis in some areas.

Case number 13 was a 62-year-old man with a history of heavy alcohol use and severe steroid-dependent chronic obstructive pulmonary disease. He subsequently reduced his alcohol intake to two to four beers a day for several years. A few days prior to admission, he developed flu-like symptoms (sore throat, myalgia, and sleeping difficulty) for which he took an estimated 4 to 5 g acetaminophen over an 8-hour period. He became progressively weaker and fell on the day prior to admission.

On admission, he was found to have hypotension, weakness, grossly elevated liver function tests (AST 16,279 IU/L, ALT 10,942 IU/L, a total bilirubin of 7.8 mg/dL, and a prothrombin time of 55.7 seconds, no control reported). Serum acetaminophen levels were not determined. The patient was diagnosed with acute hepatic failure and died within 24 hours of admission. A post-mortem liver biopsy revealed massive hepatocellular necrosis.

Case number 19 was a 30-year-old man with a history of occasional alcohol use. Four days prior to admission, he developed malaise and a sore throat and drank six glasses of wine prior to retiring for the evening. His symptoms became progressively worse, and he took acetaminophen (4 g per day) for 3 to 4 days. On the morning of admission, he became disoriented, unable to speak, and agitated.

Admission laboratory data revealed markedly elevated liver enzymes (AST 13,580 and ALT 11,250 IU/L), a prothrombin time of 32.4 seconds (no control reported), and a bilirubin of 7.0 mg/dL. No blood alcohol was detected. A serum acetaminophen level of 7 µg/mL was obtained approximately 48 hours after the last acetaminophen dose. Screening for hepatitis B surface antigen and core antibody was negative. Tests for herpes simplex virus were initially negative but were positive after transfusions. The patient deteriorated rapidly and lapsed into a coma. A liver transplant was done, after which the patient was initially stable, but subsequently developed deteriorating kidney function. The liver pathology report described extensive centrilobular hemorrhagic necrosis.

Zimmerman and Maddrey (Ref. 95) reported 67 additional cases of hepatic injury in regular alcohol users associated with the use of acetaminophen for therapeutic purposes. The majority of cases

involved subjects considered to be alcohol abusers or who reported alcohol intakes of at least 60 g/day. In 27 of the cases (40 percent), hepatic injury was attributed to acetaminophen doses under 4 g/day. In another 13 cases (19.4 percent), hepatic injury was associated with acetaminophen doses of 4.1 to 6 g/day. Unfortunately, specific details of the individual cases were not provided. Thus, a definitive assessment of the role of acetaminophen in the reported liver injuries is difficult.

Acetaminophen is metabolized principally by glucuronide and sulphate conjugation in the liver. When acetaminophen is taken at therapeutic doses, glucuronide and sulphate metabolites account for 80 to 90 percent of the acetaminophen metabolites in urine (Ref. 80). Ordinarily, a small fraction of acetaminophen is metabolized by microsomal enzyme cytochrome P450 2E1 to NAPQI (Ref. 96), but if the capacity of the glucuronidation and sulfation metabolic pathways is exceeded, as in overdose, or if the synthesis of P450 2E1 is induced, increased amounts of NAPQI are produced.

NAPQI is avidly electrophilic and can bind to liver cell macromolecules, disrupt cell function, and ultimately cause liver cell death. The binding of NAPQI to liver cell components is prevented if the compound is detoxified by conjugation with GSH or other sulfhydryl compound. The detoxification of NAPQI generates, through a series of reactions, mercapturic acid and cysteine metabolites. GSH is depleted in the detoxification process and must be replenished by sulfhydryl compounds from the diet or by drugs given as therapy, e.g., the cysteine containing compound NAC. NAC has well-documented effectiveness as an antidote for acetaminophen overdose. More recently, it has been recommended for the treatment of acetaminophen liver toxicity after ingestion of therapeutic doses of acetaminophen by individuals with a history of heavy alcohol use or abuse (Ref. 95).

Pharmacokinetic studies in humans suggest an increased sensitivity of heavy alcohol users or abusers to the hepatotoxic effects of acetaminophen. The data suggest that the ingestion of even relatively small doses of acetaminophen (1 g) by heavy alcohol users or abusers results in a higher than normal percentage of acetaminophen metabolized by the microsomal enzyme pathway that yields NAPQI. The available pharmacokinetic data suggest that the rate of metabolism of acetaminophen is increased in alcohol abusers (as evidenced by an increase in the plasma clearance rate (CL) and a decrease in the plasma elimination half-life of acetaminophen ($t_{1/2}$)). This increased metabolism suggests increased activity of the microsomal pathway in this population.

Dietz et al. (Ref. 28) compared the metabolism of acetaminophen in six healthy alcohol abusers (240 to 480 mL alcohol daily for 2 to 40 years) to eight healthy nondrinking adults. The alcohol abusers had stopped drinking within the previous 48 hours. Baseline laboratory data were obtained from both groups. Following a 12-hour fast, a single 1 g dose of acetaminophen was administered. Blood samples were collected immediately before acetaminophen administration and at 30, 60, 90, 120, and 240 minutes thereafter. Acetaminophen plasma data were fit to a one-compartment open model for oral dosing using nonlinear regression analysis. The time to peak concentration (t_{max}), peak plasma concentration (C_{max}), the area under the concentration-time curve (AUC), and CL were determined. Laboratory screening data revealed significant differences between the controls and alcohol abusers only in gamma-glutamyl transpepsidase activity (12.6 units in controls and 204.7 units in alcohol abusers, $p = 0.01$). There was no significant difference in renal function between the two groups. The acetaminophen plasma AUC's for the groups were significantly different ($p < 0.01$). While both groups achieved C_{max} at approximately the same time, C_{max} for the nondrinkers was significantly higher than for the alcohol abusers (20.2 μg/mL versus 15.4 μg/mL). The CL was also significantly accelerated in the alcohol abusers (247.4 mL/minute (min) versus 154.4 mL/min, $p < 0.001$).

Girre et al. (Ref. 55) obtained similar results in a comparison of the pharmacokinetics of acetaminophen in 12 chronic alcohol abusers and 12 healthy controls. The mean daily alcohol consumption for the alcohol abusers was 210 ± 95 g of absolute alcohol for a mean duration of 14.5 ± 9.5 years. Control subjects drank only moderately (defined in the study as a weekly alcohol consumption < 80 g) and were asked to abstain from alcohol consumption for 36 hours before the trial. A single, 1-g acetaminophen dose was administered following a 12-hour fast. Blood samples were taken before acetaminophen intake and at 0.25, 0.5, 0.75, 1, 1.5, 2, 2.5, 3, 4, 6, 8, and 24 hours thereafter.

The following pharmacokinetic parameters were determined: C_{max}, t_{max}, AUC, CL, and $t_{1/2}$. A comparison of C_{max} and t_{max} showed no significant differences between the two groups. However, in the alcohol abusers, $t_{1/2}$ was significantly shorter than for the controls (1.71 versus 2.84 hours, $p < 0.05$). CL was increased in the alcohol abusers (30.34 versus 26.52 L/hour, $p < 0.05$).

Observed increases in the excretion of metabolites (mercapturate and cysteine) of the microsomal pathway also suggest increased activity of this pathway in this population. Villeneuve et al. (Ref. 27) observed an increased urinary excretion of cysteine and mercapturate metabolites of acetaminophen in alcohol abusers. The authors compared the pharmacokinetics of acetaminophen metabolism in nine alcohol abusers (457 ± 50 g ethanol per day for at least 3 months), eleven subjects with alcoholic cirrhosis, and six healthy normal subjects. Subjects in the control group consumed no alcohol or other medications.

Subjects with a history of alcohol abuse were selected based on the absence of alcoholic hepatitis or cirrhosis (determined by physical examination and standard biological tests for liver function) and the lack of drug use (other than alcohol). The diagnosis of cirrhosis was confirmed by liver biopsy. Cirrhotic subjects were hospitalized at the time of the study and did not consume alcohol for at least 30 days prior to the start of the study. Five of the cirrhotic subjects received spironolactone (100 mg/day) for treatment of their ascites.

After 12 hours of fasting, a liquid preparation of acetaminophen was administered orally at a dose of 12 mg/kilogram with 200 mL of water (mean dose: Controls 920 mg, alcohol abusers 805 mg, and cirrhotics 872 mg). Blood samples were taken at 0, 5, 15, 30, 45, 60, 90, 120, 180, 240, 300, 360, and 420 minutes after ingesting acetaminophen. Urine was collected for 24 hours after ingestion. The apparent oral clearance (CL_o), AUC, and $t_{1/2}$ were determined.

The percentage of the acetaminophen dose eliminated in the urine of alcohol abusers was significantly decreased from the controls (88.6 to 63.4 percent). In the cirrhotics, clearance was decreased by 50 percent ($p < 0.05$), $t_{1/2}$ was extended ($p < 0.05$), and urinary elimination was not significantly decreased in relation to the controls. The level of glucuronide and sulfate conjugates in the alcohol abusers was not significantly different in comparison to the controls. The excretion of cysteine and mercapturate metabolites of acetaminophen was increased in a significant manner for the alcohol abusers ($p < 0.05$). When this increase

was expressed as a percent of the administered dose, the mean augmentation for the alcohol abusers was 92 percent. In cirrhotics, the profile of these metabolites was comparable to the controls.

An additional mechanism of the increased sensitivity of alcohol abusers to acetaminophen toxicity has been postulated to be a diminished capacity to detoxify NAPQI by conjugation with GSH. Lauterberg and Velez (Ref. 65) studied glutathione levels and the formation of the toxic metabolite of paracetamol (acetaminophen) in chronic alcohol abusers. Study subjects were recruited from an alcohol treatment program and had a history of heavy drinking (average consumption of 180 g ethanol per day) up to 2 days prior to study initiation. Some of these subjects received chlorodiazepoxide (last dose 10 mg more than 10 hours prior to the study) as part of their treatment. Control subjects denied consumption of alcohol in excess of 10 g/day and were not taking any medications.

The study determined the plasma GSH levels of alcohol abusers without clinical evidence of alcoholic liver disease and in controls following an overnight fast. The GSH plasma concentration was about 50 percent lower in alcohol abusers than in the controls (8.48 versus 4.35 micromoles (μmole), $p < 0.05$). In contrast, the plasma concentration of free cysteine was similar for alcohol abusers and for controls.

The study also examined the effect of acetaminophen administration on plasma GSH. Subjects were given a 2 g acetaminophen dose in lemonade after a 10-hour fast. Blood samples were taken hourly for 4 hours. Urine was collected for 6 hours. After the administration of acetaminophen, the plasma GSH concentration in controls was significantly decreased at 3 hours from a mean concentration of 8.37 to 6.26 μmole ($p < 0.02$ by paired t-test). The plasma GSH levels in alcohol abusers were significantly lower than baseline at 2 and 3 hours (3.10 and 2.40 μmole, respectively, baseline 4.66 μmole). All GSH levels in the alcohol abusers were significantly lower ($p < 0.05$) than the corresponding values in the control group. The decrease in plasma cysteine was not significantly different from control values. Urinary excretion of mercapturic acid and cysteine conjugates was slightly increased in alcohol abusers. However, the difference was not statistically significant. There was no significant difference in the relative amounts or proportions of glucuronide and sulfate metabolites between alcohol abusers and controls, suggesting no impact of alcohol abuse on these metabolic pathways.

To confirm that low plasma GSH levels reflect low intrahepatic GSH, the authors measured hepatic GSH in liver samples obtained from alcohol abusers in whom a percutaneous liver biopsy was indicated. The biopsied subjects all had histological evidence of alcoholic hepatitis with and without cirrhosis and had more severe liver disease than the alcohol abusers in whom plasma GSH was measured. The hepatic concentration of GSH in the biopsied subjects was about 50 percent lower than in subjects without liver disease and subjects with a mild inflammatory process or nonalcoholic cirrhosis.

Based on the data discussed above, the agency concludes that chronic heavy alcohol use or abuse has a significant effect on the metabolism of acetaminophen and the detoxification of acetaminophen's toxic metabolite, NAPQI. These changes put individuals with a history of heavy alcohol use or abuse at an increased risk from acetaminophen liver toxicity. Therefore, the agency believes that an alcohol warning for adult OTC internal analgesic/antipyretic drug products containing acetaminophen is warranted. However, the agency does not find the submitted data sufficient to demonstrate the safety of a lower maximum daily dose (2 g acetaminophen) in heavy alcohol users or abusers or to support a specific labeling recommendation to that effect. Therefore, the agency is not proposing a reduction in the recommended maximum OTC daily 4 g dose of acetaminophen at this time. Rather, the agency believes that OTC labeling should recommend contact with a physician to these individuals. A physician familiar with a consumer's history can advise them on whether a particular OTC analgesic/antipyretic drug product is appropriate for their use, suggest other appropriate therapies, and counsel them about their alcohol use.

B. Other Monograph Ingredients

The agency has carefully considered the Committees' recommendations, all comments received in response to those recommendations, and all available data and information and has determined that an alcohol warning for OTC internal analgesic/antipyretic drug products containing aspirin is warranted. The agency agrees with the comments that the unpublished epidemiological data presented to the Committees at the September 8, 1993, meeting alone were insufficient to document an increased risk of GI bleeding associated with aspirin use by individuals with a history of heavy alcohol use or abuse. At that meeting (Ref. 72), agency representatives stated that the unpublished studies had design problems and did not convince them that the use of alcohol with OTC internal analgesic/antipyretic ingredients (such as aspirin) can cause excess GI bleeding. Agency representatives also stated that, based on these studies, the magnitude of the risk and the confidence level of the estimated risk were uncertain.

However, the irritant effects of aspirin on the gastric mucosa are well documented. In discussing the effect of aspirin on the gastric mucosa (42 FR 35346 at 35386 to 35397), the Panel concluded that aspirin and salicylic acid have a direct local irritant effect on the surface of mucosal cells lining the GI tract. The Panel asserted that the acute use of aspirin may activate symptoms of both gastric and duodenal ulcer, such as epigastric pain and GI hemorrhage. The Panel stated that the initiation or exacerbation of stomach ulcers, stomach irritation, and intestinal inflammation occurs in a significant number of aspirin users. Individuals particularly at risk are those with a history of symptoms of GI problems.

Alcohol is also a gastric irritant. Tarnawski et al. (Ref. 97) studied the effect of the intragastric administration of 100 mL of 40 percent ethanol (the alcohol content of 80 proof whiskey) or saline in 15 healthy volunteers (ten test and five control subjects). Changes in the appearance of the gastric mucosa, mucosal histology, luminal pH, and gastric mucosal potential were evaluated. The authors found that a single dose of 40 percent alcohol produced rapid endoscopic changes (congestion and focal hemorrhages) and prominent histologic changes (exfoliation of the surface epithelium, edema of the lamina propria, and hemorrhagic lesions associated with mucosal microvascular damage). Histologic changes were seen as early as 5 minutes after alcohol administration.

Individuals with a history of heavy alcohol consumption commonly develop characteristic subepithelial hemorrhages with the endoscopic appearance of ''blood under plastic wrap.'' Although termed ''hemorrhagic gastritis,'' these lesions are composed of hemorrhage and edema in the interstitial space under the surface epithelium, without inflammation (Ref. 98). While there are no controlled studies demonstrating that ethanol in lower doses will precipitate relevant gastric hemorrhage, acute hemorrhagic gastritis accounts for 25 percent of the cases of major bleeding in alcohol

abusers compared to 5 percent in the population without a history of prior alcohol abuse (Ref. 99). As with gastritis from other causes, individuals with alcoholic gastritis may have no symptoms whatsoever (Ref. 100). Currently available data do not provide sufficient information to assess the magnitude of the risk of aspirin use by individuals with a history of heavy alcohol use or abuse.

Further, in the last 15 to 20 years, the use of aspirin for the prevention of recurrent myocardial infarction (MI), transient ischemic attacks (TIA), and stroke has become prevalent. The agency has evaluated the available literature on aspirin for cerebral vascular and cardiovascular indications and the incidence of GI bleeding and ulcers in these studies. Eighteen of the 19 studies that included aspirin and placebo groups and evaluated GI bleeding reported an increase in GI bleeds in the aspirin group when compared to the placebo group (Refs. 101 through 118). One study reported no GI bleeds in either group (Ref. 119). Aspirin dosages in the studies ranged from 75 to 1,500 mg daily. Increases in bleeding were reported at all aspirin dosage levels when compared to the control groups. The number of subjects in the studies ranged from 125 to 22,071. The overall results of these studies show that GI bleeding increases with long-term aspirin use, even at low aspirin doses.

The UK–TIA study (Ref. 106) suggested a risk of GI bleeding that increased in a dose-dependent manner. The odds ratio (95 percent confidence interval) was 3.3 (1.2 to 9.0) for 300 mg daily aspirin and 6.4 (2.5 to 16.5) for 1,200 mg daily aspirin (Ref. 120). Several studies reported the number of ulcers in the aspirin and placebo groups. The Aspirin Myocardial Infarction Study Research Group (Ref. 112) reported ''symptoms suggestive of peptic ulcer, gastritis, or erosion of gastric mucosa'' in 14.9 percent of the placebo group and in 23.7 percent of the aspirin group. The British Doctors' Study (Ref. 102) reported a significant increase in peptic ulcers in the aspirin group compared to the placebo group.

The Physicians' Health Study (a 325 mg aspirin dose on alternate days (Ref. 101) reported a nonsignificant increase in upper GI ulcers in the aspirin arm compared to placebo (169/11,037 versus 138/11,034, $p = 0.08$). However, a statistically significant increase in the number of duodenal ulcers was reported in the aspirin group (46/11,037 versus 27/11,034, $p = 0.03$), where most of the subjects reported some alcohol use (more than 70 percent of the subjects reporting daily or weekly use).

The agency is currently evaluating several new professional vascular uses of aspirin and is aware that more people are taking aspirin chronically for cardiovascular and/or cerebrovascular indications and thus may have an increased risk of GI bleeding or susceptibility to ulcers. Further, the magnitude of the risk of heavy alcohol use in this population is not clearly defined.

The agency is aware that numerous studies have examined the effects of alcohol consumption on the rate of cardiovascular disease. In a review of these studies, Marmot and Brunner (Ref. 121) concluded that the evidence suggests that two drinks a day do not cause cardiovascular harm and may be protective against coronary heart disease. Above two drinks per day, the authors found evidence of harmful effects. Heavier alcohol intakes have been associated with an increase in cardiovascular diseases, such as heart muscle disease, hypertension, disturbances in heart rhythm, and stroke (Ref. 122). Pohorecky (Ref. 123) found that the risk for hypertension among individuals drinking three to four drinks per day was 50 percent higher than among nondrinkers.

The American Heart Association (AHA) (Ref. 124) does not currently recommend the ingestion of moderate amounts of alcohol for its protective effect against cardiovascular disease. However, based on the adverse effects of alcohol on blood pressure, the AHA recommends that alcohol intake should not exceed two drinks per day (Ref. 124). The Dietary Guidelines of the U.S. Departments of Agriculture and Health and Human Services (Ref. 125) also recommend moderate alcohol consumption. These guidelines define moderate alcohol consumption as one drink (12 ounces (oz) of regular beer, 5 oz of wine, or 1.5 oz of 80-proof distilled spirits) per day for women and two drinks per day for men. Based on these recommendations, the agency believes that the proposed warning provides appropriate advice to consumers on low-dose prophylactic aspirin regimens.

The agency acknowledges the Committees' conclusion that there are no clinical trial data supporting the need for an alcohol warning on OTC internal analgesic/antipyretic drug products containing carbaspirin calcium, choline salicylate, magnesium salicylate, and sodium salicylate. However, the agency is concerned that the absence of an alcohol warning on OTC drug products containing these ingredients may lead consumers to conclude that they are safer to use with alcohol, when there are no data upon which to base such a conclusion. Therefore, based, among other things, on the Panel's conclusions that these OTC internal analgesic/antipyretic active ingredients all have safety profiles similar to aspirin and should bear similar labeling, the agency is also proposing that OTC drug products containing carbaspirin calcium, choline salicylate, magnesium salicylate, and sodium salicylate bear an alcohol warning.

C. OTC Internal Analgesic/Antipyretic Ingredients Switched From Prescription Status

After reviewing current data and information, and based on the Committees' recommendations, the agency is proposing to require an alcohol warning on all OTC drug products containing ibuprofen, ketoprofen, and naproxen sodium. Ibuprofen, ketoprofen, and naproxen sodium have been extensively marketed as prescription drugs at higher doses. Lower doses have been approved for OTC marketing through the new drug approval process. All OTC ketoprofen and naproxen sodium drug products are currently marketed with the following alcohol warning: ''ALCOHOL WARNING [heading in bold face type]: If you generally consume 3 or more alcohol-containing drinks per day, you should consult your physician for advice on when and how you should take [product name inserted] and other pain relievers.''

Ibuprofen, ketoprofen, and naproxen sodium are derivatives of propionic acid and, as such, share common pharmacologic effects. As with aspirin, propionic acid derivatives produce adverse GI side effects, alter platelet function, and prolong bleeding time (Refs. 126 through 129). GI complications are the most common side effects of these drugs and can include problems such as irritation, nausea, vomiting, bleeding, hematemesis, and activation of peptic ulcer (Refs. 127 and 128).

Articles in the scientific literature suggest a definitive relationship between the ingestion of propionic acid derivatives at prescription doses and GI complications. In a review article, Greene and Winickoff (Ref. 130) discussed the effectiveness, side effects, and costs of aspirin and various prescription nonsteroidal anti-inflammatory drugs (NSAID's), including ibuprofen, ketoprofen, and naproxen sodium. The authors stated that NSAID's share the risks of causing

gastric ulcer, upper GI bleeding, and GI perforation, and that GI side effects occur in roughly 25 percent of NSAID users. The authors also cited studies (Ref. 130) that attribute a relative risk of 4.03 for gastric ulcer and 3.09 for upper GI bleeding in users of these drug products.

Langman et al. (Ref. 131) compared previous use of propionic acid derivatives and other prescription NSAID's in patients age 60 and older admitted to hospitals with bleeding from peptic ulcers to controls (in hospital and community) matched for sex and age. The investigators found that peptic ulcer bleeding was strongly associated with the use of propionic acid derivatives, aspirin, and other prescription NSAID's during the 3 months before admission and that the risk of bleeding increased as dosage increased. An analysis of the risk according to drug dose (low, medium, high) revealed an odds ratio of 2.5 (1.7 to 3.8, 95 percent confidence interval) when exposure was to lower doses of these drugs and increased to 4.5 (3.3 to 6.0, 95 percent confidence interval) when exposure was to moderate doses. The study defined low dose as: (1) Less than 1,200 mg/day (OTC maximum daily dose) for ibuprofen, (2) less than 500 mg/day for naproxen (OTC maximum daily dose 660 mg/day), and (3) less than 100 mg/day for ketoprofen (OTC maximum daily dose 75 mg).

The use of ibuprofen, ketoprofen, or naproxen sodium may also predispose an individual to bleeding from a preexisting ulcer or other upper GI lesion. Increased severity of GI irritation is related to increased dosage of drug. While less severe irritation could be expected at the lower OTC doses, there are no data to clarify the magnitude of the risk for individuals with preexisting GI lesions due to a history of heavy alcohol use or abuse. In fact, more recent information (Ref. 132) suggests that OTC doses of ibuprofen or naproxen sodium increase by three times the risk of GI bleeding and that this risk is increased when OTC drug products containing these ingredients are used by individuals who consume alcohol.

The Committees discussed the relationship between alcohol and toxicities associated with OTC internal analgesic/antipyretic drug products (Ref. 72) and concluded that the effect of alcohol and ibuprofen or naproxen sodium was at least additive and that heavy and/or chronic drinkers of alcohol are at an increased risk of severe gastritis and GI bleeding. The Committees recommended that an alcohol warning should be required on OTC drug products containing ibuprofen or naproxen sodium.

On July 14, 1995, the Committees discussed two NDA's for OTC ketoprofen products (Ref. 133). The Committees agreed that ketoprofen can be used safely and effectively OTC. However, the Committees voted unanimously that, based on past Committee discussions, products containing this new OTC ingredient should be required to have the same alcohol warning in their labeling as that required for naproxen sodium.

Based on the Committees' recommendations and information in the literature, the agency has concerns that the use of OTC internal analgesic/antipyretic drug products containing aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, magnesium salicylate, naproxen sodium, and sodium salicylate by individuals with a history of heavy alcohol use or abuse may increase their risk of adverse GI effects, including serious GI bleeding. Therefore, the agency has determined that an alcohol warning is needed for OTC internal analgesic/antipyretic drug products containing these ingredients. The agency invites the submission of comments and additional data supporting the safe use of these ingredients by individuals with a history of heavy alcohol use or abuse.

VI. The Agency's Proposal

Current data and information indicate that individuals with a history of heavy alcohol use or abuse have an increased sensitivity to the hepatotoxic effects of acetaminophen. Currently available data on the use of OTC internal analgesic/antipyretic drug products containing aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, naproxen sodium, magnesium salicylate, and sodium salicylate raise the logical concern that these OTC products pose an increased risk of GI bleeding to these individuals (i.e., individuals with a history of heavy alcohol use or abuse). However, the available data are not sufficient to assess the magnitude of this risk. Therefore, the agency is proposing that all OTC internal analgesic/antipyretic drug products and any combination product containing one of these ingredients labeled for adult use, whether marketed pursuant to an OTC drug monograph or an NDA, bear an alcohol warning. This proposal follows the agency's Committees' (NDAC and ADAC) recommendations for such a warning on OTC internal analgesic/antipyretic drug products containing acetaminophen, aspirin, ibuprofen, ketoprofen, and naproxen sodium.

A comment submitted in response to NDAC's recommendation for an alcohol warning for OTC acetaminophen drug products advised that all OTC internal analgesic/antipyretic drug products should bear a common alcohol warning. The comment proposed the following warning: ''Use of certain medicines with alcohol can cause adverse effects. Consult a physician for appropriate use of this or other pain relievers if every day you consume excessive amounts of alcohol.'' The comment suggested that this warning would avoid the potential consumer confusion that could result from a more-detailed, ingredient-specific warning. The comment mentioned the following advantages of this warning: (1) Its educational nature, i.e., the warning heightens consumer awareness of a possible interaction between alcohol and OTC internal analgesic/antipyretic drug products, and (2) it helps consumers to understand that they simply cannot switch to another OTC internal analgesic/antipyretic drug product to avoid this risk.

Under the new drug approval process, the agency has approved the marketing of OTC internal analgesic/antipyretic drug products containing ketoprofen and naproxen sodium. The following warning was included in the products' approved labeling (Refs. 134, 135, and 136): ''ALCOHOL WARNING: If you generally consume 3 or more alcohol-containing drinks per day, you should consult your physician for advice on when and how you should take [product name] and other pain relievers.'' Subsequently, this warning was included in the approved labeling of an OTC extended release drug product containing acetaminophen (Ref. 136). In April of 1996, the agency requested the voluntary implementation of this alcohol warning on all OTC analgesic/antipyretic drug products (Ref. 138). This request was based on a lack of uniformity in the use of an alcohol warning and the resultant consumer confusion.

In the **Federal Register** of February 27, 1997 (62 FR 9024), the agency published a proposed rule to establish a standardized format for the labeling of OTC drugs. During the agency's evaluation of data relating to consumers' perception of label warnings it became clear that more specific information heightens the effectiveness of risk communication (Ref. 139). Therefore, the agency is concerned about the effectiveness of the general alcohol warning currently used and is proposing more specific alcohol warnings.

The warnings being proposed are similar to that suggested by the comment but contain more specific information. The warnings specify ''3 or more'' instead of the general term ''excessive.'' The agency has included a specific number of drinks in the warnings to help consumers identify a level of alcohol consumption that may increase their risk from the use of OTC internal analgesic/antipyretic drug products. However, the agency acknowledges that the data are not sufficient to clearly identify a level of alcohol consumption that increases the risk of OTC internal analgesic/antipyretic drug use.

In the proposed warnings, the agency has included a level of alcohol consumption that is consistent with limitations on daily intake recommended by the AHA (Ref. 124) and by the Dietary Guidelines for Americans developed by the U.S. Departments of Agriculture and Health and Human Services (Ref. 125). The AHA recommends that men and women limit alcohol intake to 1 oz of alcohol per day and defines this amount as follows: (1) 2 oz of 100-proof whiskey, (2) 3 oz of 80-proof whiskey, (3) 8 oz of wine, or (4) 24 oz of beer. The Dietary Guidelines recommend no more than two drinks per day for men and one drink per day for women. The guidelines define one drink as follows: (1) 12 oz of regular beer, (2) 5 oz of wine, or (3) 1.5 oz of 80-proof distilled spirits. The agency believes that the number of drinks included in the proposed warnings are consistent with these recommendations. However, the agency invites comment on the proposed warnings specifying ''3 or more alcoholic beverages daily.''

In addition, the warnings being proposed include organ-specific information. When NDAC discussed a warning for acetaminophen, it recommended that product labeling refer specifically to possible damage to the liver. However, when the Committees considered the need for an alcohol warning for other OTC internal analgesic/antipyretic drug products (e.g., aspirin), they were unable to reach a consensus on whether the warning should be general or should specify bleeding or GI effects. Based on its recent experience with OTC consumer labeling, the agency has concluded that warnings containing more specific information are more effective. Therefore, the agency is proposing that OTC analgesic/antipyretic drug products containing acetaminophen, labeled for adult use, should bear the following warning: ''Alcohol Warning'' [heading in boldface type]: ''If you drink 3 or more alcoholic beverages daily, ask your doctor whether you should take [insert product name] or other pain relievers. [Product name] may increase your risk of liver damage.'' For OTC analgesic/antipyretic drug products containing other OTC active ingredients, i.e., aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, naproxen sodium, magnesium salicylate, and sodium salicylate, labeled for adult use, the agency is proposing the following warning: ''Alcohol Warning'' [heading in boldface type]: ''If you drink 3 or more alcoholic beverages daily, ask your doctor whether you should take [insert product name] or other pain relievers. [Product name] may increase your risk of stomach bleeding.'' The agency is proposing that OTC analgesic/antipyretic drug products containing acetaminophen in combination with any other OTC analgesic/antipyretic ingredient, labeled for adult use, should bear the following warning: ''Alcohol Warning'' [heading in boldface type]: ''If you drink 3 or more alcoholic beverages daily, ask your doctor whether you should take [insert product name] or other pain relievers. [Product name] may increase your risk of liver damage and stomach bleeding.'' However, the agency invites comment on the above organ-specific alcohol warnings.

VII. Voluntary Implementation

The agency acknowledges that these proposed alcohol warnings represent a significant change from the labeling required for OTC analgesic/antipyretic new drug products approved since naproxen sodium. Therefore, holders of approved applications for OTC internal analgesic/antipyretic drug products will not be required to implement the proposed warnings at this time. However, holders of approved applications for these drug products may implement the proposed warning without advance approval from FDA provided the warning includes at least the information in proposed § 201.322. A supplement must be submitted under § 314.70(c) (21 CFR 314.70(c)) in order to provide for the implementation of such labeling. The supplement and its mailing cover should be clearly marked: ''Special Supplement—Changes Being Effected.''

Voluntary compliance with these proposed warnings is subject to the possibility that FDA may change the wording of the statement, or not require the statement, as a result of comments filed in response to this proposal. Because FDA wishes to encourage the voluntary use of the proposed labeling statements, the agency advises that manufacturers will be given ample time after publication of a final rule to use up any labeling implemented in conformance with this proposal.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). 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 by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation) in any 1 year.

The agency believes that this proposed rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this proposed rule is to add a warning statement to the labeling of OTC drug products labeled for adult use containing internal analgesic/antipyretic active ingredients. The warning statement concerns the increased risk of adverse effects from the use of OTC analgesic/antipyretic drug products by individuals with a history of heavy alcohol use or abuse. Potential benefits include a reduced risk of adverse effects when these consumers use these products.

This proposed rule amends Subpart C—Labeling Requirements of Over-the-Counter Drugs of 21 CFR part 201 and will require relabeling for many OTC drug products containing internal analgesic/antipyretic active ingredients. The agency's Drug Listing System identifies approximately 600 manufacturers and distributors of 5,000 to 6,000 OTC analgesic/antipyretic drug products with an average of 3 stock keeping units (SKU) (individual products, packages, and sizes) per product. It is also likely that there are some additional marketers and products that are not currently included in the agency's system. Nonetheless, the agency estimates that there are a total of

600 manufacturers and distributors and an estimated 18,000 SKU's.

The agency has been informed that relabeling costs of this type generally average about $2,000 to $3,000 per SKU. Assuming that there are approximately 18,000 affected SKU's in the marketplace, total one-time costs of relabeling would be $36 to $48 million. However, the agency believes that the actual costs may be lower because the agency is allowing supplementary labeling (e.g., stick on labeling) to be used for products not undergoing a new labeling printing within the 6-month implementation period. The agency solicits comments on whether these estimates are accurate and whether there are other effects that the agency should consider (e.g., the cost to manufacturers due to the effect on sales because of the decreased use of these products; or the implications to patients who take these products prophylactically for conditions such as heart ailments).

The proposed rule would not require any new reporting and recordkeeping activities. Therefore, no additional professional skills are needed. There are no other Federal rules that duplicate, overlap, or conflict with the proposed rule. The agency does not believe that there are any significant alternatives to the proposed rule that would adequately provide for the safe and effective use of OTC drug products containing analgesic/antipyretic active ingredients.

This proposed rule may have a significant economic impact on some small entities. The labeling of some of the affected products is prepared by private label manufacturers for small marketers. Census data provide aggregate industry statistics on the total number of manufacturers for Standardized Industrial Classification Code 2384 Pharmaceutical Preparations by establishment size, but do not distinguish between manfacturers of prescription and OTC drug products. According to the U.S. Small Business Administration (SBA) designations for this industry, however, over 92 percent of the roughly 700 establishments and over 87 percent of the 650 firms are small. (Because census size categories do not correspond to the SBA designation of 750 employees, these figures are based on 500 employees.)

An analysis of IMS America listings for manufacturers of OTC drug products found that from 46 to 69 percent of the 400 listed firms are small using the SBA definition of 750 employees. The agency's Drug Listing System indicates that about 600 marketers will need to relabel. Thus, the agency believes that many of the manufacturers affected by this proposal would be small. Further, some entities, such as those private label manufacturers that provide labeling for a number of the affected products may also incur a significant impact. However, the agency has allowed for a 6-month implementation period and the use of supplementary labeling (e.g., stick-on labeling) in an attempt to minimize the economic impact of the proposed regulation. The agency believes that these measures should help reduce relabeling costs for small entities.

The agency considered but rejected the following alternatives: (1) Voluntary relabeling, and (2) a longer implementation period. However, the agency does not consider either of these approaches acceptable because they do not ensure that consumers will have the most recent needed information for the safe and effective use of OTC drug products containing internal analgesic/antipyretic drug active ingredients.

This analysis shows that this proposed rule is not economically significant under Executive Order 12866 and that the agency has undertaken important steps to reduce the burden of small entities. Nevertheless, some entities, especially those private label manufacturers that provide labeling for a number of the affected products, may incur significant impacts. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandates Act does not apply to the proposed rule because it would not result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any 1 year.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on manufacturers of drug products that contain OTC internal analgesic/antipyretic active ingredients. Comments regarding the impact of this rulemaking on these drug products should be accompanied by appropriate documentation. A period of 75 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirement proposed in this document is not subject to review by the Office of Management and Budget because it does not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.). Rather, the proposed warning statement is a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

X. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) 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.

XI. Public Comment

Interested persons may, on or before January 28, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Written comments on the agency's economic impact determination may be submitted on or before January 28, 1998. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

XII. References

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

1. Baeg, N., H. C. Bodenheimer, and K. Burchard, ''Long-Term Sequelae of Acetaminophen-Associated Fulminant Hepatic Failure: Relevance of Early Histology,'' *American Journal of Gastroenterology*, 83:569–571, 1988.

2. Barker, J. D., D. J. deCarle, and S. Anuras, ''Chronic Excessive Acetaminophen Use and Liver Damage,'' *Annals of Internal Medicine*, 87:299–301, 1977.

3. Black, M. et al., ''Late Presentation of Acetaminophen Hepatotoxicity,'' *Digestive Diseases and Sciences*, 27:370–374, 1982.

4. Dennison, H., J. Kaczynski, and S. Wallerstedt, ''Paracetamol Medication and Alcohol Abuse: A Dangerous Combination for the Liver and the Kidney,'' *Scandinavian*

Journal of Gastroenterology, 22:701–704, 1987.

5. Emby, D. J., and B. N. Fraser, ''Hepatotoxicity of Paracetamol Enhanced by Ingestion of Alcohol,'' *South African Medical Journal*, 51:208–209, 1977.

6. Fleckenstein, J. L., ''Nyquil and Acute Hepatic Necrosis,'' *New England Journal of Medicine*, 1:48, 1985.

7. Floren, C., P. Thesleff, and Å. Nilsson, ''Severe Liver Damage Caused by Therapeutic Doses of Acetaminophen,'' *Acta Medica Scandinavia*, 222:285–288, 1987.

8. Foust, R. T. et al., ''Nyquil-Associated Liver Injury,'' *American Journal of Gastroenterology*, 84:422–425, 1989.

9. Gerber, M. A. et al., ''Acetaminophen Associated Hepatic Injury—Report of Two Cases Showing Unusual Portal Tract Reactions,'' *Human Pathology*, 11:37–42, 1980.

10. Goldfinger, R. et al., ''Concomitant Alcohol and Drug Abuse Enhancing Acetaminophen Toxicity,'' *American Journal of Gastroenterology*, 70:385–388, 1978.

11. Himmelstein, D. U., S. J. Woolhander, and R. D. Adler, ''Elevated SGOT/SGPT Ratio in Alcoholic Patients with Acetaminophen Hepatotoxicity,'' *American Journal of Gastroenterology*, 79:718–720, 1984.

12. Johnson, M. W., P. A. Friedman, and W. E. Mitch, ''Alcoholism, Nonprescription Drugs and Hepatotoxicity–The Risk From Unknown Acetaminophen Ingestion,'' *American Journal of Gastroenterology*, 76:530–532, 1981.

13. Kartsonis, A., K. R. Reddy, and E. R. Schiff, ''Alcohol, Acetaminophen, and Hepatic Necrosis,'' *Annals of Internal Medicine*, 105:138–139, 1986.

14. Kaysen, G. A. et al., ''Combined Hepatic and Renal Injury in Alcoholics During Therapeutic Use of Acetaminophen,'' *Archives of Internal Medicine*, 145:2019–2023, 1985.

15. Kromhout, J. P., J. D. Holtzman, and C. J. McClain, ''Potentiation of Acetaminophen Hepatotoxicity by Alcohol,'' *Gastroenterology*, 76:1288, 1980.

16. LaBreque, D. R., and F. A. Mitros, ''Increased Hepatotoxicity of Acetaminophen in the Alcoholic,'' *Gastroenterology*, 78:1310, 1980.

17. Leist, M. H., L. E. Gluskin, and J. A. Payne, ''Enhanced Toxicity of Acetaminophen in Alcoholics: Report of Three Cases,'' *Journal of Clinical Gastroenterology*, 7:55–59, 1985.

18. Lesser, P. B., M. M. Vietti, and W. D. Clark, ''Lethal Enhancement of Therapeutic Doses of Acetaminophen by Alcohol,'' *Digestive Diseases and Sciences*, 31:103–105, 1986.

19. Levinson, M., ''Ulcer, Back Pain, and Jaundice in an Alcoholic,'' *Hospital Practice*, Oct:48N and 48S, 1983.

20. Licht, H., L. B. Seeff, and H. J. Zimmerman, ''Apparent Potentiation of Acetaminophen Hepatotoxicity by Alcohol,'' *Annals of Internal Medicine*, 12:511, 1985.

21. Litovitz, T. L. et al., ''1987 Annual Report of the American Association of Poison Control Centers National Data Collection System,'' *American Journal of Emergency Medicine*, 6:479–515, 1988.

22. McClain, C. J. et al., ''Potentiation of Acetaminophen Hepatotoxicity by Alcohol,'' *Journal of the American Medical Association*, 244:251–253, 1980.

23. McClain, C. J. et al., ''Clinical Features of Acetaminophen Toxicity,'' *Journal of Clinical Gastroenterology*, 10:76–80, 1988.

24. O'Dell, J. R., R. K. Zetterman, and D. A. Burnett, ''Centrilobular Hepatic Fibrosis Following Acetaminophen-Induced Hepatic Necrosis in an Alcoholic,'' *Journal of the American Medical Association*, 255:2632–2633, 1986.

25. Pezzano, M. et al., ''Hepatic and Renal Toxicity of Paracetamol in Chronic Alcoholic Subjects,'' *Press Médicale*, 17:21–24, 1988.

26. Seeff, L. B. et al., ''Acetaminophen Hepatotoxicity in Alcoholics,'' *Annals of Internal Medicine*, 104:399–404, 1986.

27. Villeneuve, J. P. et al., ''Pharmacokinetics and Metabolism of Acetaminophen in Normal, Alcoholic, and Cirrhotic Subjects,'' *Gastroenterology and Clinical Biology*, 7:898–902, 1983.

28. Dietz, A. J. et al., ''Effects of Alcoholism on Acetaminophen Pharmacokinetics in Man,'' *Journal of Clinical Pharmacology*, 24:205–208, 1984.

29. Wójcicki, J. et al., ''The Effect of a Single Dose of Ethanol on the Pharmacokinetics of Paracetamol,'' *Polish Journal of Pharmacology and Pharmacy,'' 30:749–753, 1978*.

30. Peterson, F. J. et al., ''Ethanol Induction of Acetaminophen Toxicity and Metabolism,'' *Life Sciences*, 27:1705–1711, 1980.

31. Teschke, R., G. Stutz, and G. Strohmeyer, ''Increased Paracetamol-Induced Hepatotoxicity After Chronic Alcohol Consumption,'' *Biochemical and Biophysical Research Communications*, 91:368–374, 1979.

32. Guerri, C., and S. Grisolia, ''Decreased Glutathione in Rats Due to Chronic Intake of Ethanol,'' *Federation Proceedings*, 36:1541, 1978.

33. Pessayre, D. et al., ''Effect of Fasting on Metabolite-Mediated Hepatotoxicity in the Rat,'' *Gastroenterology*, 77:264–271, 1979.

34. McLean, A. E. M., and P. A. Day, ''The Effect of Diet on the Toxicity of Paracetamol and the Safety of Paracetamol-Methionine Mixtures,'' *Biochemical Pharmacology*, 24:37–42, 1975.

35. Mitchell, J. R. et al., ''Acetaminophen-Induced Hepatic Necrosis IV Protective Role of Glutathione,'' *Journal of Pharmacology and Experimental Therapeutics*, 187:211–217, 1973.

36. Wright, N., and L. F. Prescott, ''Potentiation by Previous Drug Therapy of Hepatotoxicity Following Paracetamol Overdosage,'' *Scottish Medical Journal*, 18:56–58, 1973.

37. Strubelt, O., F. Obermeier, and C. P. Siegers, ''The Influence of Ethanol Pretreatment on the Effects of Nine Hepatotoxic Agents,'' *Acta Pharmacologica and Toxicologica*, 43:211–218, 1978.

38. Sato, C., Y. Matsuda, and C. S. Lieber, ''Increased Hepatotoxicity of Acetaminophen after Chronic Ethanol Consumption in the Rat,'' *Gastroenterology*, 80:140–148, 1981.

39. Sato, C., M. Nakano, and C. S. Lieber, ''Prevention of Acetaminophen-Induced Hepatotoxicity by Acute Ethanol Administration in the Rat: Comparison with Carbon Tetrachloride-Induced Hepatotoxicity,'' *Journal of Pharmacology and Experimental Therapeutics*, 218:805–810, 1981.

40. Sato, C., and C. S. Lieber, ''Mechanism of the Preventive Effect of Ethanol on Acetaminophen-Induced Hepatotoxicity,'' *Journal of Pharmacology and Experimental Therapeutics*, 218:811–815, 1981.

41. Rumack, B. H. et al., ''Acetaminophen Overdose,'' *Archives of Internal Medicine*, 141:380–385, 1981.

42. Lieber, C. S, ''Interaction of Alcohol and Drugs,'' *Practical Gastroenterology*, 7:23–24, 29–30, and 48, 1983.

43. Altomare, E. et al., ''Interaction of Ethanol with Acetaminophen Metabolism in the Baboon,'' *Biochemical Pharmacology*, 31:2207–2212, 1984.

44. Banda, P. W., and B. D. Quart, ''The Effect of Mild Alcohol Consumption on the Metabolism of Acetaminophen in Man,'' *Research Communications in Chemical Pathology and Pharmacology*, 38:57–70, 1982.

45. Strubelt, O., ''Alcohol Potentiation of Liver Injury,'' *Fundamental and Applied Toxicology*, 4:144–151, 1984.

46. Rosen, G. M. et al., ''Acetaminophen Hepatotoxicity an Alternative Mechanism,'' *Biochemical Pharmacology*, 32:2053–2059, 1983.

47. *The Encyclopedia of Alcoholism*, Facts on File Publication, New York, 1982, s.v. ''alcoholism'' and ''consumption''.

48. *United States Pharmacopeial Dispensing Information—1993: Vol. I Drug Information for the Health Care Professional*, 13th ed., United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 3–4.

49. *United States Pharmacopeial Dispensing Information—1993: Vol. II Advice for the Patient Drug Information in Lay Language*, 13th ed., United States Pharmacopeial Convention, Inc., Rockville, MD, p. 3.

50. Black, M., ''Acetaminophen, Alcohol, and the Liver,'' *Philadelphia Medicine*, 82:230–237, 1986.

51. Davis, A. M. et al., ''Severe Hepatic Damage After Acetaminophen Use in Psittacosis,'' *American Journal of Medicine*, 74:349–352, 1983.

52. Kumar, S., and D. Rex, ''Failure of Physicians to Recognize Acetaminophen Hepatotoxicity in Chronic Alcoholics,'' *Archives of Internal Medicine*, 151:1189–1191, 1991.

53. Wooton, F., and W. Lee, ''Acetaminophen Hepatotoxicity in the Alcoholic,'' *Southern Medical Journal*, 83:1047–1049, 1990.

54. Bray, G. et al., ''The Effect of Chronic Alcohol Intake on Prognosis and Outcome in Paracetamol Overdose,'' *Human Experimental Toxicology*, 10:435–438, 1991.

55. Girre, C. et al., ''Increased Metabolism of Acetaminophen in Chronically Alcoholic Patients,'' *Alcoholism Clinical and Experimental Research*, 17:170–173, 1993.

56. Comment No. C150, Docket No. 77N–0094, Dockets Management Branch.

57. Bell, H., H. Schonsby, and N. Raknerud, ''Severe Liver Damage After Therapeutic Doses of Paracetamol,'' *Journal of the Norwegian Medical Association*, 107:1037–1040, 1987.

58. Bidault, I. et al., ''Do Cases of Hepatitis Due to the Subacute Toxicity of Acetaminophen Exist?,'' *Therapy*, 42:387–388, 1987.

59. Erickson, R. A., and B. A. Runyon, ''Acetaminophen Hepatotoxicity Associated with Alcoholic Pancreatitis,'' *Archives of Internal Medicine*, 144:1509, 1513, 1984.

60. Luquel, L. et al., ''Acute Hepato-Nephritis in an Alcoholic Following a Therapeutic Dose of Acetaminophen,'' *La Presse Medicale*, 17:1318, 1988.

61. Stolt, C., and S. Johnsen, ''A Therapeutic Intake of Paracetamol Causes Acute Renal Insufficiency and Liver Damage,'' *Larkartidningen*, 81:1313, 1984.

62. Vilstrup, V., N. C. Henningsen, and L. F. Hansen, ''Liver Damage After Paracetamol,'' *Ugeskrift for Laeger*, 139:831–834, 1977.

63. Critchley, J. et al., ''Is There a Place for Cimetidine or Ethanol in the Treatment of Paracetamol Poisoning,'' *Lancet*, 1:1375–1376, 1983.

64. Critchley, J. et al., ''Paracetamol Metabolism in Heavy Drinkers,'' *British Journal of Clinical Pharmacology*, 13:276P–277P, 1982.

65. Lauterburg, B. H., and M. E. Velez, ''Glutathione Deficiency in Alcoholics: Risk Factor for Paracetamol Hepatotoxicity,'' *Gut*, 29:1153–1157, 1988.

66. Farrell, G. C., W. G. E. Cooksley, and L. W. Powell, ''Drug Metabolism in Liver Disease: Activity of Hepatic Microsomal Metabolizing Enzymes,'' *Clinical Pharmacology and Therapeutics*, 26:483–492, 1979.

67. Gabrielle, L. et al., ''Determination of Human Liver Cytochrome P450 by a Micromethod Using Electron Paramagnetic Resonance. Study of 141 Liver Biopsies,'' *Gastroenterology and Clinical Biology*, 1:775–782, 1977.

68. Schoene, B. et al., ''Determination of Drug Metabolizing Enzymes in Needle Biopsies of Human Liver,'' *European Journal of Clinical Pharmacology*, 4:65–73, 1972.

69. Data and information provided for June 28 and 29, 1993, meeting of the FDA Nonprescription Drugs Advisory Committee, in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

70. Summary minutes of the June 28 and 29, 1993, meeting of the FDA Nonprescription Drugs Advisory Committee, in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

71. Data and information provided for the September 8, 1993, joint meeting of the FDA Nonprescription Drugs and Arthritis Drugs Advisory Committees, in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

72. Summary minutes of the September 8, 1993, joint meeting of the FDA Nonprescription Drugs and Arthritis Drugs Advisory Committees, in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

73. Comment No. C193, Docket No. 77N–0094, Dockets Management Branch.

74. ''A Prospective Observational Study of Adult Patients with Upper Gastrointestinal Disease with Hemorrhage and a History of Alcohol and Nonsteroidal Anti-inflammatory Drug Ingestion with Primary Emphasis on Aspirin, Over-the-Counter Ibuprofen, and Naproxen,'' draft of an unpublished paper included in Comment No. C188, Docket No. 77N–0094, Dockets Management Branch.

75. ''A Retrospective Review of Serious Acute Upper Gastrointestinal Bleeding Associated with the Prior Use of Alcohol and Nonsteroidal Anti-inflammatory Drugs,'' draft of an unpublished paper included in Comment No. C188, Docket No. 77N–0094, Dockets Management Branch.

76. ''Summary of Prospective Case Control Study from SUNY Health Science Center on the Epidemiology of Nonsteroidal Anti-inflammatory Drug Use in Patients with Upper Gastrointestinal Bleeding,'' draft of an unpublished paper included in Comment No. C188, Docket No. 77N–0094, Dockets Management Branch.

77. Kelly, J., D. Kaufman, and S. Shapiro, ''The Risk of Major Upper Gastrointestinal Bleeding Among Users of Aspirin, Ibuprofen, Naproxen, at Various Levels of Alcohol Consumption,'' draft of an unpublished paper included in Comment No. C188, Docket No. 77N–0094, Dockets Management Branch.

78. Strom, B., ''Gastrointestinal Bleeding Associated with Over-the-Counter Use of Ibuprofen and Aspirin,'' draft of an unpublished paper included in Comment No. C188, Docket No. 77N–0094, Dockets Management Branch.

79. Henry, D., A. Dobson, and C. Turner, ''Variability in the Risk of Major Gastrointestinal Complications from Nonaspirin Nonsteroidal Anti-inflammatory Drugs,'' *Gastroenterology*, 105:1078–1088, 1993.

80. Comments No. C198, C199, and C200, Docket No. 77N–0094, Dockets Management Branch.

81. Black, M., ''Acetaminophen Hepatotoxicity,'' *Annual Reviews in Medicine*, 35:577–593, 1984.

82. Proudfoot, A. T., and N. Wright, ''Acute Paracetamol Poisoning,'' *British Medical Journal*, 3:557–558, 1970.

83. Arthurs, Y., and J. F. Fielding, ''Paracetamol and Chronic Liver Disease,'' *Journal of the Irish Medical Association*, 73:273–274, 1980.

84. Bonkowsky, H. L., ''Chronic Hepatic Inflammation and Fibrosis Due to Low Doses of Paracetamol,'' *Lancet*, 1:1016–1018, 1978.

85. Bravo-Fernández, E. F. et al., ''Hepatotoxicity After Prolonged Use of Acetaminophen: Case Report,'' *Boletin-Asociacion Medica de Puerto Rico*, 80:417–419, 1988.

86. Edwards, R., and J. Oliphant, ''Paracetamol Toxicity in Chronic Alcohol Abusers—A Plea for Greater Consumer Awareness,'' *New Zealand Medical Journal*, 105:174–175, 1992.

87. Eriksson, L. S. et al., ''Hepatotoxicity Due to Repeated Intake of Low Doses of Paracetamol,'' *Journal of Internal Medicine*, 231:567–570, 1992.

88. Itoh, S. et al., ''Cirrhosis Following 12 Years of Treatment with Acetaminophen,'' *Hepato-Gastroenterology*, 30:58, 1983.

89. Olsson, R., ''Increased Hepatic Sensitivity to Paracetamol,'' *Lancet*, 2:152–153, 1978.

90. Pirotte, J. H., ''Apparent Potentiation by Phenobarbital of Hepatotoxicity from Small Doses of Acetaminophen,'' *Annals of Internal Medicine*, 101:403, 1984.

91. Rosenberg, D. M. et al., ''Acetaminophen and Hepatic Dysfunction in Infectious Mononucleosis,'' *Southern Medical Journal*, 70:660–661, 1977.

92. Ware, A. J. et al., ''Acetaminophen and the Liver,'' *Annals of Internal Medicine*, 88:267–268, 1978.

93. Whitcomb, D. C., and G. D. Block, ''Association of Acetaminophen Hepatotoxicity with Fasting and Ethanol Use,'' *Journal of the American Medical Association*, 272:1845–1850, 1994.

94. Letter from P. A. Malone, Stein, Mitchell, and Mezines, to D. A. Kessler, FDA, dated March 11, 1996, in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

95. Zimmerman, H. J., and W. C. Maddrey, ''Acetaminophen (Paracetamol) Hepatotoxicity with Regular Intake of Alcohol: Analysis of Instances of Therapeutic Misadventure,'' *Hepatology*, 22:767–773, 1995.

96. Lee, W. M., ''Drug Induced Hepatotoxicity,'' *New England Journal of Medicine*, 333:1118–1127, 1995.

97. Tarnawski, A. et al., ''Alcohol Injury to the Normal Gastric Mucosa: Endoscopic, Histologic, and Functional Assessment,'' *Clinical Investigations in Medicine*, 10:259–263, 1987.

98. Soll, A. H., ''Gastritis,'' in *Cecil Textbook of Medicine*, 19th ed., edited by J. B. Wyngaarden, L. H. Smith, and J. C. Bennett, W. B. Saunders Co., Philadelphia, pp. 649–650, 1992.

99. Domschke, S., and W. Domschke, ''Gastrointestinal Damage Due to Drugs, Alcohol and Smoking,'' in *Clinics in Gastroenterology*, W. B. Saunders Co., London, pp. 419–424, 1984.

100. MacMath, T. L., ''Alcohol and Gastrointestinal Bleeding,'' *Emergency Medicine Clinics of North America*, 8:859–872, 1990.

101. Steering Committee of the Physicians' Health Study Research Group, ''Final Report on the Aspirin Component of the Ongoing Physicians' Health Study,'' *New England Journal of Medicine*, 321:129–135, 1989.

102. Peto, R. et al., ''Randomized Trial of Prophylactic Daily Aspirin in British Male Doctors,'' *British Medical Journal*, 296:313–316, 1988.

103. Juul-Möller, S. et al., ''Double-Blind Trial of Aspirin in Primary Prevention of Myocardial Infarction in Patients with Stable Chronic Angina Pectoris,'' *Lancet*, 340:1421–1425, 1992.

104. Elwood, P. C., and P. M. Sweetnam, ''Aspirin and Secondary Mortality After Myocardial Infarction,'' *Lancet*, II:1313–1315, 1979.

105. Fields W. S., et al., ''Controlled Trial of Aspirin in Cerebral Ischemia,'' *Stroke*, 8:301–316, 1977.

106. UK–TIA Study Group, ''United Kingdom Transient Ischaemic Attack (UK-TIA) Aspirin Trial: Interim Results,'' *British Medical Journal*, 296:316–320, 1988.

107. Bousser, M. G. et al., '''AICLA' Controlled Trial of Aspirin and Dipyridamole

in the Secondary Prevention of Athero-Thrombotic Cerebral Ischemia,'' *Stroke*, 14:5–14, 1983.

108. A Swedish Cooperative Study, ''High-Dose Acetylsalicylic Acid After Cerebral Infarction,'' *Stroke*, 18:325–334, 1987.

109. Fields, W. S. et al., ''Controlled Trial of Aspirin in Cerebral Ischemia. Part II: Surgical Group,'' *Stroke*, 9:309–318, 1978.

110. The SALT Collaborative Group, ''Swedish Aspirin Low-dose Trial (SALT) of 75 mg Aspirin as Secondary Prophylaxis After Cerebrovascular Ischaemic Events,'' *Lancet*, 338:1345–1349, 1991.

111. The Coronary Drug Project Research Group, ''Aspirin in Coronary Heart Disease,'' *Journal of Chronic Disease*, 29:625–642, 1976.

112. Aspirin Myocardial Infarction Study Research Group, ''A Randomized, Controlled Trial of Aspirin in Persons Recovered from Myocardial Infarction,'' *Journal of the American Medical Association*,'' 243:661–669, 1980.

113. The Persantine-Aspirin Reinfarction Study Research Group, ''Persantine and Aspirin in Coronary Heart Disease,'' *Circulation*, 62:449–461, 1980.

114. Breddin, K. et al., ''The German-Austrian Aspirin Trial: A Comparison of Acetylsalicylic Acid, Placebo and Phenprocoumon in Secondary Prevention of Myocardial Infarction,'' *Circulation*, 62 (Suppl V):63–72, 1980.

115. Lewis, H. K. et al., ''Protective Effects of Aspirin Against Acute Myocardial Infarction and Death in Men with Unstable Angina,'' *New England Journal of Medicine*, 309:396–403, 1983.

116. Petersen, P. et al., ''Placebo-Controlled, Randomized Trial of Warfarin and Aspirin for Prevention of Thromboembolic Complications in Chronic Atrial Fibrillation,'' *Lancet*, 1:175–179, 1989.

117. Sanz, G. et al., ''Prevention of Early Aortocoronary Bypass Occlusion by Low-Dose Aspirin and Dipyridamole,'' *Circulation*, 82:765–773, 1990.

118. Gavaghan, T. et al., ''Immediate Postoperative Aspirin Improves Vein Graft Patency Early and Late After Coronary Artery Bypass Graft Surgery,'' *Circulation*, 83:1526–1533, 1991.

119. Elwood, P. C. et al., ''A Randomized Controlled Trial of Acetyl-Salicylic Acid in the Secondary Prevention of Mortality from Myocardial Infarction,'' *British Medical Journal*, 1:436–440, 1974.

120. Slattery, C. P. et al., ''Risks of Gastrointestinal Bleeding During Secondary Prevention of Vascular Events with Aspirin—Analysis of Gastrointestinal Bleeding During the UK-TIA Trial,'' *Gut*, 37:509–511, 1995.

121. Marmot, M., and E. Brunner, ''Alcohol and Cardiovascular Disease: The Status of the U-Shaped Curve,'' *British Medical Journal*, 7:565–568, 1991.

122. National Institutes of Health, Eighth Special Report to the U.S. Congress on Alcohol and Health from the Secretary of Health and Human Services, U.S. Department of Health and Human Services, National Institutes of Health, and National Institute on Alcohol Abuse and Alcoholism, NIH Publication No. 94-3699, 1994.

123. Pohorecky, L. A., ''Interaction of Alcohol and Stress at the Cardiovascular Level,'' *Alcohol*, 7:537–546, 1990.

124. American Heart Association, ''Alcohol,'' in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

125. Nutrition and Your Health: Dietary Guidelines for Americans, U.S. Department of Agriculture and U.S. Department of Health and Human Services, Home and Garden Bulletin No. 232, U.S. Department of Agriculture.

126. Gilman, A. G. et al., editors, *The Pharmacological Basis of Therapeutics*, 8th ed., McGraw-Hill, New York, pp. 643 and 664–668, 1990.

127. Dukes, M. N. G., editor, *Meyler's Side Effects of Drugs*, 12th ed., Elsevier, Amsterdam, pp. 201–205, 1992.

128. Gennaro, A. R. et al., editors, *Remington's Pharmaceutical Sciences*, 18th ed., Mack Publishing Co., Easton, PA, pp. 1112, 1117, and 1118, 1990.

129. Van Tyle, K. W., ''Internal Analgesic Products,'' in *Handbook of Nonprescription Drugs*, 10th ed., American Pharmaceutical Association, Washington, pp. 59 and 62, 1993.

130. Greene, J. M., and R. N. Winickoff, ''Cost-Conscious Prescribing of Nonsteroidal Anti-Inflammatory Drugs for Adults with Arthritis,'' *Archives of Internal Medicine*, 152:1995–2002, 1992.

131. Langman, M. J. S. et al., ''Risks of Bleeding Peptic Ulcer Associated with Individual Non-Steroidal Anti-Inflammatory Drugs,'' *The Lancet*, 343:1075–1078, 1994.

132. Peura, D. et al., ''ACG Bleeding Registry (BR): Preliminary Findings,'' abstract of an unpublished study in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

133. Draft Summary Minutes of the Nonprescription Drugs Advisory Committee and the Arthritis Advisory Committee, July 14, 1995, in OTC. Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

134. ''Approved Labeling, Aleve,'' NDA 20–204, in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

135. ''Approved Labeling, Orudis,'' NDA 20–429, in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

136. ''Approved Labeling, Actron,'' NDA 20–499, in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

137. ''Approved Labeling, Tylenol Extended Relief Caplets,'' NDA 19–872, in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

138. Letter from D. L. Bowen, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET126, Docket No. 77N–0094, Dockets Management Branch.

139. Laughery, K. et al., ''Explicitness of Consequence Information in Warnings,'' *Safety Science*, 16:597–613, 1993.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. New § 201.322 is added to subpart G to read as follows:

§ 201.322 Over-the-counter drug products containing internal analgesic/antipyretic active ingredients; required alcohol warning.

(a) People who regularly consume large quantities of alcohol have an increased risk of adverse effects (possible liver damage or gastrointestinal bleeding) when they use over-the-counter (OTC) drug products containing internal analgesic/antipyretic active ingredients. FDA concludes that the labeling of OTC drug products containing internal analgesic/antipyretic active ingredients should advise consumers with a history of heavy alcohol use or abuse to consult a physician about the use of these products. Accordingly, any OTC drug product, labeled for adult use, containing internal analgesic/antipyretic active ingredients (including, but not limited to, acetaminophen, aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, magnesium salicylate, naproxen sodium, and sodium salicylate) shall bear an alcohol warning statement in its labeling as follows:

(1) *Acetaminophen*. ''Alcohol Warning'' [heading in boldface type]: ''If you drink 3 or more alcoholic beverages daily, ask your doctor whether you should take [insert product name] or other pain relievers. [Product name] may increase your risk of liver damage.''

(2) *Aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, magnesium salicylate, naproxen sodium, and sodium salicylate*. ''Alcohol Warning'' [heading in boldface type]: ''If you drink 3 or more alcoholic beverages daily, ask your doctor whether you should take [insert product name] or other pain relievers. [Product name] may increase your risk of stomach bleeding.''

(3) *Combinations of acetaminophen with other analgesic/antipyretic active ingredients listed in § 201.322(a)(2)*. ''Alcohol Warning'' [heading in boldface type]: ''If you drink 3 or more alcoholic beverages daily, ask your doctor whether you should take [insert product

name] or other pain relievers. [Product name] may increase your risk of liver damage and stomach bleeding.''

(b) *Requirements to supplement approved application*. Holders of approved applications for OTC drug products that contain internal analgesic/antipyretic active ingredients that are subject to the requirements of paragraph (a) of this section must submit supplements under § 314.70(c) of this chapter to include the required warning in the product's labeling. Such labeling may be put into use without advance approval of FDA provided it includes at least the information included in paragraph (a) of this section.

(c) Any drug product subject to this section that is not labeled as required and that is initially introduced or initially delivered for introduction into interstate commerce after (date 6 months after
date of publication of the final rule in the **Federal Register**), is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act and is subject to regulatory action.

Dated: August 20, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–30035 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AD76

Law and Order on Indian Reservations; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction to proposed regulations.

SUMMARY: This document contains corrections to the proposed regulations which were published Friday, July 5, 1996 (61 FR 35158) and corrections to the proposed regulations which were published Wednesday, February 26, 1997 (62 FR 8665). The proposed rule amends regulations governing Courts of Indian Offenses.

DATES: Comments must be received on or before December 15, 1997.

ADDRESSES: Comments are to be mailed to Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW, MS 4641–MIB, Washington, DC 20240; or, hand delivered to Room 4641 at the same address.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Bureau of Indian Affairs (202) 208–4400.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule that is the subject of these corrections supersedes 25 CFR 11.100(a) and affects those tribes that have exercised their inherent sovereignty by removing the names of those tribes from the list of Courts of Indian Offenses.

The Assistant Secretary-Indian Affairs, or her designee, has received law and order code adopted by the Confederated Tribes of the Goshute Reservation of Nevada in accordance with their constitutions and by-laws and approved by the appropriate bureau official. The Assistant Secretary-Indian Affairs recognizes that this court was established in accordance with the tribe's constitutions and by-laws. Also, the list of Courts of Indian Offenses has been corrected to include tribes inadvertently omitted from the correction and to reflect the decision of the Court in *Fletcher* v. *United States*, No. 95–5208 (10th Cir. Dec. June 10, 1997, reh. den. Aug. 18, 1997).

Inclusion in § 11.100, *Where are Courts of Indian Offenses established?*, does not defeat the inherent sovereignty of a tribe to establish tribal courts and exercise jurisdiction under tribal law. *Tillett* v. *Lujan*, 931 F.2d 636, 640 (10th Cir. 1991) (CFR courts ''retain some characteristics of an agency of the federal government'' but they ''also function as tribal courts''); *Combrink* v. *Allen*, 20 Indian L. Rep. 6029, 6030 (Ct. Ind. App., Tonkawa, Mar. 5, 1993) (CFR court is a ''federally administered tribal court''); *Ponca Tribal Election Board* v. *Snake*, 17 Indian L. Rep. 6085, 6088 (Ct. Ind. App., Ponca, Nov. 10, 1988) (''The Courts of Indian Offenses act as tribal courts since they are exercising the sovereign authority of the tribe for which the court sits.''). Such exercise of inherent sovereignty and the establishment of tribal courts shall comply with the requirements in 25 CFR 11.100(c).

Need for Correction

As published, the proposed rule and the correction to the proposed rule contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on July 5, 1996 (61 FR 35158), of the proposed regulations, which were the subject of FR Doc. 96–16039, and the publication of February 26, 1997 (62 FR 8664), corrections to the proposed regulations, which were the subject of FR Doc. 97–4686, are corrected as follows:

§ 11.100 [Corrected]

In the **Federal Register** published July 5, 1996 on page 35159, and corrected on February 26, 1997 on 1997 on page 8665, in § 11.100, paragraph (a) is, corrected to read as follows:

§ 11.100 Where are Courts of Indian Offenses established?

(a) Unless indicated otherwise in this part, the regulations in this part apply to the Indian country (as defined in 18 U.S.C. 1151) occupied by the tribes listed below:

(1) Red Lake Band of Chippewa Indians (Minnesota).

(2) Te-Moak Band of Western Shoshone Indians (Nevada).

(3) Yomba Shoshone Tribe (Nevada).

(4) Kootenai Tribe (Idaho).

(5) Shoalwater Bay Tribe (Washington).

(6) Eastern Band of Cherokee Indians (North Carolina).

(7) Ute Mountain Ute Tribe (Colorado).

(8) Quechan Indian Tribe (Arizona) (except resident members).

(9) Hoopa Valley Tribe, Yurok Tribe and Coast Indian Community of California (California jurisdiction limited to special fishing regulations).

(10) Louisiana Area (includes Coushatta and other tribes located in the State of Louisiana which occupy Indian country and which accept the application of this part); *Provided*, that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application has been published in the **Federal Register**.

(11) For the following tribes located in the former Oklahoma Territory (Oklahoma):

(i) Absentee Shawnee Tribe of Indians of Oklahoma.

(ii) Apache Tribe of Oklahoma.

(iii) Caddo Tribe of Oklahoma.

(iv) Cheyenne-Arapaho Tribe of Oklahoma.

(v) Citizen Band of Potawatomi Indians of Oklahoma.

(vi) Comanche Tribe of Oklahoma (Except Comanche Children's Court).

(vii) Delaware Tribe of Western Oklahoma.

(viii) Fort Sill Apache Tribe of Oklahoma.

(ix) Iowa Tribe of Oklahoma.

(x) Kaw Tribe of Oklahoma.

(xi) Kickapoo Tribe of Oklahoma.

(xii) Kiowa Tribe of Oklahoma.

(xiii) Otoe-Missouria Tribe of Oklahoma.

(xiv) Pawnee Tribe of Oklahoma.
(xv) Ponca Tribe of Oklahoma.
(xvi) Tonkawa Tribe of Oklahoma.
(xvii) Wichita and Affiliated Tribes of Oklahoma.

(12) For the following tribes located in the former Indian Territory (Oklahoma):
(i) Chickasaw Nation.
(ii) Choctaw Nation.
(iii) Thlopthlocco Tribal Town.
(iv) Seminole Nation.
(v) Eastern Shawnee Tribe.
(vi) Miami Tribe.
(vii) Modoc Tribe.
(viii) Ottawa Tribe.
(ix) Peoria Tribe.
(x) Quapaw Tribe.
(xi) Wyandotte Tribe.
(xii) Seneca-Cayuga Tribe.
(xiii) Osage Tribe.

Dated: October 29, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–29938 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN–0720–AA37

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Reimbursement

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise certain requirements and procedures for reimbursement under the TRICARE program, the purpose of which is to implement a comprehensive managed health care delivery system composed of military medical treatment facilities and CHAMPUS. Issues addressed in this proposed rule include: implementation of changes made to the Medicare Prospective Payment System (PPS) upon which the CHAMPUS DRG-based payment system is modeled and required by law to follow wherever practicable, along with changes to make our DRG-based payment system operate better; extension of the balance billing limitations currently in place for individual and professional providers to non-institutional, non-professional providers; adjusting the CHAMPUS maximum allowable charge (CMAC) rate in the small number of cases where the CMAC rate is less than the Medicare rate; and implementing the government-wide debarment rule where any provider excluded or suspended form CHAMPUS shall be excluded from all other programs and activities involving Federal financial assistance, such as Medicare or Medicaid, and adding violations of our balance billing or claims filing requirements to the list of provider actions considered violations of the TRICARE/CHAMPUS program.

DATES: Comments must be received on or before January 13, 1998.

ADDRESSES: Tricare Support Office (TSO), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Kathleen Larkin, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695–3350.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate TRICARE/CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Proposed Changes Regarding The Champus DRG-Based Payment System

The final rule published on September 1, 1987, (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published on August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), and October 22, 1990 (55 FR 42560). This rule proposes to amend 32 CFR 199 to conform to changes made to the Medicare Prospective Payment System (PPS) upon which the CHAMPUS DRG-based payment system is modeled and required by law to follow whenever practicable. In addition, the rule proposes to: eliminate the requirement for the physician attestation form and change the requirement for physician acknowledgment statements; clarify authorized payment reductions by managed care support contractors for noncompliance with required utilization review procedures and; limit the ambulatory surgery group payment rate to the amount that would be allowed if the services were provided on an inpatient basis.

A. Heart and Liver Transplants

When we first implemented the CHAMPUS DRG-based payment system in 1987, we exempted all services related to heart and liver transplantation. Although both of these types of transplants are subject to the Medicare PPS, we initially exempted them because at that time we had limited experience and claims data for them. We believed these limitations could significantly skew the relative weights we would calculate for such transplants.

Since 1987 we have continued to collect data on these services. From the beginning, heart transplants were grouped to DRG 103 and exempted. For Fiscal Year 1991 the Health Care Financing Administration (HCFA) created DRG 480 for liver transplants, but we continued to exempt them.

In our notice of updated rates and weights for Fiscal Year 1991, which was published on November 5, 1990 (55 FR 46545), we noted that we intended to consider including both heart and liver transplants in our DRG system in the future, and we invited any comments in that regard. We received none.

Since we have enough claims data to calculate accurate weights for these transplants, we are proposing to end the DRG exemption for all CHAMPUS covered solid organ transplants for which there is an assigned DRG and enough data to calculate the DRG weight. Just as Medicare does, we will continue to exempt acquisition costs for all CHAMPUS covered solid organ transplants.

B. Payment Requests for Capital and Direct Medical Education Costs

Initially we required that hospitals submit their request for payment of capital and direct medical education costs within three months of the end of the hospital's Medicare cost-reporting period. However, some hospitals encountered difficulties in meeting this deadline, because HCFA implemented changes which resulted in extensions to the filing deadline. Therefore, we often did not enforce our deadline, and as of October 1988 we eliminated the requirement entirely.

We eliminated the requirement because we believed hospitals would submit their requests at the earliest possible time anyway. Also, we believed there would be no adverse impact on TRICARE/CHAMPUS. Neither of these has proven to be correct. We continually receive these requests well after the end of the Medicare cost-reporting period—in some cases several years later. As a result, it is necessary for our contractors to retain claims data in their systems indefinitely, so that they can verify the reported amounts when the requests are submitted. This is proving to be a very burdensome and costly requirement for our contractors.

On June 27, 1995, HCFA published a final rule (60 FR 33137) extending the time frame providers have to file cost reports from no later than 3 months after the close of the period covered by the report to no later than 5 months after the close of that period. The rule also

changed the regulations for granting extensions to providers. Under the new regulation, an extension may be granted by the intermediary only when a provider's operations were significantly adversely affected due to extraordinary circumstances over which the provider had no control, such as flood or fire. We are proposing to adopt these same requirements for submitting requests for payment of capital and direct medical education costs with TRICARE/CHAMPUS.

Currently, TRICARE/CHAMPUS has no deadline, other than the six year statute of limitations, for submitting payment requests for Medicare cost-reporting periods. In order to allow up to close out our data for these periods, we are proposing that any capital and direct medical education payment requests that fall within the six year statute of limitations and the effective date of this change must be submitted to the appropriate TRICARE/CHAMPUS contractor no later than 5 months after the effective date of this change.

In addition, since capital and direct medical education costs are included in the national children's hospital differential, we are proposing to eliminate the clause allowing children's hospitals to request reimbursement of capital and direct medical education costs as an alternative to being paid the national differential.

C. Indirect Medical Education Adjustment Factor

An indirect medical education (IDME) adjustment factor is calculated for all hospitals which have teaching programs approved under the Medicare regulation. This factor is calculated using a formula developed by HCFA (see our previous final rules for a discussion of the application of this formula to CHAMPUS), and is based on the number of interns and residents and the number of beds in the hospital. Each DRG-based payment is increased by this factor for that hopsital.

Initially, the number of residents and interns for each hospital was derived from the most recently available audited HCFA cost report, and the number of beds was derived from the American Hospital Association Annual Survey of Hospitals. The factors have been updated annually based on data submitted by hospitals on the annual request for payment of capital and direct medical education costs.

While this updating procedure ensures that hospitals' factors are as current as possible, it is dependent upon the hospitals' submission of requests for payment of capital and direct medical education costs. Since the crucial components (number of interns, residents and beds) can change from year to year, and since many hospitals do not submit requests for payment of capital and direct medical education costs, we believe it is necessary to establish an alternative updating method.

We are proposing to use the Medicare adjustment factor for any hospital for which a CHAMPUS-specific factor has not been calculated based on the hospital's request for payment of capital and direct education costs. We will update the factors using the Medicare amounts as of October 1 of each year when we routinely update the DRG rates and weights. Any hospital which has not submitted a capital and direct medical education payment request to CHAMPUS since the previous October 1, will be assigned the most recent Medicare adjustment factor.

HCFA uses a slightly different formula than that used by CHAMPUS, and we are aware that this will result in a different adjustment factor than would otherwise be used. Nevertheless, we believe this is justified. When the Medicare factor is used, the difference is likely to be small. In addition, CHAMPUS accounts for a very small portion of most hospital's claims, and those hospitals which do not request payment of capital and direct medical education costs probably have few, if any, CHAMPUS admissions. Therefore, the financial impact of using the Medicare factor will be negligible. Yet it will ensure that the factors are kept current, so that factors which are no longer representative of a hospital's teaching program are not used indefinitely. And, of course, hospitals can ensure that a CHAMPUS-specific factor is used simply by submitting a request for payment of capital and direct medical education costs.

For hospitals which have indirect medical education factors for CHAMPUS but are not subject to the Medicare PPS, we will eliminate the factor if a CHAMPUS-specific factor cannot be calculated based on a current request from the hospital for payment of capital and direct medical education costs. The factor will be eliminated as of October 1 if no capital and direct medical education payment request has been received since the previous October 1.

In any case where a hospital submits a capital and direct medical education payment request after the Medicare factor has been implemented (or the factor has been eliminated for hospitals not subject to the Medicare PPS, including children's hospitals), the CHAMPUS-specific factor will become effective in accordance with existing requirements. In no case will the CHAMPUS-specific factor be effective retroactively.

For children's hospitals which have indirect medical education factors for CHAMPUS, the factor will be eliminated as of October 1 of each year if during the past year, the hospital did not provide the contractor with updated information on the number of its interns, residents and beds. Since amounts for capital and direct medical education are included in the national children's hospital differential, children's hospitals are not required to submit capital and direct medical education payment requests. Because of this, the contractor is not able to update the CHAMPUS-specific factor unless requested by the children's hospital.

For Fiscal Year 1998, HCFA revised its indirect medical education adjustment formula to gradually reduce the current level of IDME adjustment over the next several years. Since the IDME formula used by CHAMPUS does not include disproportionate share hospitals (DSHs), the variables in the formula are different from Medicare's however, the percentage reductions that will be applied to Medicare's formula are being adopted by CHAMPUS.

D. Long Stay Outliers

For Fiscal Year 1998, HCFA eliminated payment for day outliers, referred to as long stay outliers under CHAMPUS. CHAMPUS also eliminated long stay outliers for all cases except children's hospitals and neonates for Fiscal Year 1998. We are proposing to eliminate the long stay outliers for children's hospitals and neonates for Fiscal Year 1999.

For Fiscal Year 1993, HCFA changed the payment procedures for day outlier per diems under the PPS. Prior to this change, the day outlier per diem was calculated using the DRGs geometric mean length of stay and a marginal payment factor of 60 percent. For discharges occurring on or after October 1, 1992, HCFA revised the day outlier payment policy to reflect that the per diem payment would be calculated using the arithmetic mean and a marginal payment factor of 55 percent. This meant that the per diem day outlier payment under the PPS for operating costs would be determined by dividing the standard DRG payment by the arithmetic mean length of stay for that DRG, and multiplying the result by 55 percent. The change in the payment policy for day outliers provided better protection against costly cases for hospitals, while maintaining a more appropriate level of payment for cases

with extraordinarily long lengths of stay that were not also extraordinarily costly.

CHAMPUS did not adopt the PPS per diem day outlier changes at that time because it required a regulatory change and there was a moratorium on publication of rules. Over the years, HCFA has reduced the marginal payment factor for day outliers from 55 percent to 47 percent to 44 percent, to 33 percent, to the point of eliminating payment of day outliers, effective with discharges occurring after September 30, 1997. CHAMPUS adopted the day outlier marginal payment factor of 47 percent for Fiscal Year 1995, 44 percent for Fiscal Year 1996, and 33 percent for Fiscal Year 1997, but has not adopted the arithmetic mean to calculate the per diem payment. As a result, CHAMPUS has been paying more than Medicare on claims qualifying for long-stay day outliers. Although we eliminated the long stay outliers for all cases except children's hospitals and neonates for Fiscal Year 1998, and are proposing to eliminate the long stay outliers for them in Fiscal Year 1999, we are still proposing to adopt the arithmetic mean to calculate the per diem, in order to be consistent with the Medicare PPS in calculating payments for transfer cases.

E. Cost Outliers

Beginning in Fiscal Year 1998, HCFA adopted a requirement that in determining the additional payment for IME (referred to as IDME under CHAMPUS), the IME adjustment factor will only be applied to the base DRG payment. In addition, the fixed loss cost outlier threshold is based on the sum of the DRG payment plus IME plus a fixed dollar amount. CHAMPUS adopted this requirement in Fiscal Year 1998 for all cases except children's hospitals and neonates. We are proposing to adopt this same requirement for children's hospitals and neonates Fiscal Year in 1999.

F. Payment for Transfer Cases

Beginning in Fiscal Year 1996, HCFA adopted a graduated per diem payment methodology for transfer cases. As of October 1, 1996, CHAMPUS adopted this payment methodology; however, we elected not to offset these additional payments with reductions in outlier payments. Using this payment methodology, CHAMPUS will pay transferring hospitals twice the per diem amount for the first day of any transfer stay plus the per diem amount for each of the remaining days before transfer, up to the full DRG amount. For neonatal cases, other than normal newborns, the transferring hospital will be paid twice the per diem amount for the first day of any transfer stay plus 125 percent of the per diem rate for all remaining days before transfer, up to the full DRG amount. This proposed change will allow hospitals to be compensated more appropriately for the treatment they furnish to patients before transfer. Transferring hospitals will continue to be paid in full for discharges classified into DRG 456 (burns, transferred to another acute care facility or DRG 601 (neonate, transferred less or equal to 4 days old).

G. Elimination of Separate Adjusted Standardized Amounts for Rural Areas

Beginning in Fiscal Year 1995, HCFA's average standardized amounts for hospitals located in ''rural'' areas were required to be equal to the average standardized amount for hospitals located in ''other urban'' areas. Based on this, separate national average standardized amounts for ''other urban'' and ''rural'' areas no longer existed. As of Fiscal Year 1995, CHAMPUS no longer differentiated between ''other urban'' and ''rural'' areas. The adjusted standardized amounts for ''other urban'' and ''rural'' areas are now listed as ''other'' areas.

H. Payment for Blood Clotting Factor

For Fiscal Year 1994, HCFA reinstated payments for the cost of administering blood clotting factor to beneficiaries who have hemophilia through discharges occurring before October 1, 1994. CHAMPUS also reinstated payments for the cost of administering blood clotting factor through discharges occurring before October 1, 1994. For Fiscal Year 1998, HCFA again reinstated payments for the cost of administering blood clotting factor. CHAMPUS also reinstated payments for discharges occurring on or after October 1, 1997.

I. Effect of Change of Ownership on Exclusion of Long-Term Care Hospitals

Beginning in Fiscal Year 1996, HCFA adopted new requirements for certain long-term care hospitals excluded from the PPS. The requirements specify that if a hospital undergoes a change of ownership at the start of a cost reporting period or at any time within the preceding 6 months, the hospital may be excluded from the prospective payment system as a long-term care hospital for a cost reporting period if, for the 6 months immediately preceding the start of the period (including time before the change of ownership), the hospital has the required average length of stay, continuously operated as a hospital, and continuously participated as a hospital in Medicare. CHAMPUS also adopted these new requirements beginning in Fiscal Year 1996.

J. Empty and Low-Volume DRGs

Currently, 32 CFR 199.14 (a)(1)(iii)(B) specifies that the Medicare weight shall be used for any DRG with less than 10 occurrences in the CHAMPUS database. Since the CHAMPUS weights are used by military treatment facilities and by an increasingly large number of state Medicaid programs, the direct substitution of the Medicare weight for the CHAMPUS weight, causes inconsistencies. These inconsistencies may pose more of a problem for other payors than it does for CHAMPUS, particularly if they have more cases in the DRG categories where the substitutions have occurred. Because of these inconsistencies, we are proposing that the Director, TSO, or designee, has the authority to consider alternative methods for estimating CHAMPUS weights in these low-volume DGR categories.

K. Hospitals Within Hospitals

For Fiscal Year 1998, HCFA established additional criteria for excluding from the PPS, long-term care hospitals that occupy space in the same building or on the same campus as another hospital, sometimes called ''hospitals within hospitals.'' The additional criteria extends the hospital within hospital criteria to excluded hospitals other than long-term care hospitals. CHAMPUS also adopted these requirements beginning in Fiscal Year 1998.

II. Proposed Changes Regarding Elimination of Physician Attestation Requirement

On September 1, 1995, Medicare eliminated the requirement for the physician attestation form that requires doctors to certify the accuracy of all diagnoses and procedures before submitting claims for payment. In addition, instead of requiring a physician to sign an acknowledgment statement every year, Medicare changed its regulations to require a physician need only sign the acknowledgment statement upon receiving admitting privileges at a hospital. CHAMPUS adopted these requirements effective the same date.

III. Proposed Changes Regarding Clarification of Payment Reduction for Noncompliance with Required Utilization Review Procedures

To cover those situations where network providers have agreements with the managed care contractors for denial of payments for the provider's

failure to obtain the required preauthorization, we are proposing to add the words ''at least'' before the words ''ten percent''. By adding the words ''at least'', the managed care support contractor is authorized to apply reductions in payments in accordance with the network provider's contract.

IV. Clarification Regarding List of Ambulatory Surgery Procedures

On October 1, 1993, we published a final rule (58 FR 51227) which included prospective payment procedures for ambulatory surgery. These procedures were modeled on the Medicare methodology. In that rule, we stated that ''A list of ambulatory surgery procedures will appear as Attachment 2 (to be published later) to this preamble.'' We subsequently published the list of procedures on October 15, 1993, (58 FR 53411).

The list of procedures published on October 15, 1993, was not made part of the Code of Federal Regulations (CFR) at that time, and it was not, and continues not to be, our intention that it be part of the CFR. However, the final rule did not make this clear. The list of procedures to be ''published periodically by the Director, OCHAMPUS,'' as cited in section 199.14 paragraph (d)(1), is contained in the TRICARE/CHAMPUS Policy Manual.

V. Proposed Changes Regarding Limits On Ambulatory Surgery Group Payment Rates

Effective November 1, 1994, CHAMPUS identified a number of procedures which can be performed safely and effectively as ambulatory surgery and established prospective payment procedures for reimbursing these services. Ambulatory surgery often is less disruptive to the patient's life than an inpatient stay. It also provides a less expensive alternative to an inpatient stay, since the patient does not require a hospital room and all the costs associated with it. As a result, TSO wants to encourage the use of ambulatory surgery whenever it is reasonable, but we do not believe it ever should be more expensive than an inpatient stay. Therefore, we are adding a provision that gives discretion to the Director, TSO, to limit the ambulatory surgery group payment rate to the amount that would be allowed if the services were provided on an inpatient basis. To calculate the allowable inpatient amount we will multiply the applicable DRG relative weight times the national large urban adjusted standardized amount (ASA). We will use the large urban ASA rather than the ''other area'' ASA because it is higher and will not economically disadvantage any provider, and we expect that most ambulatory surgery centers are located in large urban areas.

VI. Proposed Changes Regarding Balance Billing

Section 731 of the National Defense Authorization Act for Fiscal Year 1996, revised 10 U.S.C. 1079(h) which provides the statutory basis for limits on balance billing of CHAMPUS beneficiaries established in section 199.14(h)(1)(i)(D). Section 731 extends the balance billing limit authority to non-institutional, non-professional providers, such as clinical laboratories and ambulance companies.

This paragraph explains that non-institutional, non-professional providers will be limited in the amount they may bill a TRICARE/CHAMPUS-eligible beneficiary an actual charge in excess of the allowable amount. This provides financial protection for our beneficiaries by preventing excessively high billing by providers by establishing the balance billing limit to these new categories of providers as the same percentage as that used for TRICARE/CHAMPUS professional providers: 115 percent of the allowable charge. In order to provide flexibility to continue CHAMPUS benefits in special circumstances in which a beneficiary may feel strongly about using a particular provider, notwithstanding high fees, the proposed rule states that the limitation may be waived on a case-by-case basis.

VII. Proposed Changes Regarding CMAC Rates

CHAMPUS policy, based on Congressional enactment, is to set CHAMPUS Maximum Allowable Charge (CMAC) rates comparable to Medicare rates. For almost all procedure codes, the CMAC rate has been reduced to equal the Medicare rate or is in the process of being phased down to that level. For a very small number of procedures, for unusual reasons or idiosyncrasies of the data used for calculations, however, the CMAC rate is less than the Medicare rate. We propose to establish a special rule for these cases to permit an increase in the CMAC up to the Medicare rate. This is based on the authority of 10 U.S.C. 1079(h)(4), which allows for exceptions to the normal statutory payment limitation if DoD determines it necessary to assure that beneficiaries have adequate access to health care services. Because the Medicare rates are products of a system that reflects careful governmental judgments of factors suggesting fair payment rates, we propose to adopt these rates as indicators of payment levels associated with adequate access. In addition, under the applicable Appropriations Act general provision, DoD may increase CMAC rates that are lower than Medicare rates by reference to appropriate economic index data similar to that used by Medicare. We have heretofore utilized only the Medicare Economic Index in this connection, but we propose to adopt an additional Medicare indicator of economic factors, namely the data used for the Medicare fees determination, to adjust the rates in these special cases. This is set forth in the proposed new section 199.14(h)(1)(iii)(D).

VIII. Proposed Changes Regarding Government-Wide Effect Of Exclusion Or Suspension From Champus

Section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, October 13, 1994, and Executive Order 12549, ''Debarment and Suspension from Federal Financial and Nonfinancial Assistance Programs,'' February 18, 1986, require that any entity debarred, suspended, or otherwise excluded under any program or activity involving Federal financial assistance shall also be debarred, suspended, or otherwise excluded from all other programs and activities involving Federal financial assistance. We are restating this requirement in the context specific to CHAMPUS through a proposed addition to section 199.9. The proposed addition provides that any health care provider excluded or suspended from CHAMPUS shall, as a general rule, also be debarred, suspended, or otherwise excluded from all other programs and activities involving the Federal financial assistance. Among these other such programs are Medicare and Medicaid. Other regulations related to this authority are 32 CFR Part 25 (DoD rules) and 45 CFR Part 76 (HHS rules).

In conjunction with implementation of this government-wide debarment rule, we are strengthening the linkage between CHAMPUS and these other programs on the important issues of submittal of claims and balance billing by providers. Current regulations generally require providers to file claims on behalf of beneficiaries and to limit balance billing to 15% greater than the CHAMPUS Maximum Allowable Charge (CMAC). These regulations also provide that violations are grounds for exclusion or suspension from CHAMPUS. We are proposing to reinforce these compliance provisions by adding violations of these requirements to the list of provider actions that are considered abuse of the program for purposes of termination,

suspension and other administrative remedies.

A principal effect of these proposed revisions is that any provider who fails to file CHAMPUS claims or exceeds the balance billing limits risks not only exclusion or suspension from CHAMPUS, but also exclusion or suspension from Medicare, Medicaid, and other Federal programs.

IX. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any ''significant regulatory action,'' defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

Pursuant to the Paperwork Reduction Act of 1995, the reporting provisions of this proposed rule have been submitted to OMB for review under 3507(d) of the Act.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (Health Affairs) announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have any practical utility; (2) the accuracy of the agency's estimated burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) 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.

The collection of information allows TRICARE to collect the information necessary to properly reimburse institutional providers based on diagnosis-related groups (DRGs) for their share of these costs. The collection of this information is authorized by 32 CFR 199.14(a)(1)(G)(1) and (2). The CHAMPUS DRG-based payment system is modeled on the Medicare Prospective Payment System (PPS) and was implemented on October 1, 1987.

Affected Public: Individuals; Business or Other For Profit.

Annual Burden Hours: 5,532.

Number of Respondents: 5,400.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes for physicians, 1 hour for institutions.

Frequency: On occasion.

Respondents are institutional providers and admitting physicians. Institutional providers are requesting reimbursement for allowed capital and direct medical education costs from the TRICARE/CHAMPUS contractor. The information can be submitted in any form, most likely in the form of a letter. The contractor will calculate the TRICARE/CHAMPUS share of capital and direct medical education costs and make a lump-sum payment to the hospital.

Physicians sign a physician acknowledgement, maintained by the institution, at the time the physician is granted admitting privileges. This acknowledgement indicates the physician understands the importance of a correct medical record, and misrepresentation may be subject to penalties.

Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, N.W., Washington, DC 20503, marked ''Attention Desk Officer for Department of Defense, Health Affairs.'' Copies should be sent to the Office of the Assistant Secretary of Defense (Health Affairs), 1200 Pentagon, Washington, DC 20301–1200, Attention: Kathleen Larkin. When the Department of Defense promulgates the Final Rule, the Department will respond to comments by OMB or the public regarding the information collection provisions of the rule.

The is a proposed rule. Public comments are invited. All comments will be considered. A discussion of the major issues raised by public comments will be included with issuance of the final rule, anticipated approximately 60 days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Fraud, Health care, Health insurance, individuals with disabilities, Military personnel.

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.9 is proposed to be amended by adding new paragraph (m) to read as follows:

§ 199.9 Administrative remedies for fraud, abuse, and conflict of interest.

* * * * *

(m) *Government-wide effect of exclusion or suspension from CHAMPUS.* As provided by section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, October 13, 1994, and Executive Order 12549, ''Debarment and Suspension from Federal Financial and Nonfinancial Assistance Programs,'' February 18, 1986, any health care provider excluded or suspended from CHAMPUS under this section shall, as a general rule, also be debarred, suspended, or otherwise excluded from all other programs and activities involving Federal financial assistance. Among the other programs for which this debarment, suspension, or exclusion shall operate are the Medicare and Medicaid programs. This debarment, suspension, or termination requirement is subject to limited exceptions in the regulations governing the respective Federal programs affected.

Note: Other regulations related to this government-wide exclusion or suspension authority are 32 CFR part 25 and 45 CFR part 76.

3. Section 199.14 is proposed to be amended by revising the first sentence of (a)(1) introductory text, and paragraphs (a)(1)(i)(C)(*6*)(*iv*), (a)(1)(ii)(C)(*2*), (*3*), (*4*) and (*10*) first sentence, (a)(1)(ii)(D)(*4*), redesignating paragraphs (a)(1)(ii)(D)(*5*) through (a)(1)(ii)(D)(*8*) as (a)(1)(ii)(D)(*6*) through (a)(1)(ii)(D)(*9*), revising (a)(1)(iii)(a)(*3*), (a)(1)(iii)(B), (a)(1)(iii)(D) (*1*), (*2*) and (*5*), (a)(1)(iii)(E)(*1*)(*i*) (*A*) and (*B*), (a)(1)(iii)(E)(*1*)(*ii*) (*A*) and (*B*), (a)(1)(iii)(G)(*3*) introductory text, (d)(3)(iv), and (h) introductory text, and by adding new paragraphs (a)(1)(ii)(D)(*5*), (a)(1)(iii)(E)(*3*) (*i*), (*ii*), (*iii*), (*iv*), and (*v*), and (h)(1)(iii)(D), to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(a) * * *

(1) *CHAMPUS Diagnosis Related Group (DRG)-based payment system.* Under the CHAMPUS DRG-based payment system, payment for the

operating costs of inpatient hospital service furnished by hospitals subject to the system is made on the basis of prospectively-determined rates and applies on a per discharge basis using DRGs. * * *

(i) * * *

(C) * * *

(*6*) * * *

(*iv*) *Payment to a hospital transferring an inpatient to another hospital.* If a hospital subject to the CHAMPUS DRG-based payment system transfers an inpatient to another such hospital, the transferring hospital shall be paid a per diem rate (except that in neonatal cases, other than normal newborns, the hospital will be paid at 125 percent of that per diem rate), as determined under instructions issued by TSO, for each day of the patient's stay in that hospital, not to exceed the DRG-based payment that would have been paid if the patient had been discharged to another setting. For admissions occurring on or after October 1, 1995, the transferring hospital shall be paid twice the per diem rate for the first day of any transfer stay, and the per diem amount for each subsequent day up to the limit described in this paragraph.

* * * * *

(ii) * * *

(C) * * *

(*2*) All services related to solid organ acquisition for CHAMPUS covered transplants by CHAMPUS-authorized transplantation centers.

(*3*) All services related to heart and liver transplantation for admissions prior to October 1, 1998, which would otherwise be paid under DRG 103 and 480, respectively.

(*4*) All services related to CHAMPUS covered solid organ transplantations for which there is no DRG assignment.

* * * * *

(*10*) For admissions occurring on or after October 1, 1990, and before October 1, 1994, and for discharges occurring on or after October 1, 1997, the costs of blood clotting factor for hemophilia patients. * * *

(D) * * *

(*4*) *Long-term hospitals.* A long-term hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a long-term hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, TSO, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of title 42 CFR.

(*5*) *Hospitals within hospitals.* A hospital within a hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a hospital within a hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, TSO, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.22 and the criteria for one or more of the excluded hospital classifications described in § 412.23 of Title 42 CFR.

* * * * *

(iii) * * *

(A) * * *

(*3*) *Indirect medical education standardization.* The charges shall be standardized for the cost effects of indirect medical educational factors. If the Medicare adjustment factor was used in calculating a teaching hospital's indirect medical education adjustment factor, the Medicare factor shall be used when standardizing the charges.

* * * * *

(B) *Empty and low-volume DRGs.* For any DRG with less than ten (10) occurrences in the CHAMPUS database, the Director, TSO, or designee, has the authority to consider alternative methods for estimating CHAMPUS weights in these low-volume DRG categories.

* * * * *

(D) * * *

(*1*) *Differentiate large urban and other area charges.* All charges in the database shall be sorted into large urban and other area groups (using the same definitions for these categories used in the Medicare program).

(*2*) *Indirect medical education standardization.* The charges shall be standardized for the cost effects of indirect medical education factors. If the Medicare adjustment factor was used in calculating a teaching hospital's indirect medical education adjustment factor, the Medicare factor shall be used when standardizing the charges.

* * * * *

(*5*) *Preliminary base year standardized amount.* A preliminary base year standardized amount shall be calculated by summing all costs in the database applicable to the large urban or other area group and dividing by the total number of discharges in the respective group.

* * * * *

(E) * * *

(*1*) * * *

(*i*) * * *

(*A*) *Short-stay outliers.* Any discharge with a length-of-stay (LOS) less than 1.94 standard deviations from the DRG's arithmetic LOS shall be classified as a short-stay outlier. Short-stay outliers shall be reimbursed at 200 percent of the per diem rate for the DRG for each covered day of the hospital stay, not to exceed the DRG amount. The per diem rate shall equal the DRG amount divided by the arithmetic mean length-of stay for the DRG.

(*B*) *Long-stay outliers.* Any discharge (except for neonatal services and services in children's hospitals) which has a length-of-stay (LOS) exceeding a threshold established in accordance with the criteria used for the Medicare Prospective Payment System as contained in 42 CFR 412.82 shall be classified as a long-stay outlier. Any discharge for neonatal services or for services in a children's hospital which has a LOS exceeding the lesser of 1.94 standard deviations or 17 days from the DRG's arithmetic mean LOS also shall be classified as a long-stay outlier. Long-stay outliers shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier threshold. The per diem rate shall equal the DRG amount divided by the arithmetic mean LOS for the DRG. For admissions on or after October 1, 1997, the long stay outlier has been eliminated for all cases except children's hospitals and neonates. For admissions on or after October 1, 1998, the long stay outlier has been eliminated for children's hospitals and neonates.

(ii) * * *

(A) *Cost outliers except those in children's hospitals or for neonatal services.* Any discharge which has standardized costs that exceed a threshold established in accordance with the criteria used for the Medicare Prospective Payment System as contained in 42 CFR 412.84 shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in § 199.14(a)(1)(iii)(D)(*4*) and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of all costs exceeding the threshold. Effective with admissions occurring on or after October 1, 1997, the standardized costs are no longer adjusted for indirect medical education costs.

(B) *Cost outliers in children's hospitals and for neonatal services.* Any discharge for services in a children's hospital or for neonatal services which has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or $13,800 shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in § 199.14(a)(1)(iii)(D)(*4*) (adjusted to include average capital and direct medical education costs) and adjusting this amount for indirect medical education costs. Cost outliers for services in children's hospitals and for neonatal services shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of all costs exceeding the threshold. Effective with admissions occurring on or after October 1, 1998, the cost outlier thresholds for children's hospitals and neonatal services are the same as other hospitals and the standardized costs are no longer adjusted for indirect medical education costs.

* * * * *

(*3*) * * *

(*i*) The indirect medical education adjustment factor is calculated for all hospitals which have teaching programs approved under the Medicare regulation. The factor is based on the number of interns, residents and beds in the hospital. Each DRG-based payment is increased by this factor for that hospital. The factors are updated yearly based on data submitted by hospitals on the annual request for payment of capital and direct medical education costs.

(*ii*) To ensure the indirect medical education factors are as current as possible, the Medicare adjustment factor will be used for any hospital for which a CHAMPUS-specific factor has not been calculated based on the hospital's request for payment of capital and direct medical education costs. The factors will be updated using the Medicare amounts as of October 1 of each year; the same time the DRG rates and weights are updated. Any hospital which has not submitted a capital and direct medical education payment request to CHAMPUS since the previous October 1, will be assigned the most recent Medicare adjustment factor.

(iii) For hospitals which have indirect medical education factors for CHAMPUS but are not subject to the Medicare prospective payment system, the indirect medical education adjustment factor will be eliminated if a CHAMPUS-specific factor cannot be calculated based on a current request from the hospital for payment of capital and direct medical education costs. The factor will be eliminated as of October 1 if no capital and direct medical education payment request has been received since the previous October 1.

(iv) For children's hospitals which have indirect medical education factors for CHAMPUS, the factor will be eliminated as of October 1 of each year if during the past year, the hospital did not provide the contractor with updated information on the number of interns, residents and beds. Since amounts for capital and direct medical education are included in the national children's hospital differential, children's hospitals are not required to submit capital and direct medical education payment requests. Because of this, the contractor is not able to update the CHAMPUS-specific factor unless requested by the children's hospital.

(v) In any case where a hospital submits a capital and direct medical education payment request after the Medicare factor has been implemented (or the factor has been eliminated for hospitals not subject to the Medicare prospective payment system, including children's hospitals), the CHAMPUS specific factor will become effective in accordance with existing requirements. In no case will the CHMPUS-specific factor be effective retroactively.

* * * * *

(G) * * *

(*3*) *Information necessary for payment of capital and direct medical education costs.* All hospitals subject to the CHAMPUS DRG-based payment system, except for children's hospitals, may be reimbursed for allowed capital and direct medical education costs by submitting a request to the CHAMPUS contractor. Such request shall be filed with CHAMPUS on or before the last day of the fifth month following the close of the hospitals' cost reporting period, and shall cover the one-year period corresponding to the hospital's Medicare cost-reporting period. The first such request may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS contractor must correspond to the costs reported on the hospital's Medicare cost report. An extension of the due date for filing the request may only be granted if an extension has been granted by HCFA due to a provider's operations being significantly adversely affected due to extraordinary circumstances over which the provider has no control, such as flood or fire. (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the hospital's CHAMPUS contractor within 30 days of the date the hospital is notified of the change.) The request must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

* * * * *

(d) * * *

(3) * * *

(iv) *Step 4: standard payment amount per group.* The standard payment amount per group will be the volume weighted median per procedure cost for the procedures in that group. For cases in which the standard payment amount per group exceeds the CHAMPUS-determined inpatient allowable amount, the Director, TSO, or his designee, may make adjustments.

* * * * *

(h) *Reimbursement of individual health care professionals and other non-institutional, non-professional providers.* The CHAMPUS-determined reasonable charge (the amount allowed by CHAMPUS) for the service of an individual health care professional or other non-institutional, non-professional provider (even if employed by or under contract to an institutional provider) shall be determined by one of the following methodologies, that is, whichever is in effect in the specific geographic location at the time covered services and supplies are provided to a CHAMPUS beneficiary.

(1) * * *

(iii) * * *

(D) *Special rule for cases in which the national CMAC is less than the Medicare rate.* In any case in which the national CMAC calculated in accordance with paragraphs (h)(1) (i) through (iii) of this section is less than the Medicare rate, the Director, TSO, may determine that the use of the Medicare Economic Index under paragraph (h)(1)(iii)(B) of this section will result in a CMAC rate below the level necessary to assure that beneficiaries will retain adequate access to health care services. Upon making such a determination, the Director, TSO, may increase the national CMAC to a level not greater than the Medicare rate.

* * * * *

4. Section 199.15 is proposed to be amended by revising paragraphs (b)(4)(iii)(B), (c)(2), (d)(2)(iii) and (e)(3) (i) and (ii), to read as follows:

§ 199.15 Quality and utilization review peer review organization program.

* * * * *

(b) * * *

(4) * * *

(iii) * * *

(B) In a case described in paragraph (b)(4)(iii)(A) of this section, reimbursement will be reduced, unless such reduction is waived based on special circumstances. The amount of this reduction shall be at least ten percent of the amount otherwise allowable for services for which preauthorization (including preauthorization for continued stays in connection with concurrent review requirements) approval should have been obtained, but was not obtained.

* * * * *

(c) * * *

(2) The physician acknowledgment required for Medicare under 42 CFR 412.46 is also required for CHAMPUS as a condition for payment and may be satisfied by the same statement as required for Medicare, with substitution or addition of ''CHAMPUS'' when the word ''Medicare'' is used.

* * * * *

(d) * * *

(2) * * *

(iii) Review for physician's acknowledgment of annual receipt of the penalty statement as contained in the Medicare regulation at 42 CFR 412.46.

* * * * *

(e) * * *

(3) * * *

(i) If the diagnostic and procedural information in the patient's medical record is found to be inconsistent with the hospital's coding or DRG assignment, the hospital's coding on the CHAMPUS claim will be appropriately changed and payments recalculated on the basis of the appropriate DRG assignment.

(ii) If the information stipulated under paragraph (d)(2) of this section is found not to be correct, the PRO will change the coding and assign the appropriate DRG on the basis of the changed coding.

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Dated: November 7, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29975 Filed 11–13–97; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[FRL–5921–1]

Hazardous Waste Combustors; Continuous Emissions Monitoring Systems; Proposed Rule—Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: This announcement is a notice of advanced availability of a test report pertaining to the proposed requirement for Particulate Matter (PM) Continuous Emissions Monitoring Systems (CEMS) for hazardous waste combustors: ''Draft Particulate Matter Continuous Emissions Monitoring Systems Demonstration'', dated October 1997. The report documents PM CEMS demonstration tests conducted between September 1996 and May 1997 at the DuPont, Inc. Experimental Station On-Site Incinerator, in Wilmington, Delaware. Included in the report are the testing scheme, raw data, and discussion of results. Appendices to the report include: Method 5I—Determination of Low Level Particulate Matter Emissions from Stationary Sources; Revised Draft Performance Specification 11—Specifications and Test Procedures for PM CEMS in Stationary Sources; and Appendix F to 40 CFR Part 60, Quality Assurance Requirements for PM CEMS used for Compliance Determination.

FOR FURTHER INFORMATION CONTACT: To obtain the October 1997, Draft PM CEMS Demonstration test report, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday–Friday, 9:00 a.m. to 6:00 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION: On April 19, 1996, EPA proposed the Revised Standards for Hazardous Waste Combustors (i.e., incinerators, cement and lightweight aggregate kilns that burn hazardous waste). The revised standards would limit emissions of PM at these facilities and address the application of PM CEMS for compliance monitoring. See 61 FR 17358. On March 21, 1997, EPA published a Notice of Data Availability (NODA) that further examined the issues concerning PM CEMS as compliance instruments. See 62 FR 13776. EPA published an additional NODA on May 2, 1997, to inform the public of: (1) Significant changes the Agency is considering on aspects of the proposal based on public comments and new information; and (2) the Agency's own re-evaluation of MACT standard-setting approaches based on new data and public comments.

The proposed rule would require that PM CEMS be used to document compliance with the proposed PM standards. To be effective for compliance monitoring, the Agency determined that commercially available PM CEMS must meet certain performance specifications. The results of the demonstration tests assist in the development of these PM CEMS performance specifications.

EPA plans to follow today's NODA with a second NODA which will discuss issues pertaining to the demonstration test report and PM CEMS implementation considerations. The second NODA will provide the opportunity to comment on the report and the issues.

Dated: November 5, 1997.

David Bussard,

Acting Director, Office of Solid Waste.

[FR Doc. 97–30019 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–184; MM Docket No. 92–260; FCC 97–376]

Inside Wiring

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a *Report and Order and Second Further Notice of Proposed Rulemaking* which addresses rules and policies concerning cable inside wiring. The *Report and Order* segment of this decision may be found elsewhere in this issue of the Federal Register. The *Second Further Notice of Proposed Rulemaking* (''*Second Further Notice*'') segment seeks comment on proposed amendments to the Commission's regulations relating to exclusive service contracts, application of cable inside wiring rules to all multichannel video programming distributors (''MVPDs''), signal leakage reporting requirements, and simultaneous use of home run wiring. This action was necessary because exclusive service contracts and

access to home run wiring are significant competitive issues in multiple dwelling unit buildings (''MDUs''). In addition, this action was necessary in order to ensure that all MVPDs are treated equitably under our inside wiring rules. The intended effect of this action is to expand opportunities for new entrants seeking to compete in distributing video programming and to ensure that the Commission's inside wiring rules remain pro-competitive.

DATES: Comments must be submitted on or before December 23, 1997 and reply comments must be submitted on or before January 22, 1998.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: The following is a synopsis of the *Second Further Notice* segment of the Commission's *Report and Order and Second Further Notice of Proposed Rulemaking* in CS Docket No. 95–184 and MM Docket No. 92–260, FCC No. 97–376, adopted October 9, 1997 and released October 17, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800 (phone), (202) 857–3805 (fax), 1231 20th Street, NW, Washington, DC 20036.

Synopsis

I. Introduction

1. The *Second Further Notice* addresses issues raised in the *Notice of Proposed Rulemaking* in CS Docket No. 95–184, 61 FR 3657 (February 1, 1996) (''*Inside Wiring Notice*''), the *Order On Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket No. 92–260, 61 FR 6131 (February 16, 1996) and 61 FR 6210 (February 16, 1996) (''*Cable Home Wiring Further Notice*''), and the *Further Notice of Proposed Rulemaking* in CS Docket No. 95–184 and MM Docket No. 92–260, 62 FR 46453 (September 3, 1997) (''*Inside Wiring Further Notice*'') regarding potential changes in our telephone and cable inside wiring rules in light of the evolving telecommunications marketplace.

II. Second Further Notice of Proposed Rulemaking

A. Exclusive Service Contracts

2. We believe that exclusive service contracts between MDU owners and MVPDs can be pro-competitive or anti-competitive, depending upon the circumstances involved. The term ''MDU owner'' (sometime referred to as the ''premises owner'') as used herein includes whatever entity owns or controls the common areas of an apartment building, condominium or cooperative. Some alternative providers have commented that in order to initiate service in an MDU, they must be able to use exclusive contracts to ensure their ability to recover investment costs. Other alternative providers have argued that the Commission should limit the ability of incumbent cable operators to enter into exclusive contracts with MDU owners.

3. We seek comment on whether the Commission should adopt a ''cap'' on the length of exclusive contracts for all MVPDs that would limit the enforceability of exclusive contracts to the amount of time reasonably necessary for an MVPD to recover its specific capital costs of providing service to that MDU, including, but not limited to, the installation of inside wiring, headend equipment and other start-up costs. Commenters have suggested exclusivity periods such as five to six years, seven years and seven to ten years as reasonable. We seek comment on what would be a reasonable period of time for a provider to recoup its specific investment costs in an MDU. We seek comment on an approach under which a presumption that all existing and future exclusivity provisions would be enforceable for a maximum term of seven years, except for exceptional cases in which the MVPD could demonstrate that it has not had a reasonable opportunity to recover its specific investment costs. For instance, the exclusivity of a ''perpetual'' exclusive contract entered into in 1983 would no longer be enforceable; however, if the service provider completed a substantial rebuild of its plant in 1996, the provider may be able to show that it has not had a reasonable opportunity to recover its investment costs notwithstanding the fact that the exclusive contract was entered into more than seven years ago. Similarly, a provider may be able to show that it has not had an opportunity to recover its costs where it provided discounted service in the early years of an exclusive contract with the expectation of making its returns in later years. We inquire whether there should be different treatment accorded existing contracts and future contracts. We also seek comment on the appropriate forum for such a showing and whether the enforceability of an exclusivity provision should be extended only for the time period reasonably necessary for the provider to recover its costs.

4. If a ''cap'' is adopted, we seek comment on whether service providers would generally be able to structure their business arrangements so as to recover their capital costs within that time limit. After a video service provider has had an opportunity to recover its costs under an exclusive contract on a particular property, we seek comment on whether we should prohibit future exclusive contracts between the video service provider and the property owner, unless the service provider can demonstrate that the exclusive contract is necessary to recoup a substantial new investment in the property. We also inquire whether MDU owners should be afforded an opportunity to terminate the exclusive contract and retain the inside wiring, in exchange for a payment to the provider compensating it for unrecovered investment costs. We seek to determine what circumstances allow MDU owners and tenants to receive the benefits of technological improvements most expeditiously, while at the same time enhancing competition among MVPDs.

5. In the alternative, we seek comment on whether the Commission should only limit exclusive contracts where the MVPD involved possesses market power. The Supreme Court has noted: ''Exclusive dealing is an unreasonable restraint on trade only when a significant fraction of buyers or sellers are frozen out of a market by the exclusive deal.'' *Jefferson Parish Hosp. Dist. No. 2* v. *Hyde*, 466 U.S. 2, 45 (1984), citing *Standard Oil* v. *United States*, 337 U.S. 293 (1949). We seek comment on circumstances encompassing the video distribution market and whether the Commission can and should restrict or prohibit MVPDs with market power from entering into or enforcing exclusive service contracts. In particular, we seek comment on how to define ''market power'' for these purposes, as well as how to define the relevant geographic market.

6. We are concerned about the administrative practicability of making market power determinations on a widespread, case-by-case basis and seek comment on whether we should establish any presumptions in this

regard. We seek comment on whether our decision not to preempt state mandatory access statutes effectively means that non-cable MVPDs cannot enforce exclusive agreements in those states, even where such agreements may be pro-competitive. We also seek comment on any other issues relevant to the analysis of market power and exclusive contracts in the context of this proceeding.

7. In addition, we seek comment on whether the Commission can and should take any specific actions regarding so-called ''perpetual'' exclusive contracts (i.e., those running for the term of a cable franchise and any extensions thereof). For instance, under the market power approach, we seek comment on whether the Commission should adopt a presumption that the MVPDs involved possessed market power when such contracts were executed. Under the seven-year ''cap'' approach, we seek comment on whether ''perpetual'' exclusive contracts would simply fall within the general rule limiting the enforceability of exclusive contracts to seven years from execution unless the MVPD can demonstrate that it has not had a reasonable opportunity to recover its specific capital costs.

8. Under one proposal, property owners that have committed to long-term perpetual exclusive contracts would have a window of 180 days to take a ''fresh look'' at the marketplace to renegotiate or terminate those contracts without liability in order to avail themselves of a competitive alternative service provider. We seek comment on whether we can and should adopt a ''fresh look'' for ''perpetual'' exclusive contracts. In addition, we seek comment on several implementation issues: (1) whether the ''fresh look'' would apply only to ''perpetual'' exclusive contracts and, if so, how such contracts reasonably can be distinguished from other long-term exclusive contracts; (2) the scope of the ''fresh look'' and how the ''fresh look'' period would be triggered to ensure a viable choice exists (e.g., whether the ''fresh look'' be applied on an MDU-by-MDU basis upon the request of a private cable operator able to serve the MDU, or more generally on a franchise-by-franchise basis where competitive choices exist in the franchise area); and (3) whether the ''fresh look'' would be a one-time opportunity or whether there could be additional ''fresh look'' windows in light of the development of new technology and the entry of new video service providers.

9. If we were to adopt a ''fresh look'' for ''perpetual'' exclusive contracts, we seek comment on whether we should open a 180-day ''fresh look'' window for MDU owners upon the effective date of our rules, unless the ''perpetual'' exclusive contract was entered into less than seven years earlier, in which case the ''fresh look'' window would open for that MDU at the end of the seven-year period. We also seek comment on whether the MVPD should be able to apply to the Commission for an extension if the MVPD can demonstrate that it has not had a reasonable opportunity to recover its specific capital costs by the end of this seven-year period. Further, we seek comment on whether, if an MDU owner does not enter into a new contract during its initial ''fresh look'' period, a new 180-day ''fresh look'' window should open at the expiration of each subsequent franchise period until the MDU owner opts out of its ''perpetual'' exclusive contract. We seek comment on whether this framework would protect MDU owners who do not have a competitive alternative and therefore would be prejudiced by a one-time ''fresh look'' window, while ensuring that the MVPDs involved have a reasonable opportunity to recover their costs.

10. We also seek comment on our statutory authority to adopt the exclusive contracts proposals discussed above. We also seek comment on any other constitutional, statutory or common law implications that these proposals raise.

B. Application of Cable Inside Wiring Rules to All MVPDs

11. We propose to apply our cable home wiring rules for single-unit installations to all MVPDs in the same manner that they apply to cable operators. We believe that applying those rules to all MVPDs would promote competitive parity and facilitate the ability of a subscriber whose premises was initially wired by a non-cable MVPD to change providers. We seek comment on this proposal and on our authority to adopt it.

12. We also propose to expand to all MVPDs the rule we are adopting herein regarding cable subscribers' rights, prior to termination of service, to provide and install their own cable home wiring and to connect additional home wiring to the wiring installed and owned by the cable operator. We believe that applying this rule to all MVPDs will promote the same consumer benefits as in the cable context: increased competition and consumer choice, lower prices and greater technical innovation. We seek comment on this proposal, and in particular on the Commission's authority for expanding this rule to all MVPDs.

C. Signal Leakage Reporting Requirements

13. Section 76.615 of the Commission's signal leakage rules requires cable operators to file certain information with the Commission when operating in the aeronautical radio frequency bands. 47 CFR 76.615. In particular, § 76.615(b)(7) requires cable operators to file annually with the Commission the results of their signal leakage tests conducted pursuant to § 76.611. 47 CFR 76.611 and 76.615(b)(7). We are concerned that the reporting requirements of § 76.615(b)(7) may impose undue burdens on small broadband service providers, including small cable operators. We seek comment on whether certain categories of broadband service providers should be exempt from the filing requirements of § 76.615(b)(7) and, if so, what criteria the Commission should use in defining those providers. We would not propose to exempt any broadband service providers from the testing requirements of § 76.615(b)(7), but simply the requirement to report the results of such tests to the Commission. For instance, we seek comment on whether we should exempt small broadband service providers from the filing requirements of § 76.615(b)(7) based on an existing definition in the Commission's rules, a particular number of subscribers served, the length of the cable plant or some other criteria. For example, we have defined a small cable system as any system that serves 15,000 or fewer subscribers and a small cable company as one serving a total of 400,000 or fewer subscribers over all of its systems. *Sixth Report and Order and Eleventh Order on Reconsideration,* MM Docket Nos. 92–266 and 93–215 (Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation), 60 FR 35854 (July 12, 1995). We seek comment on the risks to safety of life communications posed by such an exemption. We also seek comment on any other changes in this area that would reduce burdens, yet meet the goals of protecting against signal leakage.

D. Simultaneous Use of Home Run Wiring

14. As stated above, DIRECTV suggests that the Commission should establish a ''virtual'' demarcation point from which an alternative provider could share the wiring simultaneously with the cable operator. Other alternative providers endorse this view, if it is technically possible, and CEMA states that some of its members are

currently developing equipment that will allow multiple uses of a single broadband wire. Cable operators generally oppose DIRECTV's suggestion that two video service providers may share a single wire, stating that the alternative provider would have to use different frequency bands to avoid interference, and, while theoretically possible, most systems do not have sufficient bandwidth capacity to carry multiple MVPDs. DIRECTV acknowledges that only service providers that use different parts of the spectrum technically may be able to share a single wire.

15. We believe that the sharing of a single wire by multiple service providers deserves further exploration. We seek comment on DIRECTV's proposal that we require competing broadband service providers to share a single home run wire in MDUs. In particular, we seek comment on the current technical, practical and economic feasibility and limitations of sharing of home run wiring. We also seek comment on our legal authority to impose such a requirement and whether such a requirement would constitute an impermissible taking of private property under the Fifth Amendment.

III. Initial Regulatory Flexibility Act Analysis

16. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, (''RFA''), the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected significant impact on small entities by the policies and rules proposed in this *Second Further Notice.* Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing procedures as other comments in this proceeding, but they must be have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Second Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the RFA. In addition, the *Second Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**, pursuant to 5 U.S.C. 603(a).

Need for Action and Objectives of the Proposed Rules

17. The Commission issues this *Second Further Notice* to consider additional rules to promote competition and enhance consumer choice. In particular, we seek comment on the competitive implications of exclusive service contracts between MDU owners and MVPDs, and whether we should: (1) limit exclusive contracts to a time certain; (2) adopt restrictions on the ability of MVPDs to enter into exclusive contracts; or (3) adopt a ''fresh look'' for ''perpetual'' exclusive contracts. In addition, we propose to expand to all MVPDs the rule regarding cable subscribers' rights, prior to termination of service, to provide and install their own cable home wiring and to connect additional home wiring to the wiring installed and owned by the MVPD. We also ask whether certain categories of broadband service providers (e.g., small broadband service providers, including small cable operators) should be exempt from the signal leakage reporting requirements in § 76.615(b)(7). Finally, we seek comment on the current technical, practical, economic, and legal limitations of requiring competing broadband service providers to share a single home run wire in MDUs.

Legal Basis

18. *This Second Further Notice* is adopted pursuant to sections 1, 4, 224, 251, 303, 601, 623, 624, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 224, 251, 303, 521, 543, 544, and 552.

Description and Estimate of the Number of Small Entities Impacted

19. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' and the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one that: (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''). The rules we propose in this *Second Further Notice* will affect MVPDs and MDU owners.

20. Small MVPDs: SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. We will address each service individually to provide a more succinct estimate of small entities.

21. Cable Systems: The Commission has developed its own definition of a small cable company for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules proposed in this *Second Further Notice.*

22. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

23. MMDS: The Commission refined the definition of ''small entity'' for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of the Commission's *Report and Order*

concerning MMDS auctions has been approved by the SBA.

24. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas (''BTAs''). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. We believe that there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

25. ITFS: There are presently 1,989 licensed educational ITFS stations and 97 licensed commercial ITFS stations. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees and are unable to ascertain how many of the 97 commercial stations would be categorized as small under the SBA definition. Thus, we believe that at least 1,989 ITFS licensees are small businesses.

26. DBS: There are presently nine DBS licensees, some of which are not currently in operation. The Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

27. HSD: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by video service providers, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other video service providers; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

28. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small MSO. Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

29. OVS: The Commission has certified nine OVS operators. Because these services were introduced so recently and only one operator is currently offering programming to our knowledge, little financial information is available. Bell Atlantic (certified for operation in Dover) and Metropolitan Fiber Systems (''MFS,'' certified for operation in Boston and New York) have sufficient revenues to assure us that they do not qualify as small business entities. Two other operators, Residential Communications Network (''RCN,'' certified for operation in New York) and RCN/BETG (certified for operation in Boston), are MFS affiliates and thus also fail to qualify as small business concerns. However, Digital Broadcasting Open Video Systems (a general partnership certified for operation in southern California), Urban Communications Transport Corp. (a corporation certified for operation in New York and Westchester), and Microwave Satellite Technologies, Inc. (a corporation owned solely by Frank T. Matarazzo and certified for operation in New York) are either just beginning or have not yet started operations. Accordingly, we believe that three OVS licensees may qualify as small business concerns.

30. SMATVs: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

31. LMDS: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. An LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined above. A small radiotelephone entity is one with 1500 employees or less. For the purposes of this proceeding, we include only an estimate of LMDS video service providers. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, in the *LMDS Second Report and Order,* we defined a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than $40 million. We have not yet received approval by the SBA for this definition.

32. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules. We tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

33. MDU Operators: The SBA has developed definitions of small entities for operators of nonresidential buildings, apartment buildings and dwellings other than apartment buildings, which include all such companies generating $5 million or less in revenue annually. According to the

Census Bureau, there were 26,960 operators of nonresidential buildings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992. Also according to the Census Bureau, there were 39,903 operators of apartment dwellings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992. The Census Bureau provides no separate data regarding operators of dwellings other than apartment buildings, and we are unable at this time to estimate the number of such operators that would qualify as small entities.

Reporting, Recordkeeping, and Other Compliance Requirements

34. The *Second Further Notice* seeks comment on whether small broadband service providers, including small cable operators, should be exempt from the signal leakage reporting requirements in § 76.615(b)(7). Such an exemption would relieve qualifying providers from only the relevant filing requirements, but not from the signal leakage testing requirements.

Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With the Stated Objectives

This section analyzes the impact on small entities of the regulations proposed or considered in the *Second Further Notice.*

35. The *Second Further Notice* seeks comment on several proposals which could minimize the economic impact on a substantial number of small entities. For instance, in seeking comment on what policies should be adopted with respect to exclusive contracts, the Commission raises the option of a limit on the length of exclusive contracts that would still permit a small MVPD to obtain exclusive contracts for the period of time necessary to recover its investment costs in the MDU building. In addition, the Commission seeks comment on whether small broadband service providers, including small cable operators, should be exempt from the signal leakage reporting requirements in § 76.615(b)(7). The issue of whether competing providers should be required to share home run wiring explores the possibility of another means by which small MVPDs may be able to access MDUs. Commenters are invited to address the economic impact of these proposals on small entities and offer any alternatives.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

IV. Procedural Provisions

36. Ex parte Rules—''Permit-but-Disclose'' Proceeding. This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under § 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b). 47 CFR 1.1206(b).

37. Filing of Comments and Reply Comments. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 23, 1997, and reply comments on or before January 22, 1998. 47 CFR 1.415 and 1.419. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street NW, Washington DC 20554.

V. Ordering Clauses

38. *It is ordered* that, pursuant to sections 1, 4(i), 201–205, 214–215, 220, 303, 623, 624 and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, 214–215, 220, 303, 543, 544 and 552, NOTICE IS HEREBY GIVEN of proposed amendments to the Commission's rules, in accordance with the proposals, discussions and statements of issues in the *Second Further Notice of Proposed Rulemaking,* and COMMENT IS SOUGHT regarding such proposals, discussions and statements of issues.

39. *It is further ordered* that the Commission SHALL SEND a copy of this *Second Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29513 Filed 11–13–97; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL RAILROAD PASSENGER CORPORATION

49 CFR Part 701

Revision of the Freedom of Information Act Regulations of the National Railroad Passenger Corporation and Implementation of the Electronic Freedom of Information Act Amendments of 1996 (Public Law 104–231)

AGENCY: National Railroad Passenger Corporation.

ACTION: Proposed rule.

SUMMARY: This notice sets forth proposed revisions of the Freedom of Information Act (FOIA) regulations of the National Railroad Passenger Corporation (''Amtrak''). The rules reflect recent developments in the statute and case law, including the Electronic Freedom of Information Act Amendments of 1996 (Public Law 104–231). The proposed revisions provide substantive and procedural changes to conform to the amendments. Amtrak has also taken this opportunity to streamline its rules and include updated cost figures to be used in calculating and charging fees.

DATES: Submit comments on or before December 15, 1997.

ADDRESSES: Address all comments concerning this proposed rule to Medaris Oliveri, Freedom of Information Office, National Railroad Passenger Corporation, 60 Massachusetts Avenue, N.E., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Medaris Oliveri at 202/906–2728.

SUPPLEMENTARY INFORMATION: These revisions incorporate changes to the language and structure of Amtrak's regulations and also add new provisions

to implement the Electronic Freedom of Information Act Amendments of 1996 (Public Law 104–231). New provisions implementing the amendments are found at § 701.2 definitions, § 701.3 policy, § 701.4 (c) and (d) reading room records, § 701.5 requirements for making requests, § 701.6(f) electronic records, § 701.7 timing of responses to requests, § 701.8 (a) and (b) content of responses, § 701.9 business information, § 701.10 appeals, and § 701.11 fees.

Proposed revisions of the fee schedule can be found at § 701.11(e). The duplication charge will remain the same at 25 cents per page, while document search and review charges will increase from $27 to $38 per hour. The amount at or below which a requester will not be charged will remain the same.

List of Subjects in 49 CFR Part 701

Freedom of Information.

For the reasons stated in the preamble, Amtrak proposes to revise 49 CFR part 701 as follows:

PART 701—AMTRAK FREEDOM OF INFORMATION ACT PROGRAM

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701.1 General provisions.
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701.8 Responses to requests.
701.9 Business information.
701.10 Appeals.
701.11 Fees.
701.12 Other rights and services.

Authority: 5 U.S.C. 552; 49 U.S.C. 24301(e).

§ 701.1 General provisions.

This part contains the rules that the National Railroad Passenger Corporation (''Amtrak'') follows in processing requests for records under the Freedom of Information Act (FOIA), Title 5 of the United States Code, section 552. Information routinely provided to the public (i.e., train timetables, press releases) may be obtained without following Amtrak's FOIA procedures. As a matter of policy, Amtrak may make discretionary disclosures of records or information exempt under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption; however, this policy does not create any right enforceable in court.

§ 701.2 Definitions.

Unless the context requires otherwise in this part, masculine pronouns include the feminine gender and ''includes'' means ''includes but is not limited to.''

(a) *Amtrak or Corporation* means the National Railroad Passenger Corporation.

(b) *Appeal* means a request submitted to the President of Amtrak or designee for review of an adverse initial determination.

(c) *Business days* means working days; Saturdays, Sundays, and legal public holidays are excluded in computing response time for processing FOIA requests.

(d) *Disclose or disclosure* means making records available for examination or copying, or furnishing a copy of nonexempt responsive records.

(e) *Electronic data* means records and information (including E-mail) that are created, stored, and retrievable by electronic means.

(f) *Exempt information* means information that is exempt from disclosure under one or more of the nine exemptions to the FOIA.

(g) *Final determination* means a decision by the President of Amtrak or designee concerning a request for review of an adverse initial determination received in response to a FOIA request.

(h) *Freedom of Information Act or ''FOIA''* means the statute as codified in section 552 of Title 5 of the United States Code as amended.

(i) *Freedom of Information Officer* means the Amtrak official designated to fulfill the responsibilities of implementing and administering the Freedom of Information Act as specifically designated under this part.

(j) *Initial determination* means a decision by an Amtrak FOIA Officer in response to a request for information under the FOIA.

(k) *Pages* means paper copies of standard office size or the cost equivalent in other media.

(l) *President* means the Chairman, President and Chief Executive Officer (CEO) of the National Railroad Passenger Corporation (Amtrak) or designee.

(m) *Record* means any writing, drawing, map, recording, tape, film, photograph, or other documentary material by which information is preserved in any format, including electronic format. A record must exist and be in the possession and control of Amtrak at the time of the request to be subject to this part and the FOIA. The following are not included within the definition of the word ''record'':

(1) Library materials compiled for reference purposes or objects of substantial intrinsic value.

(2) Routing and transmittal sheets, notes, and filing notes which do not also include information, comments, or statements of substance.

(3) Anything that is not a tangible or documentary record such as an individual's memory or oral communication.

(4) Objects or articles, whatever their historical or value as evidence.

(n) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(o) *Requester or requesting party* means any person who has submitted a request to Amtrak.

(p) *Responsive records* means documents determined to be within the scope of a FOIA request.

§ 701.3 Policy.

(a) Amtrak will make records of the Corporation available to the public to the greatest practicable extent in keeping with the spirit of the law. Therefore, records of the Corporation are available for public inspection and copying as provided in this part with the exception of those that the Corporation specifically determines should not be disclosed either in the public interest, for the protection of private rights, or for the efficient conduct of public or corporate business, but only to the extent withholding is permitted by law.

(b) A record of the Corporation, or parts thereof, may be withheld from disclosure if it comes under one or more exemptions in 5 U.S.C. 552(b) or is otherwise exempted by law. Disclosure to a properly constituted advisory committee, to Congress, or to federal agencies does not waive the exemption.

(c) In the event one or more exemptions apply to a record, any reasonably segregable portion of the record will be made available to the requesting person after deletion of the exempt portions. The entire record may be withheld if a determination is made that nonexempt material is so inextricably intertwined that disclosure would leave only essentially meaningless words or phrases, or when it can be reasonably assumed that a skillful and knowledgeable person could reconstruct the deleted information.

(d) The procedures in this part apply only to records in existence at the time of a request. The Corporation has no obligation to create a record solely for the purpose of making it available under the FOIA or to provide a record that will be created in the future.

(e) Each officer and employee of the Corporation dealing with FOIA requests is directed to cooperate in making

records available for disclosure under the Act in a prompt manner consistent with this part.

(f) The FOIA time limits will not begin to run until a request has been identified as being made under the Act and deemed received by the Freedom of Information Office.

(g) Generally, when a member of the public complies with the procedures established in this part for obtaining records under the FOIA, the request shall receive prompt attention, and a response shall be made within twenty business days.

§ 701.4 Amtrak public information.

(a) *Public reading room.* Amtrak maintains a public reading room at its headquarters at 60 Massachusetts Avenue, N.E. in Washington, D.C. The public reading room contains records required under the FOIA to be regularly available for public inspection and copying. A current subject-matter index shall be maintained of records in the public reading room that are available for inspection and copying. The index shall be updated at least quarterly with respect to newly included records. A copy of the index shall be provided upon request at a cost not to exceed the direct cost of duplication.

(b) *Electronic reading room.* Amtrak will make available electronically reading room records created by the Corporation on or after November 1, 1996 on its World Wide Web site which can be accessed at http://www.Amtrak.com. An index of the Corporation's reading room records will also be made available at the web site. The index will indicate reading room records that are available electronically.

(c) *Frequently requested information.* The FOIA requires that copies of records, regardless of form or format, released pursuant to a FOIA request under 5 U.S.C. 552(a)(3) that have become or are likely to become the subject of subsequent requests for substantially the same records be made publicly available. Such records created by the Corporation after November 1, 1996 will be made available electronically while records created prior to this date will be made available for inspection and copying in Amtrak's public reading room.

(1) Amtrak shall decide on a case-by-case basis whether records fall into the category of ''frequently requested FOIA records'' based on the following factors:

(i) Previous experience with similar records;

(ii) The nature and type of information contained in the records;

(iii) The identity and number of requesters and whether there is widespread media or commercial interest in the records.

(2) The provision in this paragraph is intended for situations where public access in a timely manner is important. It is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. Amtrak may remove the records from this category when it is determined that access is no longer necessary.

(d) *Guide for making requests.* A guide on how to use the FOIA for requesting records from Amtrak shall be made available to the public upon request. Amtrak's major information systems will be described in the guide.

§ 701.5 Requirements for making requests.

(a) *General requirements.* (1) A FOIA request can be made by ''any person'' as defined in 5 U.S.C. 551(2), which encompasses individuals (including foreign citizens; partnerships; corporations; associations; and local, state, tribal, and foreign governments). A FOIA request may not be made by a federal agency.

(2) A request must be in writing, indicate that it is being made under the FOIA, and provide an adequate description of the records sought. The request should also include applicable information regarding fees as specified in paragraphs (d) and (e) of this section.

(b) *How to submit a request.* (1) A request must clearly state on the envelope and in the letter that it is a Freedom of Information Act or ''FOIA'' request.

(2) The request must be addressed to the Freedom of Information Office; National Railroad Passenger Corporation; 60 Massachusetts Avenue, N.E.; Washington, D.C. 20002. Requests will also be accepted by facsimile at (202) 906–2169. Amtrak cannot assure that a timely or satisfactory response under this part will be given to written requests addressed to Amtrak offices, officers, or employees other than the Freedom of Information Office. Amtrak employees receiving a communication in the nature of a FOIA request shall forward it to the FOIA Office expeditiously. Amtrak shall advise the requesting party of the date that an improperly addressed request is received by the FOIA Office.

(c) *Content of the request.* (1) *Description of records*—Identification of records sought under the FOIA is the responsibility of the requester. The records sought should be described in sufficient detail so that Amtrak personnel can locate them with a reasonable amount of effort. When possible, the request should include specific information such as dates, title or name, author, recipient, subject matter of the record, file designation or number, or other pertinent details for each record or category of records sought.

(2) *Reformulation of a request.* Amtrak is not obligated to act on a request until the requester provides sufficient information to locate the record. Amtrak may offer assistance in identifying records and reformulating a request where the description is considered insufficient, the production of voluminous records is required, or a considerable number of work hours would be required that would interfere with the business of the Corporation. The Freedom of Information Office shall notify the requester within ten business days of the type of information that will facilitate the search. The requesting party shall be given an opportunity to supply additional information and may submit a revised request, which will be treated as a new request.

(d) *Payment of fees.* The submission of a FOIA request constitutes an agreement to pay applicable fees accessed up to $25.00 unless the requesting party specifies a willingness to pay a greater or lesser amount or seeks a fee waiver or reduction in fees.

(1) *Fees in excess of $25.00.* When Amtrak determines or estimates that applicable fees are likely to exceed $25.00, the requesting party shall be notified of estimated or actual fees, unless a commitment has been made in advance to pay all fees. If only a portion of the fee can be estimated readily, Amtrak shall advise the requester that the estimated fee may be a portion of the total fee.

(i) In order to protect requesters from large and/or unexpected fees, Amtrak will request a specific commitment when it estimates or determines that fees will exceed $100.00.

(ii) A request shall not be considered received, and further processing carried out until the requesting party agrees to pay the anticipated total fee. Any such agreement must be memorialized in writing. A notice under this paragraph will offer the requesting party an opportunity to discuss the matter in order to reformulate the request to meet the requester's needs at a lower cost.

(iii) Amtrak will hold in abeyance for forty-five (45) days requests requiring agreement to pay fees and will thereafter deem the request closed. This action will not prevent the requesting party from refiling the FOIA request with a fee commitment at a subsequent date.

(2) *Fees in excess of $250.* When Amtrak estimates or determines that allowable charges are likely to exceed

$250, an advance deposit of the entire fee may be required before continuing to process the request.

(e) *Information regarding fee category.* In order to determine the appropriate fee category, a request should indicate whether the information sought is intended for commercial use or whether the requesting party is a member of the staff of an educational or noncommercial scientific institution or a representative of the news media.

(f) *Records concerning other individuals.* If the request is for records concerning another individual, either a written authorization signed by that individual permitting disclosure of those records to the requesting party or proof that the individual is deceased (*i.e.*, a copy of a death certificate or an obituary) will help to expedite processing of the request.

§ 701.6 Release and processing procedures.

(a) *General provisions.* In determining records that are responsive to a request, Amtrak will ordinarily include only records that exist and are in the possession and control of the Corporation as of the date that the search is begun. If any other date is used, the requesting party will be informed of that date.

(b) *Authority to grant or deny requests.* Amtrak's FOIA officer is authorized to grant or deny any request for records.

(c) *Notice of referral.* If Amtrak refers all or any part of the responsibility for responding to a request to another organization, the requesting party will be notified. A referral shall not be considered a denial of access within the meaning of this part. All consultations and referrals of requests will be handled according to the date that the FOIA request was initially received.

(d) *Creating a record.* There is no obligation on the part of Amtrak to create, compile, or obtain a record to satisfy an FOIA request. The FOIA also does not require that a new computer program be developed to extract the records requested. Amtrak may compile or create a new record, however, when doing so would result in a more useful response to the requesting party or would be less burdensome to Amtrak than providing existing records. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee that would be charged for providing the existing record.

(e) *Incomplete records.* If the records requested are not complete at the time of a request, Amtrak may, at its discretion, inform the requester that complete nonexempt records will be provided when available without having to submit an additional request.

(f) *Electronic records.* Amtrak is not obligated to process a request for electronic records where creation of a record, programming or a particular format would result in a significant expenditure of resources or interfere with the corporation's operations.

§ 701.7 Timing of responses to requests.

(a) *General.* (1) The time limits of the FOIA will begin only after the requirements for submitting a request as established in § 701.5 have been met, and the request is deemed received by the Freedom of Information Office.

(2) A request for records shall be considered to have been received on the later of the following dates:

(i) The requester has agreed in writing to pay applicable fees in accordance with § 701.5(d), or

(ii) The fees have been waived in accordance with § 701.11(k), or

(iii) Payment in advance has been received from the requester when required in accordance with § 701.11(i).

(3) The time for responding to requests set forth in paragraph (b) of this section may be delayed if:

(i) The request does not sufficiently identify the fee category applicable to the request;

(ii) The request does not state a willingness to pay all fees;

(iii) A request seeking a fee waiver does not address the criteria for fee waivers set forth in § 701.11(k);

(iv) A fee waiver request is denied, and the request does not include an alternative statement indicating that the requesting party is willing to pay all fees.

(b) *Initial determination.* Whenever possible, an initial determination to release or deny a record shall be made within twenty business days after receipt of the request. In ''unusual circumstances'' as described in paragraph (d) of this section, the time for an initial determination may be extended for ten business days.

(c) *Multitrack processing.* (1) Amtrak may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process a request or the number of pages involved.

(2) In general, when requests are received, Amtrak's FOIA Office will review and categorize them for tracking purposes. Requests within each track will be processed according to date of receipt.

(3) The FOIA Office may contact a requester when a request does not appear to qualify for fast track processing to provide an opportunity to limit the scope of the request and qualify for a faster track. Such notification shall be at the discretion of the FOIA Office and will depend largely on whether it is believed that a narrowing of the request could place the request on a faster track.

(d) *Unusual circumstances.* (1) The requesting party shall be notified in writing if the time limits for processing a request cannot be met because of unusual circumstances, and it will be necessary to extend the time limits for processing the request. The notification shall include the date by which the request can be expected to be completed. Where the extension is for more than ten business days, the requesting party will be afforded an opportunity to either modify the request so that it may be processed within the time limits or to arrange an alternative time period for processing the initial request or modified request.

(2) If Amtrak believes that multiple requests submitted by a requester or by a group of requesters acting in concert constitute a single request that would otherwise involve unusual circumstances and the requests involve clearly related matters, the requests may be aggregated. Multiple requests concerning unrelated matters may not be aggregated.

(3) Unusual circumstances that may justify delay include:

(i) The need to search for and collect the requested records from other facilities that are separate from Amtrak's headquarters offices.

(ii) The need to search for, collect, and examine a voluminous amount of separate and distinct records sought in a single request.

(iii) The need for consultation, which shall be conducted with all practicable speed, with agencies having a substantial interest in the determination of the request, or among two or more Amtrak components having a substantial subject-matter interest in the request.

(e) *Expedited processing.* (1) Requests and appeals may be taken out of order and given expedited treatment whenever it is determined that they involve a compelling need, which means:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; and

(ii) An urgency to inform the public about an actual or alleged Amtrak activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at a later date.

(3) A requester seeking expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. This statement must accompany the request in order to be considered and responded to within the ten calendar days required for decisions on expedited access.

(4) A requester who is not a full-time member of the news media must establish that he is a person whose main professional activity or occupation is information dissemination, though it need not be his sole occupation. A requester must establish a particular urgency to inform the public about the Amtrak activity involved in the request.

(5) Within ten business days of receipt of a request for expedited processing, Amtrak shall determine whether to grant such a request and notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable.

(6) Amtrak shall provide prompt consideration of appeals of decisions denying expedited processing.

§ 701.8 Responses to requests.

(a) *Granting of requests.* When an initial determination is made to grant a request in whole or in part, the requesting party shall be notified in writing and advised of any fees charged under § 701.11(e). The records shall be disclosed to the requesting party promptly upon payment of applicable fees.

(b) *Adverse determination of requests.* (1) *Types of denials.*—The requesting party shall be notified in writing of a determination to deny a request in any respect. Adverse determinations or denials of records consist of:

(i) A determination to withhold any requested record in whole or in part;

(ii) A determination that a requested record does not exist or cannot be located;

(iii) A denial of a request for expedited treatment; and

(iv) A determination on any disputed fee matter including a denial of a request for a fee waiver.

(2) *Deletions.* When practical, records disclosed in part shall be marked or annotated to show both the amount and location of the information deleted.

(3) *Content of denial letter.* The denial letter shall be signed by the Freedom of Information Officer or designee and shall include:

(i) A brief statement of the reason(s) for the adverse determination including any FOIA exemptions applied in denying the request;

(ii) An estimate of the volume of information withheld (number of pages or some other reasonable form of estimation). An estimate does not need to be provided if the volume is indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;

(iii) A statement that an appeal may be filed under § 701.10 and a description of the requirements of that section; and

(iv) The name and title or position of the person responsible for the denial.

§ 701.9 Business information.

(a) *General.* Business information held by Amtrak will be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information held by Amtrak that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity including partnerships; corporations; associations; and local, state, tribal, and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(d) *Notice to submitters.* Amtrak shall provide a submitter with prompt written notice of a FOIA request or an appeal that seeks its business information when required under paragraph (e) of this section, except as provided in paragraph (h), in order to give the submitter an opportunity to object to disclosure of any specified portion of the information under paragraph (f). The notice shall either describe the business information requested or include copies of the requested records or portions of records containing the information.

(e) *When notice is required.* Notice shall be given to a submitter when:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) Amtrak has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* Amtrak will allow a submitter a reasonable amount of time to respond to the notice described in paragraph (d) of this section.

(1) A detailed written statement must be submitted to Amtrak if the submitter has any objection to disclosure. The statement must specify all grounds for withholding any specified portion of the information sought under the FOIA. In the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential.

(2) In the event that a submitter fails to respond within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information sought under the FOIA.

(3) Information provided by a submitter in response to the notice may be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* Amtrak shall consider a submitter's objections and specific grounds for disclosure in making a determination whether to disclose the information. In any instance, when a decision is made to disclose information over the objection of a submitter, Amtrak shall give the submitter written notice which shall include:

(1) A statement of the reason(s) why each of the submitter's objections to disclosure was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(1) Amtrak determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than the FOIA);

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous. In such a case, Amtrak shall within a reasonable time prior to a specified disclosure date, give the submitter written notice of the final decision to disclose the information; or

(5) The information requested is not designated by the submitter as exempt from disclosure in accordance with this part, unless Amtrak has substantial reason to believe that disclosure of the

information would result in competitive harm.

(i) *Notice of a FOIA lawsuit.* Whenever a FOIA requester files a lawsuit seeking to compel disclosure of business information, Amtrak shall promptly notify the submitter.

(j) *Notice to requesters.* (1) When Amtrak provides a submitter with notice and an opportunity to object to disclosure under paragraph (f) of this section, the FOIA Office shall also notify the requester(s).

(2) When Amtrak notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, Amtrak shall also notify the requester(s).

(3) When a submitter files a lawsuit seeking to prevent the disclosure of business information, Amtrak shall notify the requester(s).

§ 701.10 Appeals.

(a) *Appeals of adverse determinations.* (1) The requesting party may appeal:

(i) A decision to withhold any requested record in whole or in part;

(ii) A determination that a requested record does not exist or cannot be located;

(iii) A denial of a request for expedited treatment; or

(iv) Any disputed fee matter or the denial of a request for a fee waiver.

(2) The appeal must be addressed to the Chairman, President and CEO; National Railroad Passenger Corporation; 60 Massachusetts Avenue, N.E.; Washington, D.C. 20002.

(3) The appeal must be in writing and specify the relevant facts and the basis for the appeal. The appeal letter and envelope must be marked prominently ''Freedom of Information Act Appeal'' to ensure that it is properly routed.

(4) The appeal must be received by the President's Office within thirty (30) days of the date of denial.

(5) An appeal will not be acted upon if the request becomes a matter of FOIA litigation.

(b) *Responses to appeals.* The decision on any appeal shall be made in writing.

(1) A decision upholding an adverse determination in whole or in part shall contain a statement of the reason(s) for such action, including any FOIA exemption(s) applied. The requesting party shall also be advised of the provision for judicial review of the decision contained in 5 U.S.C. 552(a)(4)(B).

(2) If the adverse determination is reversed or modified on appeal in whole or in part, the requesting party shall be notified, and the request will be reprocessed in accordance with the decision.

(c) *When appeal is required.* The requesting party must appeal any adverse determination prior to seeking judicial review.

§ 701.11 Fees.

(a) *General.* Amtrak shall charge for processing requests under the FOIA in accordance with this section. A fee of $9.50 per quarter hour shall be charged for search and review. For information concerning other processing fees, refer to paragraph (e) of this section. Amtrak shall collect all applicable fees before releasing copies of requested records to the requesting party. Payment of fees shall be made by check or money order payable to the National Railroad Passenger Corporation.

(b) *Definitions.* For purposes of this section:

(1) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(2) *Review* means the process of examining a record located in response to a request to determine whether one or more of the statutory exemptions of the FOIA apply. Processing any record for disclosure includes doing all that is necessary to redact the record and prepare it for release. Review time includes time spent considering formal objection to disclosure by a commercial submitter under § 701.9, but does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are recoverable even if a record ultimately is not disclosed.

(3) *Reproduction* means the making of a copy of a record or the information contained in it in order to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (i.e., magnetic tape or disk) among others. Amtrak shall honor a requester's specified preference for the form or format of disclosure if the record is readily reproducible with reasonable effort in the requested form or format by the office responding to the request.

(4) *Direct costs* means those expenses actually incurred in searching for and reproducing (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include such costs as the salary of the employee performing the work (the basic rate of pay for the employee plus applicable benefits and the cost of operating reproduction equipment). Direct costs do not include overhead expenses such as the costs of space and heating or lighting of the facility.

(c) *Fee categories.* There are four categories of FOIA requesters for fee purposes: ''commercial use requesters,'' ''representatives of the news media,'' ''educational and non-commercial scientific institution requesters,'' and ''all other requesters.'' The categories are defined in paragraphs (c)(1) through (5), and applicable fees, which are the same for two of the categories, will be assessed as specified in paragraph (d) of this section.

(1) *Commercial requesters.* The term ''commercial use'' request refers to a request from or on behalf of a person who seeks information for a use or purpose that furthers his commercial, trade, or profit interests, including furthering those interests through litigation. Amtrak shall determine, whenever reasonably possible, the use to which a requester will put the records sought by the request. When it appears that the requesting party will put the records to a commercial use, either because of the nature of the request itself or because Amtrak has reasonable cause to doubt the stated intended use, Amtrak shall provide the requesting party with an opportunity to submit further clarification. Where a requester does not explain the use or where explanation is insufficient, Amtrak may draw reasonable inferences from the requester's identity and charge accordingly.

(2) *Representative of the news media or news media requester* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of news). For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through an organization. A publication contract would be the clearest proof, but Amtrak shall also look to the past publication record of a requester in making this determination. A request for records supporting the news dissemination function of the requester shall not be considered to be for commercial use.

(3) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for commercial use but to further scholarly research.

(4) *Noncommercial scientific institution* refers to an institution that is not operated on a ''commercial'' basis, as that term is defined in paragraph (c)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, the requesting party must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for commercial use but to further scientific research.

(5) *Other requesters* refers to requesters who do not come under the purview of paragraphs (c) (1) through (4) of this section.

(d) *Assessing fees.* In responding to FOIA requests, Amtrak shall charge the following fees unless a waiver or a reduction in fees has been granted under paragraph (k) of this section:

(1) *''Commercial use'' requesters*: The full allowable direct costs for search, review, and duplication of records.

(2) *''Representatives of the news media'' and ''educational and non-commercial scientific institution'' requesters*: Duplication charges only, excluding charges for the first 100 pages.

(3) *''All other'' requesters*: The direct costs of search and duplication of records. The first 100 pages of duplication and the first two hours of search time shall be provided without charge.

(e) *Schedule of fees.* (1) *Manual searches*—Personnel search time includes time expended in either manual searches for paper records, searches using indices, review of computer search results for relevant records, and personal computer system searches.

(2) *Computer searches.* The direct costs of conducting a computer search will be charged. These direct costs will include the cost of operating a central processing unit for that portion of the operating time that is directly attributable to searching for responsive records as well as the costs of operator/programmer salary apportionable to the search.

(3) *Duplication fees.* Duplication fees will be charged all requesters subject to limitations specified in paragraph (d) of this section. Amtrak shall charge 25 cents per page for a paper photocopy of a record. For copies produced by computer (such as tapes or printouts), Amtrak will charge the direct costs, including the operator time in producing the copy. For other forms of duplication, Amtrak will charge the direct costs of that duplication.

(4) *Review fees.* Review fees will be assessed for commercial use requests. Such fees will be assessed for review conducted in making an initial determination, or upon appeal when review is conducted to determine whether an exemption not previously considered is applicable.

(5) *Charges for other services.* The actual cost or amount shall be charged for all other types of output, production, and duplication (e.g., photographs, maps, or printed materials). Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item available for release, and an allocated cost for the equipment used in producing the item. The requesting party will be charged actual production costs when a commercial service is required. Items published and available through Amtrak will be made available at the publication price.

(6) *Charges for special services.* Apart from the other provisions of this section, when Amtrak chooses as a matter of discretion to provide a special service such as certifying that records are true copies or sending records by other than ordinary mail, the direct costs of providing such services shall be charged.

(f) *Commitment to pay fees.* When Amtrak determines or estimates that applicable fees will likely exceed $25.00, the requesting party will be notified of the actual or estimated amount unless a written statement has been received indicating a willingness to pay all fees. To protect requesters from large and/or unexpected fees, Amtrak will request a specific commitment when it is estimated or determined that fees will exceed $100.00. See § 701.5(d) for additional information.

(g) *Restrictions in accessing fees.* (1) *General*—Fees for search and review will not be charged for a quarter-hour period unless more than half of that period is required.

(2) *Minimum fee.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the costs to Amtrak for billing, receiving, recording, and processing the fee for deposit, which has been deemed to be $10.00.

(3) *Computer searches.* With the exception of requesters seeking documents for commercial use, Amtrak shall not charge fees for computer search until the cost of search equals the equivalent dollar amount of two hours of the salary of the operator performing the search.

(h) *Nonproductive searches.* Amtrak may charge for time spent for search and review even if responsive records are not located or if the records located are determined to be entirely exempt from disclosure.

(i) *Advance payments.* (1) When Amtrak estimates or determines that charges are likely to exceed $250, an advance payment of the entire fee may be required before continuing to process the request.

(2) When there is evidence that the requester may not pay the fees that would be incurred by processing the request, an advance deposit may be required. Amtrak may require the full amount due plus applicable interest and an advance payment of the full amount of anticipated fees before beginning to process a new request or continuing to process a pending request where a requester has previously failed to pay a properly charged FOIA fee within thirty (30) days of the date of billing. The time limits of the FOIA will begin only after Amtrak has received such payment.

(3) Amtrak will hold in abeyance for forty-five (45) days requests where deposits are due.

(4) Monies owed for work already completed (i.e., before copies are sent to a requester) is not considered an advance payment.

(5) Amtrak shall not deem a request as being received in cases in which an advance deposit or payment is due, and further work will not be done until the required payment is received.

(j) *Charging interest.* Amtrak may charge interest on any unpaid bill for processing charges starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate that Amtrak pays for short-term borrowing.

(k) *Waiver or reduction of fees.* (1) *Automatic waiver of fees*—When the costs for a FOIA request total $10.00 or less, fees shall be waived automatically for all requesters regardless of category.

(2) *Other fee waivers.* Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be

made on a case-by-case basis. Records responsive to a request will be furnished without charge or at below the established charge where Amtrak determines, based on all available information, that disclosure of the requested information is in the public interest because:

(i) It is likely to contribute significantly to public understanding of the operations or activities of Amtrak and

(ii) It is not primarily in the commercial interest of the requesting party.

(3) To determine whether fee waiver requirement in paragraph (k)(2)(i) of this section is met, Amtrak will consider the following factors:

(i) *The subject of the request—whether the subject of the requested records concerns the operations or activities of Amtrak.* The subject of the requested records must concern identifiable operations or activities of Amtrak with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed—whether the disclosure is likely to contribute to an understanding of Amtrak operations or activities.* The disclosable portions of the requested records must be meaningfully informative about Amtrak's operations or activities in order to be found to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure—whether disclosure of the requested information will contribute to public understanding.* The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject as opposed to the individual understanding of the requester. A requester's ability and expertise in the subject area as well as the requester's intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) *The significance of the contribution to public understanding—whether the disclosure is likely to contribute significantly to public understanding of Amtrak operations or activities.* The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(4) To determine whether the fee waiver requirement in paragraph (k)(2)(ii) of this section is met, Amtrak will consider the following factors:

(i) *The existence and magnitude of a commercial interest—whether the requesting party has a commercial interest that would be furthered by the requested disclosure.* Amtrak shall consider any commercial interest of the requesting party (with reference to the definition of ''commercial use'' in paragraph (c)(1) of this section), or any person on whose behalf the requesting party may be acting that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure—whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''* A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than any identified commercial interest in disclosure.

(5) Requests for a fee waiver will be considered on a case-by-case basis, based upon the merits of the information provided. Where it is difficult to determine whether the request is commercial in nature, Amtrak may draw inference from the requester's identity and the circumstances of the request.

(6) Requests for a waiver or reduction of fees must address the factors listed in paragraphs (k)(3) and (4) of this section. In all cases, the burden shall be on the requesting party to present evidence of information in support of a request for a waiver of fees.

(l) *Aggregating requests.* A requester may not file multiple requests at the same time in order to avoid payment of fees. Where Amtrak reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, Amtrak may aggregate those requests and charge accordingly. Amtrak may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, Amtrak may aggregate them only when there exists a solid basis for determining that aggregation is warranted. Multiple requests involving unrelated matters may not be aggregated.

§ 701.12 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Dated: November 6, 1997.

Sarah H. Duggin,

Vice President and General Counsel.

[FR Doc. 97–29717 Filed 11–13–97; 8:45 am]

BILLING CODE 7531–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 971023253–7253–01; I.D. 093097E]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of a petition for regulations and an application for a small take exemption; request for comment and information.

SUMMARY: NMFS has received a request from the 30th Space Wing, U.S. Air Force for a small take of marine mammals incidental to missile and rocket launches, aircraft flight test operations and helicopter operations at Vandenberg Air Force Base, CA (Vandenberg). As a result of that request, NMFS is considering whether to propose regulations that would authorize the incidental taking of a small number of marine mammals. In order to issue such regulations, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application and suggestions on the content of the regulations.

DATES: Comments and information must be postmarked no later than December 15, 1997.

ADDRESSES: Comments should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application may be

obtained by writing to the above address, telephoning the person below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Irma Lagomarsino, Southwest Regional Office, NMFS, (310) 980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking, and the requirements pertaining to the monitoring and reporting of such taking. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Description of Request

On September 30, 1997, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from the 30th Space Wing, Vandenberg to take marine mammals incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg.

Vandenberg is located on the south-central coast of California. The base covers approximately 98,000 acres in western Santa Barbara County. The Air Force's primary missions at Vandenberg are to launch and track satellites in space, test and evaluate the United State's intercontinental ballistic missile systems, and support aircraft operations. As a nonmilitary facet of operations, Vandenberg is also committed to promoting commercial space launch ventures.

Vandenberg anticipates a total of 10 launches annually for Minuteman and Peacekeeper missiles from North Vandenberg and a total of 20 launches annually for space launches (6 Delta II, 3 Taurus, 2 Atlas, 3 Titan IV, 2 Titan II and 4 Lockheed launch vehicles) from South Vandenberg.

Launch operations are a major source of noise. The operation of launch vehicle engines produces significant sound levels. Generally, four types of noise occur during a launch. They are: (1) Combustion noise from launch vehicle chambers; (2) jet noise generated by the interaction of the exhaust jet and the atmosphere; (3) combustion noise from the post-burning of combustion products; and (4) sonic booms.

Noise disturbance from operations on Vandenberg may cause negligible short-term impacts to pinnipeds (seals and sea lions) hauled out on the Vandenberg coastline. The principal form of impacts would be infrequent and unintentional incidental harassment resulting from noise generated by aircraft and by missile and rocket launches. There is a potential for launch noises and sonic booms to cause a startle response and flight to water for those harbor seals, California sea lions and other pinnipeds that may haul out on the coastline of Vandenberg and on the Northern Channel Islands (NCI). Launch noise is expected to occur over the coastal habitats in the vicinity of the Vandenberg launch site during every launch, while sonic booms may be heard on NCI, specifically San Miguel and Santa Rosa Islands, only during certain launches of certain rocket types (principally Titan IV). Because the noise may potentially result in disturbance of pinnipeds, an MMPA authorization is required in order to exempt the applicant from the penalties of the MMPA for taking by harassment that occurs in compliance with such authorization.

Regulations, if issued, would replace annual incidental harassment authorizations issued to Vandenberg for takings incidental to launches by Lockheed Martin launch vehicles (62 FR 40335, July 28, 1997), McDonnell Douglas Aerospace Delta II rocket launches (61 FR 59218, November 21, 1996), Taurus launches (62 FR 734, January 6, 1997) and Titan II and Titan IV launches (61 FR 64337, December 4, 1996). In addition, these regulations would authorize takings incidental to Minuteman and Peacekeeper missile launches, aircraft flight test operations and helicopter operations, which have not been authorized previously.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations to allow the taking. NMFS will consider this information in developing proposed regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be given ample time and opportunity to comment.

Dated: November 6, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–29935 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 220
Friday, November 14, 1997

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. 97–109–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the export of poultry and poultry hatching eggs from the United States.

DATES: Comments on this notice must be received by January 13, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–109–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–109–1. 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: For information regarding the Certificate for Poultry and Hatching Eggs for Export, contact Dr. Andrea Morgan, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1236, (301) 734–8068. For copies of more detailed information on the information collection, contact Ms. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Certificate for Poultry and Hatching Eggs for Export

OMB Number: 0579–0048.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The export of agricultural commodities, including poultry and hatching eggs, is a major business in the United States and contributes to a favorable balance of trade. In accordance with 21 U.S.C. 112 and 113, the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS), collects information and conducts inspections to ensure that poultry and hatching eggs exported from the United States are free of communicable diseases. Receiving countries have specific health requirements for poultry and hatching eggs exported from the United States. Most countries require a certification that our poultry and hatching eggs are disease free. This certification generally must carry the USDA seal and be endorsed by an APHIS veterinarian. VS Form 17–6, Certificate for Poultry and Hatching Eggs for Export, is generally used to meet these requirements.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) 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;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: U.S. exporters of poultry and hatching eggs, Federal veterinarians, accredited veterinarians.

Estimated number of respondents: 300.

Estimated number of responses per respondent: 70.

Estimated annual number of responses: 21,000.

Estimated total annual burden on respondents: 10,500 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of November 1997.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–29992 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–001–3]

Handling, Training, and Exhibition of Potentially Dangerous Exotic or Wild Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our notice requesting information concerning what practices are currently used for handling and training potentially dangerous exotic or wild animals used in exhibition (such as, but

not limited to, elephants, lions, or tigers), and what training and experience levels trainers and handlers of such animals have. This reopening and extension will provide interested groups and individuals with additional time to prepare comments on the request for information.

DATES: Consideration will be given only to comments on Docket No. 97–001–1 that are received on or before December 12, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–001–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–001–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8:00 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. Stephen Smith, Staff Animal Health Technician, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1997, we published in the **Federal Register** (62 FR 39802, Docket No. 97–001–1) a notice requesting information concerning the training and handling of potentially dangerous wild and exotic animals used in exhibition in order to obtain a better understanding of the issues pertaining to their welfare. Comments on the request for information were required to be received on or before September 22, 1997. On September 22, 1997, we published in the **Federal Register** (62 FR 49468–49469, Docket No. 97–001–2) a notice that reopened and extended the comment period for an additional 45 days, to November 6, 1997.

In the notice requesting information, we said we were most interested in receiving information that is in the form of published industry standards, published reports in peer-reviewed journals, studies, and objective scientific data. We have been made aware that several industry associations interested in submitting information have been unable to complete their consultation with members of their associations in order to compile information on accepted industry standards for the handling and training of exotic or wild animals. We believe this information would be helpful to us in obtaining a better understanding of the issues pertaining to the welfare of exotic or wild animals used in exhibition.

In order that these groups can have time to compile the requested information, we are reopening and extending the comment period on Docket No. 97–001–1 to December 12, 1997. This action will also allow any other interested groups and individuals additional time to prepare and submit comments.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 7th day of November 1997.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–29991 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on December 1, 1997 at Rock Springs Guest Ranch 7 miles north of Bend, OR. The meeting will start at 9:00 a.m. and finish at 5:00 p.m. Agenda items include: (1) Completion of comments on the DEIS documents for the Eastside Ecosystem project, (2) Monitoring Reports, (3) Update on Working Groups (4) Open Public Forum. All Deschutes Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Fort Rock Ranger District, 1230 N. E. 3rd, Bend, Oregon 97701, 541–383–4769.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 97–29917 Filed 11–13–97; 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 services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 15, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 11, August 1, 8, September 5 and 12, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 F.R. 37192, 41339, 42745, 46944 and 48050) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the 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 services to the Government.
2. The action will not have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the 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 services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Central Facility Management (Including Janitorial/Custodial, Grounds Maintenance, Interior Landscaping, Copier Operation, Mail and Messenger Service & Shipping/Receiving), U.S. Department of Agriculture, Beltsville Office Complex, 5601 Sunnyside Avenue, Beltsville, Maryland

Food Service Attendant, Naval Air Station, Jacksonville, Florida

Mailroom Operation, National Oceanic and Atmospheric Administration, Western Regional Center & Pacific Marine Center, Seattle, Washington

Operation of Postal Service Center, Building 337, Goodfellow Air Force Base, Texas

Warehouse Operation, 565th Quartermaster Company, 80th Street, Fort Hood, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–30006 Filed 11–13–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 15, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

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 additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services 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 services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the 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 services 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 services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

HVAC System Filter Maintenance

Basewide (less Family Quarters), Fort Sam Houston, Texas

NPA: Goodwill Industries of San Antonio, San Antonio, Texas

Janitorial/Custodial

Naval Air Reserve, Moffett Field, California

NPA: VTF Services, Palo Alto, California

Janitorial/Grounds Maintenance

VA Outpatient Clinic, Griffiss Air Base, Rome, New York

NPA: The Arc of Oneida County, Inc., Utica, New York

Kennel Caretaker

U.S. Customs Service, JFK Airport, Jamaica, New York

NPA: The Corporate Source, Inc., New York, New York

Laundry Service

Naval Amphibious Base, Buildings 302, 303 and 505, Coronado, California

NPA: Job Options, Inc., San Diego, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–30007 Filed 11–13–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of Foreign Ocean Carriers' Expenses in the United States—BE–29.

Form Number(s): BE–29.

OMB Approval Number: 0608–0012.

Type of Request: Extension—regular submission.

Burden: 620 hours.

Number of Respondents: 155.

Avg Hours Per Response: 4 hours.

Needs and Uses: The Bureau of Economic Analysis is responsible for the computation and publication of the U.S. balance of payments accounts. The information collected in this survey is an integral part of the ''transportation'' portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business,* are one of the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions. They are used by government and private organizations for national and international policy formulation, and analytical studies. Without the information collected in this survey, an integral component of the transportation account would be omitted. No other Government agency collects comprehensive annual data on foreign ocean carriers' expenses in the United States.

Affected Public: U.S. agents of foreign ocean carriers.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade Services Act. 22 U.S.C. 3101–3108.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room, 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of this notice to Paul Bugg, OMB Desk Officer, Room 10201,

New Executive Office Building, Washington, DC 20503.

Dated: November 7, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc.97–29999 Filed 11–13–97; 8:45am]

BILLING CODE: 3610–EA–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of Foreign Airline Operators' Revenues and Expenses in the United States—BE–36.

Form Number(s): BE–36.

OMB Approval Number: 0608–0013.

Type of Request: Extension—regular submission.

Burden: 350 hours.

Number of Respondents: 70.

Avg Hours Per Response: 5 hours.

Needs and Uses: The Bureau of Economic Analysis is responsible for the computation and publication of the U.S. balance of payments accounts. The information collected in this survey is an integral part of the ''transportation'' portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business,* are one of the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions. They are used by government and private organizations for national and international policy formulation, and analytical studies. Without the information collected in this survey, an integral component of the transportation account would be omitted. No other Government agency collects comprehensive annual data on foreign airline operators' revenues and expenses in the United States.

Affected Public: Foreign air carriers.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade Services Act. 22 U.S.C. 3101–3108.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room, 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 7, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc.97–30000 Filed 11–13–97; 8:45am]

BILLING CODE: 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Application for Transfer of Licenses to Another Party

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Certain circumstances such as company mergers, company takeovers, etc., necessitate the transfer of an active export license from one party to another. When a licensee transfers an unexpired license to another party, there must be assurances that the other party, the transferee, will also be accountable for the proper use of the license. The required information collected from both parties provides assurances that the balance of the shipments will not be diverted or used for purposes contrary to the authorized use of the approved license.

II. Information Submitted in Writing

III. Data

OMB Number: 0694–0051.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Response: 1 hour per response.

Estimated Total Annual Burden Hours: 18.

Estimated Total Annual Cost: $200 (no capital expenditures required).

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 will also become a matter of public record.

Dated: November 6, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–29964 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

One-time Report for Foreign Software or Technology Eligible for De Minimis Exclusion

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and

respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 734.4 exempts from the EAR reexports of foreign technology commingled with or drawn from controlled U.S. origin technology valued at 10% or less of the total value of the foreign technology. However, persons must submit a one-time report for the foreign software or technology to BXA prior to reliance upon this *de minimis* exclusion.

II. Method of Collection

Exporters submit a one-time written report.

III. Data

OMB Number: 0694–0101.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Time Per Response: 25 hours.

Estimated Total Annual Burden Hours: 250.

Estimated Total Annual Cost: $5,000 (no capital expenditures are required).

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 will also become a matter of public record.

Dated: November 7, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–30001 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

License Exception; Humanitarian Donations

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 7(g) of the EAA, as amended by the Export Administration Amendments Act of 1985 (Public Law 99–64), exempts from foreign policy controls exports of donations to meet basic human needs. Previously an exporter had to apply for a bulk Humanitarian License when wishing to export goods to restricted countries. Under the current regulations, there is license exception procedure which allows exporters to ship humanitarian donations to restricted countries by simply maintaining certain records. The records can be used for enforcement purposes.

III. Data

OMB Number: 0694–0033.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 4.

Estimated Time Per Response: 4 hours per response.

Estimated Total Annual Burden Hours: 16.

Estimated Total Annual Cost: $60 (no capital expenditures are required).

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 will also become a matter of public record.

Dated: November 7, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–30002 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–802]

Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol From the Republic of South Africa

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

SUMMARY: On July 8, 1997, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on furfuryl alcohol from the Republic of South Africa. The review covers shipments of this merchandise to the United States during the period December 16, 1994, through May 31, 1996, the period of review.

Based on our analysis of the comments received, and the correction of certain ministerial errors, we have changed the preliminary results. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or Kris Campbell, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0186 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreement Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to the provisions codified at 19 CFR part 353, as of April 1, 1996. Where we cite to the Department's new regulations (19 CFR part 351, 62 FR 27926 (May 19, 1997) (''New Regulations'') as an indication of current Department practice, we have so stated.

Background

This review covers one manufacturer/exporter to the United States of the subject merchandise, Illovo Sugar Limited (''ISL''). On July 8, 1997, the Department published in the **Federal Register** the *Preliminary Results of Administrative Review of the Antidumping Duty Order on Furfuryl Alcohol from the Republic of South Africa,* 62 FR 36488 (''the preliminary results''). We received case and rebuttal briefs from QO Chemicals, Inc (''the petitioner'') and ISL on August 7, 1997, and August 26, 1997, respectively. A public hearing was held on August 28, 1997.

The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The merchandise covered by this order is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Constructed Export Price (''CEP'')

For sales to the United States, we calculated CEP based on the same methodology used in the preliminary results, with the following exceptions:

1. We excluded certain sales made of furfuryl alcohol which entered the United States prior to the suspension of liquidation. *See* Comment 6.

2. We based the calculation of the CEP profit rate on information contained in ISL's audited financial statements regarding profits made on ''by-products'' rather than on the total profit figure in the company's financial statements. *See* Comment 8.

3. We have treated the quality testing expense that ISL incurs upon furfuryl alcohol's arrival in the United States as a movement expense and not as an indirect selling expense. *See* Comment 9.

4. We limited the deduction of indirect expenses incurred in the home market on behalf of U.S. sales to the expenses of ISL personnel incurred for travel to the United States. *See* Comment 10.

5. Tank car rental credits gained for transporting furfuryl alcohol in the United States are no longer added to CEP because the reported tank car rental expense is net of such credits. *See* Comment 11.

6. Certain U.S. inventory carrying costs have been converted from Rand to U.S. dollars. *See* Comment 12.

Normal Value (''NV'')

We used the same methodology to calculate NV as that described in the preliminary results.

Analysis of Comments Received

In accordance with 19 CFR 353.38, we gave interested parties an opportunity to comment on the preliminary results. We received a case brief from the petitioner and a rebuttal brief from ISL (*e.g.*, ''Petitioner Case Brief'', ''ISL Rebuttal Brief'').

Comment 1: Fictitious Home Market: The petitioner argues that the Department erred in the preliminary results by not determining that a fictitious market exists in South Africa rendering HM sales of furfuryl alcohol inappropriate as a basis for NV. The petitioner contends that the Department unlawfully restricted the applicability of the fictitious market provision (section 773(a)(2) of the Act) to situations where there is evidence of different movements in prices at which different forms of the foreign like product are sold or offered for sale.

Specifically, the petitioner argues that the Department's restriction of this provision to situations involving price movements of different forms of the foreign like product is incorrect for the following reasons. First, the legislative history of the 1988 amendment to the fictitious market provision (which provides that the Department may consider ''different movements in prices at which different forms of the foreign like product are sold or offered for sale'' as evidence of a fictitious market) clearly indicates that this evidence is simply an illustrative example of a fictitious market and does not prevent the Department from finding a fictitious market based on other evidence. In this regard, the petitioner cites the Senate Report accompanying this amendment: ''The purpose of this provision is to *highlight one particular example* of a fictitious market.'' S.Rep. No. 71, 100th Congress., 1st Sess. at 126 (1987) (*Senate Report*) (emphasis petitioner's). Second, the petitioner contends that the Department's interpretation conflicts with *PQ Corp* v. *United States,* 652 F. Supp. 724, 729 (CIT 1987) (''*PQ Corp.*''), which, although it predated the 1988 amendment, continues to offer the proper reading of the general purpose of the fictitious market provision as concerned with preventing ''parties from manipulating dumping margins by * * * offering merchandise at a price that does not reflect its actual market

price.'' Third, the petitioner claims that the Department's reasoning renders the provision a nullity in all cases where there is only one form of the foreign like product, as in this review. The petitioner concludes that the Department's overly restrictive reading of the fictitious market provision has allowed ISL to manipulate the results of this review by establishing a fictitious market through severe home market price reductions even though the world price for furfuryl alcohol increased during the period of review (''POR'').

ISL responds that the petitioner's reading of the fictitious market provision is overly broad and contends that the Department should sustain its position in the preliminary results that a fictitious market does not exist in the home market. Citing *Tubeless Steel Disc Wheels from Brazil,* 56 FR 14083 (April 5, 1991) (*Disc Wheels*), *Porcelain-on-Steel Cooking Ware from Mexico,* 58 FR 32095 (June 8, 1993) (*Porcelain Cookware*), and the Department's *June 30, 1997, Memorandum,* ISL contends that: (a) The Department has always required evidence of price movements of different forms of the foreign like product before pursuing a fictitious market allegation; (b) furfuryl alcohol is a single, unitary product and there is no possibility that the prices of different forms of the foreign like product could be manipulated to distort the dumping margin; and (c) contrary to the petitioner's interpretation of *PQ Corp.,* this case stands for the proposition that there is no reason to invoke the fictitious market provision absent evidence that a sale is anything less than a *bona fide* transaction; in this case, the viability and reality of the transactions is not in dispute. ISL adds that the petitioner's concern with reduced home market prices is more appropriate to a below-cost allegation, which the petitioner chose not to file, and concludes that a respondent is within its discretion to eliminate price discrimination by either raising U.S. price, lowering home market price, or doing a combination of the two, citing Final Results of Redetermination to Court Remand, *The Timken Company* v. *United States,* CIT Case No. 94–01–00008 (December 17, 1996)) (*Timken Remand*).

DOC Position: We agree with ISL that the record evidence regarding its South African sales does not warrant a finding that ISL has established a fictitious home market. Our general practice in determining whether a fictitious market exists is to require evidence that the decrease in the price of home market sales of the foreign like product was accompanied by an increase in the price of sales of ''different forms of the foreign like product.'' *See Disc Wheels,* 56 FR at 14085 (''[B]efore pursuing a [fictitious market] allegation, the Department must have sufficient evidence to believe that there have been different movements in the prices at which different forms of the subject merchandise have been sold in the home market'') and *Porcelain Cookware,* 58 FR at 32096 (''In order for price differences to serve as a basis for initiating a fictitious sales inquiry . . . the Department must have sufficient evidence to believe or suspect that there have been different movements in the prices at which different forms of the subject merchandise have been sold in the home market and that such movements appear to reduce the amount by which foreign market value (FMV) exceeds the U.S. price of the merchandise''). As we explained in the *June 30, 1997, Memorandum,* the facts that the petitioner presents in support of its claim, centering around a single supplier selling at low prices in the home market, do not justify an expansion of our practice.

Although our position regarding the petitioner's claim was stated clearly in that memorandum, we make the following additional points regarding the petitioner's comments as contained in its case brief. First, given the language in the Senate Report to the 1988 amendment to the fictitious market provision that price movements within a foreign like product are ''one example of a fictitious market,'' it is possible that we may determine in the future that a fact pattern other than price movements within a foreign like product constitutes a fictitious market. However, the fact pattern before us, involving a single respondent that lowered its home market prices during the POR, is insufficient to make such a determination and, in fact, would conflict with a basic tenet of the dumping law were we to do so. As noted in the *Timken Remand,* a respondent may reduce or eliminate dumping either by raising its U.S. prices or by lowering its home market prices of merchandise subject to the order. A finding that ISL has created a fictitious market based solely on ISL's lowering of its home market furfuryl alcohol prices would contradict this basic proposition.

Second, regarding the petitioner's argument that CIT's decision in *PQ Corp.* requires a different result, we agree with the petitioner that the court indicated that a fictitious market could exist when the price of merchandise ''does not reflect its actual price.'' However, we disagree that the information on the record indicates that ISL's home market sales fail to meet this standard. Rather, ISL's home market sales were *bona fide* transactions involving a significant number of customers made during the course of the POR. These customers ordered, received, and paid for the merchandise in the normal course of business based on prices contained in ISL's price lists. Further, the total quantity of ISL's home market sales was far in excess of the viability threshold and in our view those South African sales must be considered one of the company's primary markets.

Finally, based on the above facts concerning ISL's home market sales, we disagree with the petitioner's assertion that the Department is rendering the fictitious market provision a nullity where, as here, there was no other form of the foreign like product to which a price comparison can be made. Rather, given the facts surrounding ISL's home market sales, we have determined that the harm that this provision seeks to prevent (artificial pricing leading to the elimination of a finding of dumping) is not present in this case. As a result, there is no reason in this proceeding to go beyond our normal practice of determining the existence of a fictitious market based on a comparison of prices of different forms of the foreign like product.

Comment 2: Home Market Customer Affiliation: The petitioner argues that ISL is affiliated with its home market customers due to its self-described status as the only established producer and seller of furfuryl alcohol in South Africa. Citing the SAA's discussion (at 838) of possible affiliation in the absence of an equity relationship (in elaborating on section 771(33)(G) of the Act), the petitioner states that affiliation can result from the ability of one company ''to exercise restraint or direction'' over another company through a ''close supplier relationships in which the supplier or buyer becomes reliant upon the other.''

In addition, the petitioner commented on the following specific aspects of the Department's *June 30, 1997, Memorandum,* which provided an analysis of this issue for the preliminary results. In this memorandum, the Department noted that: (a) ISL's home market customers appear to be free to purchase furfuryl alcohol from any source willing to offer it; (b) a 10 percent tariff rate appeared to be the only barrier to trade facing furfuryl alcohol; and (c) that it appears that furfuryl alcohol based resins compete with phenolic resins.

The petitioner counters these points by arguing that: (a) as stated in the *Final Results of Antidumping Duty*

Administrative Review: Certain Welded Stainless Steel Pipe from Taiwan, 62 FR 37543, 37550 (July 14, 1997), the Department focuses on actual supplier relationships, not putative statements regarding freedom to purchase from other suppliers; (b) the 10 percent tariff is significant given the absence of furfuryl alcohol imports to South Africa during the POR; (c) there is evidence of barriers to trade such as insignificant purchasing power, immense transportation distances from foreign suppliers, insufficient storage for foreign bulk shipments, and the possibility of ISL's customers' damaging their relationship with ISL, the sole domestic supplier; and (d) there are in fact no substitutes for furfuryl alcohol in its primary uses.

These facts, the petitioner concludes, demonstrate affiliation between ISL and its home market customers, warranting the rejection of ISL's home market sales unless they are determined to have been made at arm's length.

ISL responds that the Department was correct in determining, in its *June 30, 1997, Memorandum* at 8, that the petitioner's allegation that ISL is affiliated with its home market customers is ''an overly broad interpretation of the affiliation via control provision in section 771(33)(G).'' According to ISL, the fact that it is the sole domestic producer of furfuryl alcohol in South Africa is not sufficient to support a finding of affiliation with its home market customers. Specifically, ISL argues that: (a) None of the home market customers is related to ISL by ownership; (b) sales are freely negotiated with home market customers using the company's price lists; (c) there are no long-term sales or agency agreements with home market customers; (d) all home market customers are free to purchase from abroad; (e) there are no import barriers on furfuryl alcohol—the tariff rate on this product entering South Africa before December 1996 was 10 percent and zero thereafter; and (f) the International Trade Commission's (ITC) report notes that while there are no precise substitutes for furfuryl alcohol itself, phenolic resins compete in the foundry industry with furfuryl alcohol's primary downstream products, furan resins. Accordingly, ISL contends, there are no indicia of control.

Finally, ISL notes that the Department has recently considered this issue in a number of cases and did not find affiliation between domestic producers of the foreign like product and home market customers because the requisite control did not exist, citing *inter alia, Final Determination of Sales at Less than Fair Value: Open-End Spun Rayon Singles Yarn from Austria,* 62 FR 43701 (August 15, 1997). ISL states that in each case involving this issue, the petitioner argued that affiliation existed because of a close supplier relationship between the producer and its customer or supplier, and the Department declined to find the parties affiliated because the requisite control relationship did not exist.

DOC Position: We disagree with the petitioner's contention that ISL is affiliated with all of its home market customers. The basis for petitioner's claim, the fact that ISL is the only manufacturer of furfuryl alcohol in South Africa, is insufficient for a finding of affiliation. Further, the petitioner failed to provide any evidence that ISL controls its home market customers. As we stated in the *June 30, 1997, Memorandum* at 8, ''ISL's dominant position in the home market is not sufficient, in and of itself, to find affiliation between ISL and its customers.'' We also noted in that memorandum that the other primary evidence that the petitioner provided to support its affiliation claim, ISL's POR pricing in the home market, ''does not suggest that the company is in a position to exercise restraint or control over its customers, since customers will generally seek the lowest price possible from their suppliers.'' *Id.*

We also do not accept the petitioner's allegation that ISL controls its home market customers due to significant barriers to trade, an absence of imports during the POR of the subject merchandise, and no substitutes for furfuryl alcohol in its primary uses. First, the factors proposed by the petitioner would be more relevant to an assertion that ISL is controlling its customers through high pricing, not low pricing. Second, while we agree with the petitioner that there was an absence of imports during the POR, the petitioner's other arguments are speculative (*e.g.,* whether a 10 percent tariff is a ''significant'' barrier to trade). Further, if we were to consider the absence of imports as determinative of affiliation, we would in effect find affiliation in any sole supplier situation. In sum, these factors, whether true or not, do not indicate that ISL controls its customers.

Comment 3: Particular Market Situation in the Home Market: The petitioner disagrees with the Department preliminary determination (as detailed in its *June 30, 1997, Memorandum*) that a ''particular market situation'' did not exist in South Africa. Citing this Memorandum, the petitioner first notes that this finding was based in part on the inapplicability of any of the three illustrative examples of particular market situations in the SAA and the absence of any model matching complications. Moreover, the petitioner states that the Department based its finding on the position that the facts of the case be analyzed more appropriately under the below-cost and fictitious market provisions of the Act.

The petitioner disagrees with this finding based on its contention that a particular market situation does exist in South Africa due to the absence of competitive pricing. It maintains that the SAA makes clear that competitive pricing is an important consideration in assessing the existence of a particular market situation, citing the ''government control over pricing'' example of a possible particular market situation listed in the SAA (at 822) (*i.e.,* ''where there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set''). Acknowledging that the instant proceeding does not involve government control, the petitioner argues that the key element of this example of a particular market situation is whether prices are competitively set, not whether there is government control of prices. In support of its argument, the petitioner cites *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea,* 62 FR 18404 (April 15, 1997), where the Department considered whether pricing practices in an oligopolistic market constituted a particular market situation but ultimately found competitive pricing, and no particular market situation, in that case. Contrary to the Korean oligopoly in question, the petitioner asserts that ISL is a monopolist and as such, allowed for no price competition of any type in this case.

Regarding the Department's position that the facts of the case are more appropriately analyzed under the fictitious market provision, the petitioner argues that both the fictitious market and particular market situation provisions are applicable because both are intended to preserve the integrity of the Department's analysis by eliminating inappropriate sales from consideration. The petitioner affirms its claim that, given a correct understanding of the facts of this case and of the particular market situation provision, the Department should disregard ISL's home market sales and require ISL to submit third country sales data.

ISL responds that the Department should sustain its position in the preliminary results that a particular market situation does not exist in the

home market. In its rebuttal brief (at 8) ISL interprets *Certain Cold-Rolled and Corrosion-Resistant Steel Flat Product from Korea* to mean that ''[t]he fact that there are very few, or even one, producer in a market is not evidence, *per se*, that prices are not competitively set.'' ISL reiterates its claim, first made in Comment 3, above, that there are no import barriers to furfuryl alcohol entering South Africa and, therefore, foreign producers are free to compete, just as non-furfuryl alcohol products compete in the foundry industry with furfuryl alcohol's primary downstream products.

ISL further argues that none of the circumstances of particular market situations outlined in the SAA are present in this case. Thus, ISL concludes, the petitioner is actually arguing for the creation of a new form of particular market situation based on the sole criterion that a foreign producer has lowered it home market prices. Accordingly, ISL, urges the Department to reject the petitioner's expansive reading of the Act.

DOC Position: Although we agree with the petitioner that the list of examples in the SAA regarding what may constitute a particular market situation is not exhaustive, we disagree that such a finding is warranted under the facts of this case. First, we do not agree with the petitioner that the facts of this case are analogous to the ''government control over pricing'' example in the SAA. In this regard, we agree with ISL's interpretation of *Cold-Rolled Steel.* In that case, although we considered whether oligopolistic pricing practices might constitute a particular market situation, we ultimately determined that prices were competitively set. In fact, we explicitly found that even though different pricing patterns may occur in an oligopolistic market, such patterns are not evidence, per se, sufficient to establish that prices are not competitively set. We conceded that there was substantial Korean government involvement in the industry, but did not find ''convincing evidence'' of control (*Cold-Rolled Steel*, 62 FR at 18412). The Department found that there was price competition based on discounts, credit adjustments, and freight equalization. Similarly, the fact pattern in the instant proceeding, involving a large volume of low-priced sales of furfuryl alcohol sold to a significant number of home market customers from price lists, does not indicate an absence of competitive pricing.

As we stated in the *June 30, 1997, Memorandum*, the facts as presented by the petitioner, focusing on a single supplier that has lowered its home market prices, are more appropriately analyzed in the context of the below-cost and fictitious market provisions of the statute. In this regard, the petitioner did not make a below-cost allegation in this segment of the proceeding and, as discussed above, our analysis of the petitioner's claim in the context of a fictitious market allegation indicates that the facts presented by petitioner do not warrant such a finding.

Comment 4: Whether the Antidumping Duty Reimbursement Regulation Applies to ISL: ISL argues that the Department's doubling of the assessment rate in the preliminary results, which was based on the Department's finding that ISL reimbursed its affiliated U.S. importer Harborchem, is impermissible because: (1) The reimbursement regulation should not apply to affiliated importers; (2) the reimbursement provision's focus on raising U.S. prices is improper, since the Act itself is not concerned with the absolute level of the price at which subject merchandise is sold in the United States; and (3) even if the reimbursement provision is valid and can legally be applied to affiliated parties, there was no reimbursement of actual duties assessed in this case.

The petitioner disagrees with ISL, stating that: (1) The Department can apply the reimbursement regulation to affiliated parties; and (2) there is clear evidence in this case that ISL reimbursed its U.S. affiliate for AD duties during the POR, citing the Department's proprietary preliminary analysis memorandum (*Analysis Memorandum to the File*, June 30, 1997, at 2).

DOC Position: Since the assessment rate for this review is zero, there are no duties to be assessed. Hence, this issue is moot.

Comment 5: Affiliation of ISL and Harborchem: The petitioner argues that ISL and its U.S. importer, Harborchem, are not affiliated parties and, accordingly, the Department should base U.S. price on export price rather than CEP in the final results. The petitioner maintains that the Department's finding in the original investigation that these parties are affiliated, on which the Department subsequently relied in stating that the facts had not changed in this review, was incorrect. The petitioner contends that the record demonstrates that Harborchem is not ISL's agent under the law of agency or the four-part test originally relied on by the Department.

The petitioner states that since the Act does not define the term ''agent,'' the term must give its common law meaning, *i.e.*, ''that an agent is to act on behalf of and for the benefit of the principal.'' Petitioner Brief at 16. Citing, *inter alia, Waterhout* v. *Associated Dry Goods, Inc.*, 835 F.2d 718 (8th Cir. 1987), the petitioner adds that a second tenet of the law of agency is that a determination as to the existence of an agency relationship is to be based on the factual circumstances at hand and not on a party's characterization of itself as an agent.

The petitioner submits that, in this case, there is no record evidence indicating an agency relationship between ISL and Harborchem, since ISL merely characterizes Harborchem as its an agent; instead, the evidence shows two distinct commercial transactions: one in which Harborchem purchases furfuryl alcohol from ISL and another in which Harborchem resells the merchandise to a third party. Specifically, the petitioner states that:

(a) ISL negotiates price and quantity with Harborchem;

(b) ISL sells to Harborchem;

(c) ISL invoices and receives payment Harborchem; and

(d) Harborchem then separately stores, markets, ships, and receives payment for the merchandise.

Thus, the petitioner asserts, Harborchem acts on its own behalf, and ISL and Harborchem each seek to maximize profits. Moreover, the petitioner asserts that mere coordination of certain activities for their mutual benefit is not critical in determining an agency relationship.

ISL responds that it is in fact affiliated with Harborchem. First, ISL argues that the question of relationship was examined thoroughly in the investigation and at on-site verifications of both ISL and Harborchem. Second, ISL agrees with the Department's preliminary finding that the facts considered by the Department in its original determination are the same as those in the current review, namely:

(a) ISL participated directly with Harborchem in the marketing of furfuryl alcohol to ultimate U.S. customers;

(b) ISL participated directly in pricing and sales negotiations with ultimate U.S. customers;

(c) ISL interacted directly, as well as through Harborchem, with ultimate U.S. customers on product testing and quality control;

(d) ISL and Harborchem communicated on a daily basis on matters related to marketing and sales to the ultimate customers;

(e) ISL exerted a substantial degree of control over Harborchem marketing and pricing of furfuryl alcohol to the ultimate U.S. customers; and

(f) the two parties viewed their relationship as one of principal and agent.

As support for its contention that these facts apply to the POR as well as the period of investigation (POI), ISL cites to evidence on the record of this review regarding the correspondence between Harborchem and ISL on the setting of U.S. prices, the approval by ISL of any significant sales and marketing efforts, and the granting of permission by ISL on other business decisions.

Regarding the petitioner's arguments concerning the nature of an ''agency'' relationship, ISL submits that although the URAA replaced the definition of ''related party'' with the definition of ''affiliation'' based on a ''control'' concept, Congress did not intend to narrow the criteria it uses for determining affiliation, and the Department has in fact continued to use the same criteria for assessing ''control'' as was used under the pre-URAA law related party ''agency'' provision. In this respect, ISL cites the post-URAA cases *Melamine from Indonesia* and *Rayon Singles Yarn from Austria,* where the Department examined:

(a) Whether one party controlled pricing of the subject merchandise;

(b) Whether a long-term sales agreement existed;

(c) Whether there were any restrictions on purchasing from or selling to other sources; and

(d) Whether there were other indicia of affiliation, such as a joint venture arrangement.

ISL asserts that the facts surrounding its relationship with Harborchem meet this standard.

Finally, ISL cites the preamble to the New Regulations as proving that, because section 771(33) of the statute refers to a person being in a position to exercise restraint or direction, the Department is required to examine the ability to control, not the actual exercise of control (62 FR 27298). ISL concludes that, based on the facts as stated above, the record shows that ISL is in a position to exercises restraint over Harborchem.

DOC Position: We disagree with the petitioner. As both parties note, in the less-than-fair-value (LTFV) investigation, we examined this issue in depth at verification (*see Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa,* 60 FR 22550 (May 8, 1995) (*Final Determination of Sales at LTFV*)). Our examination was based on the criteria for determining an agency relationship as established in *Final Determination of Sales at Not Less Than Fair Value: Certain Forged Steel Crankshafts from Japan,* 52 FR 36984, 36985 (October 2, 1987). Contrary to the petitioner's assertions, the information on the record in this review again indicates that a finding of affiliation between ISL and Harborchem is appropriate.

As noted in our preliminary results, the facts that led to our finding in the LTFV investigation have not changed. The petitioner provides no evidence that the facts have changed. ISL, on the other hand, submitted evidence (at Exhibit A–4 of its September 19, 1996 response) in response to our questionnaire that indicates that the agency relationship between ISL and Harborchem still exists. For example, this evidence indicates that ISL and Harborchem routinely coordinate marketing and sales activity, including pricing, for sales to U.S. customers.

Rather than provide evidence that the facts have changed during this review period, the petitioners are suggesting that these facts are not sufficient for a finding of affiliation. We agree with the petitioner that although the Act does not define agency, the existence of an agency relationship is based on the factual circumstances. The four-pronged test relied upon in the LTFV investigation explores the factual circumstances of the relationship between ISL and Harborchem. At verification, based on correspondence files, we determined that ISL: (1) participates directly with Harborchem in marketing furfuryl alcohol to U.S. customers; (2) participates directly in pricing and sales negotiations with U.S. customers; (3) interacts directly, as well as through Harborchem, with U.S. customers on product testing and quality control matters; and (4) interacts with U.S. customers directly (*Final Determination of Sales at LTFV,* 60 FR at 22552–53). In the current review, ISL provided additional documentary evidence of this relationship consistent with our finding in the LTFV investigation. Proprietary correspondence documents were submitted by ISL in its September 1996 response (Exhibit A–4a and b) that demonstrated that: ISL and Harborchem have an exclusive distributor agreement; frequently discuss pricing to U.S. customers; and participate in joint marketing efforts. Documents submitted also show that ISL maintains direct contact with U.S. end-user customers and exerts control over U.S. marketing efforts. In addition, documentation concerning the arrangement and sharing of profits between the two parties were included in Exhibit A–22 of the April 10, 1997, response and documentation showing Harborchem seeking and obtaining ISL's approval of a purchase of furfuryl alcohol from alternative source, were submitted in Exhibit A–23 of the same response. Therefore, we continue to find that, based on our four-prong test, ISL and Harborchem maintain an agency relationship and are affiliated within the meaning of section 771(33) of the Act. Consequently, we have used CEP for sales to the United States.

Comment 6: Exclusion of Certain U.S. Sales: ISL requests that the Department exclude from its analysis U.S. sales of subject merchandise that entered prior to suspension of liquidation, which ISL identified using a first-in, first-out (''FIFO'') inventory accounting methodology. ISL further asserts that certain of these sales merit exclusion regardless of the validity of its FIFO analysis, based on the fact that they were shipped prior to the first post-suspension entry of merchandise.

In the preliminary results, the Department rejected ISL's request, citing *Final Results of Antidumping Duty Administrative Review: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured from Italy,* 57 FR 8295 (March 9, 1992) (''*Industrial Belts*''), wherein the Department had similarly rejected an exclusion request based on a FIFO inventory analysis. ISL states that the preliminary results did not sufficiently explain the Department's reasons for denying the request. ISL contemplates two possible reasons for this rejection: (a) that the Department finds a FIFO matching methodology to be inherently unacceptable; or (b) that the Department requires a further explanation regarding ISL's FIFO analysis.

In arguing against the first reason, ISL states that Harborchem's normal inventory accounting records use the FIFO methodology employed in its exclusion request. ISL also notes that Harborchem uses FIFO to match specific entries and sales as part of its internal cost control and reporting systems to ensure proper accounting treatment. ISL contends that since furfuryl alcohol is a fungible liquid, this is the only methodology available for matching pre-suspension entries to specific POR sales. ISL notes that the Department verified Harborchem's inventory accounting records during the less than fair value investigation. Citing *Industrial Quimica del Nalon* v. *United States,* 15 CIT 240, 243–44 (1991), ISL contends that the Department's rejection of the only methodology available to link entries to sales would constitute an abuse of the Department's discretion and, in the

words of the ruling, ''fly in the face of established business practice.''

Regarding the second possible reason, ISL provides in its brief a further explanation of the methodology employed in the company's responses to ensure that the analysis is clear to the Department. In so doing, ISL points to worksheets, inventory records, and entry and sales data that provide sufficient information to allow the Department to tie the sales in question to pre-suspension entries.

Finally, ISL asserts that even if the Department chooses to reject again ISL's FIFO methodology, the company is still entitled to the exclusion of certain sales from the antidumping analysis. ISL notes that the record shows that the first shipment of furfuryl alcohol to enter the United States during the POR, *i.e.*, after suspension, entered the United States after sales by Harborchem to U.S. customers had already been made and delivered during the POR. ISL states that it is therefore physically impossible for those sales to have been made using furfuryl alcohol entered during the POR.

The petitioner responds that the Department should continue to reject ISL's exclusion request. It argues that ISL did not sufficiently link POR sales to specific pre-suspension entries because the company's receipt and inventory records are inconsistent and unreliable, as demonstrated by certain discrepancies on the record. Specifically, the petitioner notes that ISL, in its April 10, 1997, supplemental response, conceded that it made two mistakes in reporting its inventory in its initial response. The petitioner asserts that this unreliability, together with ''the Department's justifiable reluctance to use hypothetical constructions to link U.S. sales to specific pre-suspension entries,'' necessitates the Department's continued rejection of the request.

DOC Position: We agree with ISL, in part. As discussed below, all but one of the POR sales that ISL requested be excluded are not appropriately part of our analysis because they involve merchandise that entered the United States prior to the suspension of liquidation. *See Certain Stainless Steel Wire Rod from France,* 61 FR 47874, 47875 (September 11, 1996). Accordingly, we have not included these sales in our calculation of ISL's antidumping duty rate for this POR. However, we have included one such sale in our analysis because it cannot be tied to pre-suspension merchandise.

We note that the petitioner is correct in pointing out the Department's reluctance to use hypothetical constructions to link U.S. sales to specific pre-suspension entries. This was demonstrated in *Industrial Belts,* wherein the Department rejected an exclusion request based on a FIFO inventory analysis. However, we excluded a majority of the sales at issue based not on a FIFO analysis but on the fact that these sales were shipped before the first post-suspension entry of subject merchandise. *See Memorandum from Michelle Frederick and Scott Oudkirk to Richard W. Moreland* (November 5, 1997) (''*November 5, 1997, Memorandum*''). We have excluded these sales from our analysis because it would not be possible for those sales to have been shipped using merchandise that entered during the POR.

We excluded a second group of sales based on a FIFO analysis that involves a single POR entry made prior to these sales. For these sales, the data contained in ISL's response indicates that the company's storage of inventory involved the co-mingling of only one POR entry of furfuryl alcohol with a pre-existing inventory of pre-suspension furfuryl alcohol. As detailed in the *November 5, 1997, Memorandum,* ISL's inventory, sales, and entry data contained in its responses establishes that it had sufficient pre-suspension inventory, prior to the one POR entry of subject merchandise at issue, to cover all but one of the second group of sales for which ISL requested the exclusion. To the extent that we attribute the merchandise involved in such sales to this pre-suspension inventory, rather than to the single POR entry that occurred prior to these sales, this analysis is based on a FIFO methodology. However, given that the fact pattern involves only a single POR entry occurring prior to these sales, along with the fact that this is a unitary liquid product, it is appropriate under these circumstances to determine that these sales involved pre-suspension merchandise. We note that, in the unique circumstances of this case, the respondent was able to provide supporting documentation regarding entry and sales data not only for the claimed exclusions, but also for the remainder of the South African-sourced POR sales.

Finally, we have not excluded one sale (the final chronological sale in the second group) because the inventory of pre-suspension furfuryl alcohol was insufficient to cover this sale.

Regarding the petitioner's contention that ISL's inventory records are inconsistent and unreliable, we found that an examination of the evidence on the record demonstrates that any inconsistencies are relatively minor and that the mistakes reported by ISL were corrected in supplemental responses (see the memorandum referenced above). Therefore, the record as a whole allowed us to sufficiently link entries to sales and to exclude sales when appropriate.

Finally, we note that the petitioner claimed at the public hearing, with respect to ISL's counsel's discussion of this issue, that certain information presented by ISL was not included in its hearing briefs. We have determined that ISL's counsel did not reveal new information during the hearing and that it was responding to a question raised by the Department regarding this issue. The information that ISL's counsel referenced was already on the record in the form of entry dates, sale dates, inventory records and location of inventory.

Comment 7: Level of Trade and CEP Offset: ISL asserts that the Department's preliminary determination that the level of trade (LOT) at which ISL sold furfuryl alcohol in the home market level is not more advanced than the LOT of the CEP sales is incorrect because it ignores significant selling functions performed in the home market. In particular, ISL states that there is a ''significant difference in the level of selling function provided at each LOT.''

ISL argues that the Department ignored the level or degree of selling activities that ISL performed with respect to home market versus U.S. sales, as well as the corresponding greater amounts of time and energy spent performing these activities in conducting home market sales. Further, ISL stated that, whereas ISL itself undertook all of these activities in conducting home market sales, it merely supported Harborchem, which was principally responsible for marketing and selling activities in the United States. For this reason, ISL claims that the degree of the selling functions it provides to home market customers is greater than that of those provided for Harborchem such that the home market LOT is more advanced than the LOT of the CEP. In support of this claim, ISL compared the number of customers, the number of shipments, and the individual shipment sizes in the home market to shipments to Harborchem, noting that ''[t]he average size of a shipment to Harborchem was over 30 times as large as a shipment in the home market.'' Therefore, ISL claims it is entitled to a CEP offset.

The petitioner responds that the Department did not ignore specific selling functions in the home market but, rather, determined that the selling functions performed by ISL for sales in the home market did not differ substantially from those performed by

ISL for sales to Harborchem. The petitioner adds that ISL exaggerates the differences between the number of customers and shipments in the home market compared with those to Harborchem. Finally, the petitioner notes that ISL's contention in its case brief that the company plays a supporting, non-principal role for U.S. sales is at variance with earlier statements made in support of ISL's claim of affiliation with Harborchem, i.e., that ISL plays a joint role with Harborchem in the U.S. market.

DOC Position: We disagree with ISL. We have continued to find that a CEP offset is inappropriate because the record evidence indicates that ISL's home market sales are not made at a more advanced LOT than that of the CEP.

Section 773(a)(7) of the Act provides that one requirement for granting a CEP offset is that the home market sale must be made at a more advanced stage of distribution than the LOT of the CEP. In order to determine whether home market sales were at the same, or a different, LOT than U.S. sales, we examined whether home market sales had been made at a different stage in the marketing process. Section 351.412(c)(2) of the new regulations defines an LOT as a marketing stage ''or the equivalent'' and provides that different LOTs depend on one level (or stage) being more remote, characterized by an additional layer of selling activities, amounting in the aggregate to a substantially different selling function. Substantial differences in the amount of selling expenses associated with two groups of sales also may indicate that the two groups are at different LOTs.

Accordingly, as a threshold matter in examining whether home market sales were made at a more advanced LOT than the LOT of the CEP, we considered the selling activities performed for the home market LOT and compared them to the selling activities performed for the LOT of the CEP. Specifically, we examined the selling activities performed by ISL for setting up, shipping, and delivering furfuryl alcohol destined for the U.S. market up to the point of tank storage at the U.S. port of entry (selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act). Next, we compared the selling activities performed by ISL for home market sales.

In the preliminary results, we determined that there was one LOT in the home market and, furthermore, that the LOT for home market sales was comparable to the LOT of the CEP. In other words, we determined that the home market LOT did not constitute a more advanced stage of distribution than the LOT of the CEP and, therefore, no adjustment to price (i.e., LOT adjustment or CEP offset) was necessary. We explained, in detail, in the preliminary results our rationale for making this determination. 62 FR 36488, 36490 (July 8, 1997). ISL's arguments in its case brief do not establish that our analysis in the preliminary results was incorrect.

We disagree with ISL's argument that we ignored the level or degree of selling functions performed in the home market. While it is our preference to examine selling functions on both a qualitative and a quantitative basis, our examination is not contingent on the number of customers nor on the number of sales for which the activity is performed.

Thus, having determined that the LOT for home market sales is comparable to the LOT of the CEP, we are precluded in this case from granting a CEP offset.

Comment 8: Basis for the Calculation of CEP Profit: The petitioner argues that the Department's calculation of CEP profit understates the amount of profit that should be deducted from CEP. In the preliminary results, the Department relied upon revenue and cost of sales data from ISL's 1995 and first-half 1996 financial statements to calculate a profit ratio. The figures in those financial statements are representative of all ISL products. The petitioner cites the SAA (at 824–825, regarding section 772(f)(2)(C) of the Act) for the proposition that, where the Department has not requested cost data, CEP profit information shall be based on ''the narrowest category of merchandise sold in the United States and the exporting country which includes the subject merchandise or * * * the narrowest category of merchandise sold in all countries which includes the subject merchandise.'' The petitioner contends that there is information on the record, in the form of an internal report, that would allow the Department to base the calculation of a CEP profit ratio on a more narrow category of merchandise, *e.g.* excluding sugar, than that contained in ISL's financial statements.

ISL argues that the financial statements on which the Department relied in its calculation of profit are audited and, given the Department's normal reliance on audited or published data, are the proper basis for the calculation of a CEP profit ratio. ISL notes that the information that the petitioner advocates is found in an unverified internal report used to report gross sales and profit figures. As such, it does not take account of reversals, reconciliations, and adjustments made only at year-end. Therefore, the Department should continue to use the information contained in the audited financial statements in its calculation of a CEP profit ratio for the final results.

DOC Position: We agree with the petitioner in part. Section 772(f)(2)(C)(iii) of the Act provides that, absent more specific data related to expenses incurred in selling subject merchandise in the United States or home market, the expenses used in the profit calculation should be based on ''the narrowest category of merchandise sold in all countries which includes the subject merchandise.'' In this review, there is information on the record that would allow the Department to base the calculation of a CEP profit ratio on a more narrow category of merchandise than that covered by ISL's overall profit amount for all products sold by the company. However, contrary to petitioner's assertions, the audited financial statements contain profit data on a product basis (*i.e.* by-products) that is sufficiently narrow to fulfill the statutory requirements regarding CEP profit.

Instead of relying on the internal report, we were able to derive a more appropriate CEP profit ratio from the audited financial statements, thus meeting our obligation to rely on information for the ''narrowest category of merchandise.'' We were able to discern from the audited financial statements the relative amount of profit due to the sale of sugar, ISL's primary merchandise, and the profit due to the sales of by-products, which includes the subject merchandise sold. Thus, we revised the CEP profit ratio for the final results based on information from audited financial statements. (*See Analysis Memorandum to File,* November 5, 1997.)

We note that, given the statutory preference for profit based on a narrow category of merchandise, the use of internal financial reports may be appropriate where we do not otherwise have sufficiently tailored profit data. The preamble of the proposed regulations at 61 FR 7308, 7332 (February 27, 1996), reflects this, stating ''[p]aragraph (d)(2) [of section 351.402] specifies that the Department will not be limited to audited financial statements, but may use any appropriate financial report, including internal reports, the accuracy of which can be verified, if verification is conducted. This provision reflects the suggestion of commentators that the Department make clear its discretion to use financial reports prepared in the normal course of business that are as specific as possible

to the merchandise under investigation or review.''

Comment 9: Inclusion of Quality Testing Expenses in the Calculation of CEP Profit: The petitioner notes that the Department determined that the expense ISL incurs for the quality testing of furfuryl alcohol upon its arrival in the United States is an indirect selling expense. The Department therefore made a circumstance of sale adjustment to CEP for the preliminary results, but the petitioner contends that this quality testing expense should also be included as part of total selling expenses for the calculation of CEP profit.

ISL argues that this expense is a movement expense undertaken solely for U.S. sales insurance purposes because of the possibility of contamination during shipment and because the U.S. Customs periodically requires purity reports. Therefore, ISL argues that this expense is not an indirect selling expense and, as a movement expense, should not be included as part of selling expenses when calculating CEP profit.

DOC Position: We agree with ISL that the quality testing expense that the company incurs upon furfuryl alcohol's arrival in the United States is a movement expense undertaken solely for U.S. sales as a result of shipment from South Africa. We note ISL's description at page 84 of its September 19, 1996, response, that, ''Furfuryl alcohol is tested on arrival to detect any impurities that may have entered the product while in transit * * * [t]he testing is performed * * * at the time the product is unloaded from the maritime vessel.'' We also note that there is no similar testing done for shipments in the home market; all semi-bulk sales of furfuryl alcohol in the home market are made f.o.b., so there is no chance of contamination that will result in a loss to the company and though drum sales are sometimes made on a c.i.f. basis, it is not subject to contamination because it is packed. Because contamination only results from transporting furfuryl alcohol via a shipping vessel, which carries many other different products, not just furfuryl alcohol, we have determined that the quality testing expense is associated with the type of transportation, and, thus, is a movement expense. Accordingly, we have changed the margin calculation to treat this expense as a movement expense, which is not included in total U.S. expenses in the calculation of CEP profit.

Comment 10: Treatment of ISL U.S. Travel Expenses in the Margin Calculation: The petitioner claims that the expenses ISL personnel incurred for travel to the United States to market furfuryl alcohol are indirect selling expenses incurred in the United States. As such, they should be deducted from U.S. price when calculating CEP and should be included in the total U.S. selling expenses used to derive profit attributable to those expenses.

ISL contends that the expenses in question are already included in the South African component of U.S. indirect selling expenses, given that most of the expenses associated with U.S. travel of ISL personnel, such as airfare and salaries, were incurred and paid for in the home market. Therefore, it would be incorrect for the Department to deduct these expenses once again.

DOC Position: We agree with ISL that the expenses ISL personnel incurred for travel to the United States to market furfuryl alcohol are included in the South African component of U.S. indirect selling expenses (DINDIRSU). As such, for the preliminary results, they had already been deducted from U.S. price when calculating CEP.

We do not deduct indirect selling expenses incurred in the home market on behalf of U.S. sales, except when such expenses are associated with economic activity in the United States. The expenses of ISL personnel incurred for travel to the United States are associated with economic activity in the United States. Therefore, for these final results, we segregated the expenses of ISL personnel incurred for travel to the United States from all other indirect expenses incurred in the home market on behalf of U.S. sales, and deducted only those travel expenses from CEP. *See Final Results and Partial Rescission of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Colombia*, 62 FR 53287, 53293 (October 14, 1997) (''selling expenses incurred in the home market that are not associated with U.S. economic activity should neither be deducted from CEP nor included in the basis for calculating CEP profit'').

Comment 11: Addition of Tank Car Rental Credits to CEP: The petitioner claims that the U.S. tank car rental expense is reported net of credits. Therefore, tank car rental credits should not be added to CEP.

ISL concedes the petitioner's claim.

DOC Position: We agree that the U.S. tank car rental expense reported is net of credits for tank car utilization. Therefore, we have deducted these expenses from CEP.

Comment 12: Conversion of Certain Inventory Carrying Cost Expenses: ISL contends that the Department failed to convert the U.S. inventory carrying cost expense, which is expressed in rand, to U.S. dollars.

The petitioner did not comment on this issue.

DOC Position: We agree with ISL. This expense was expressed in rand because the inventory value used in the calculation of this inventory carrying cost was the total cost of manufacture in rand. Accordingly, we have converted this to U.S. dollars.

Final Results of Review

As a result of our review, we determine that the following margin exists for the period of December 16, 1994, through May 31, 1996:

Manufacturer/exporter	Margin (percent)
Illovo Sugar Ltd	0.00

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. The Department will issue appraisement instructions directly to the U.S. 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)(2)(C) of the Act: (1) The cash deposit rate for ISL is zero; (2) if the exporter is not a firm covered in this review or the original 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 (3) 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 11.55 percent established in the less than fair value investigation (60 FR 28840, June 21, 1995). 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 is the only 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)(1). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a) of the Act and 19 CFR 353.22, and this notice is published in accordance with section 777(i) of the Act.

Dated: November 5, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–29958 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–089. *Applicant:* Worcester Polytechnic Institute, 100 Institute Road, Worcester, MA 01609. *Instrument:* Fire Modeling Research Apparatus. *Manufacturer:* Fire Testing Technology Ltd., United Kingdom. *Intended Use:* The instrument will be used to determine certain fire properties from a particular substance, object or material—sometimes testing each type of material present in a composite then calculating experimental values if the materials were burned together. In addition, the instrument will be used for educational purposes in the course FPE580F. *Special Problems:* Fire Science Laboratory providing overall instruction and hands-on experience with fire science related experimental measurement techniques. *Application accepted by Commissioner of Customs:* October 23, 1997.

Docket Number: 97–090. *Applicant:* University of Minnesota, Department of Psychology, N218 Elliott Hall, 75 East River Road, Minneapolis, MN 55455. *Instrument:* Visual Stimulus Generator, Model VSG2/3S. *Manufacturer:* Cambridge Research Systems Ltd., United Kingdom. *Intended Use:* The instrument will be used to investigate the sensory limitations on letter recognition which involves measuring the spatio temporal properties of letter recognition across the human visual field. The experiments will tell the size of the visual span (the number of letters that can be recognized in a single fixation) for different print sizes, contrasts and fixation duration. This data will test models that relate letter recognition to reading. *Application accepted by Commissioner of Customs:* October 23, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–29957 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093097E]

Small Takes of Marine Mammals Incidental to Specified Activities; Space Launch Vehicles at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of applications and proposed authorizations for small take exemptions; request for comments.

SUMMARY: NMFS has received a request from the U.S. Air Force for continuation of incidental harassment authorizations to take small numbers of marine mammals incidental to launches of Delta II, Titan II, Titan IV, and Taurus launch vehicles at Vandenberg Air Force Base, CA (Vandenberg). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to continue to authorize these takings (limited to harassment), for a period not to exceed 1 year.

DATES: Comments and information must be received no later than December 15, 1997.

ADDRESSES: Comments on this application should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. A copy of this application, previous documentation and **Federal Register** notices on this action may be obtained by writing to this address or by telephoning the contact listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Irma Lagomarsino, Southwest Regional Office at 562–980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' * * *an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to one year. The MMPA defines ''harassment'' as:

> ...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application

followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 7, 1997, NMFS received an application from the U.S. Air Force, Vandenberg, requesting continuation of an authorization for the harassment of small numbers of seals and sea lions incidental to launches of Delta II, Titan II, Titan IV, and Taurus launch vehicles at Vandenberg. This application incorporates by reference the information contained in applications provided last year for these rocket launches. These applications (Titan II and IV-January 24, 1996, Delta II-July 17, 1996, Taurus-August 14, 1996) are available upon request (see **ADDRESSES**).

NMFS has received a petition for regulations and an application for a small take authorization under section 101(a)(5)(A) of the MMPA. If implemented, this rulemaking will replace these 1-year authorizations, along with another issued previously for Lockheed launch vehicles (62 FR 40335, July 28, 1997) with a 5-year regulatory program, governing incidental takes of marine mammals by launches of all rocket and missile types from Vandenberg. This petition is published elsewhere in this issue of the **Federal Register**.

Description of Marine Mammals and Potential Effects of Launches on Marine Mammals

The marine mammal species anticipated to be incidentally harassed by launches from Vandenberg are harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*) and possibly Guadalupe fur seals (*Arctocephalus townsendi*) in the vicinity of Vandenberg and on the Northern Channel Islands (NCI). In conjunction with publication of the previous application notices for launch activities, a description of the Southern California Bight population of seals and sea lions and the potential impacts from rocket launches on these species and stocks was provided on August 18, 1995 (60 FR 43120), and August 29, 1996 (61 FR 45404), for Delta II authorizations, September 25, 1996 (61 FR 50276), for Taurus rocket authorization, and March 15, 1996 (61 FR 10727), for Titan II and IV authorizations. Interested reviewers are encouraged to refer to those documents for the appropriate discussion. These documents are available from NMFS (see **ADDRESSES**)

As a result of the noise associated with launches and the sonic boom resulting from some launch vehicles at certain trajectories, there is a potential to cause a startle response to those seals and sea lions that haul out on the coastline of Vandenberg and on the NCI. The effect on the above listed seals and sea lions would be anticipated to result in a negligible short-term impact to small numbers of seals and sea lions that are hauled out at the time of a launch. No impacts are anticipated to animals that are in the water at the time of launch. Detailed descriptions of the expected impact from rocket launches on harbor seals and other marine mammals have been provided in the above referenced **Federal Register** notices and are not repeated here.

Conclusions

Based upon information provided by the applicant, and previous reviews of the incidental take of seals and sea lions by this activity, NMFS believes that the short-term impact of the rocket launches at Vandenberg is expected to result at worst, in a temporary reduction in utilization of the haulout as seals and/or sea lions leave the beach for the safety of the water. The launching is not expected to result in any reduction in the number of seals or sea lions, and they are expected to continue to occupy the same area. In addition, there will not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on seals and sea lions at Vandenberg are unlikely.

Proposed Authorization

NMFS proposes to issue individual incidental harassment authorizations for a period of time not to exceed 1 year for launches of Delta II, Titan II, Titan IV, and Taurus launch vehicles at Vandenberg provided the monitoring and reporting requirements currently in effect are continued. NMFS has preliminarily determined that the proposed launches of these launch vehicles at Vandenberg would result in the harassment taking of only small numbers of seals and sea lions, and will have no more than a negligible impact on the species and stocks of marine mammals.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: November 6, 1997.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–29936 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110697A]

Marine Mammals; Scientific Research Permit (PHF# 875–1401)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Christopher W. Clark, Cornell University, Ithaca, New York 14850, has requested an amendment to Permit No. 875–1401.

DATES: Written comments must be received on or before December 14, 1997.

ADDRESSES: The application for amendment and related documents, including a draft environmental assessment (EA) that examines the environmental consequences of issuing the requested amended permit, are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (562/980-4001).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application for amendment to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject amendment to permit no. 875–1401 is requested under the authority of the Marine Mammal Protection Act of

1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222.23).

Permit No. 875–1401 currently authorizes the harassment of several species of marine mammals during the conduct of research to study the effects of low-frequency sound produced by the Navy's Surface Towed Array Surveillance System Low Frequency Active (SURTASS LFA) system on the behavior of blue whales (*Balaenoptera musculus*) and fin whales (*Balaenoptera physalus*) feeding in the Southern California Bight during September/October of 1997 and/or 1998. The permit holder is now requesting that the Permit be amended to provide for: 1) the conduct of playback experiments using a SURTASS LFA sound source to study behavioral responses of gray whales (*Eschrichtius robustus*) to SURTASS LFA signals and related stimuli; and 2) radio tagging via suction cup attachment of up to 14 gray whales. Individuals of several other species of cetaceans, pinnipeds, and possibly sea turtles, may be taken (*i.e.*, by harassment or auditory temporary threshold shift) incidentally during the proposed experiments.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a draft EA examining the environmental consequences of issuing the requested amended permit has been prepared. Based upon this draft EA, NMFS has preliminarily concluded that issuance of the requested permit will not have a significant effect on the human environment.

Dated: November 6, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–29937 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technology Administration

Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure

AGENCY: Technology Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure will hold a meeting on December 17–18, 1997. The Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure was established by the Secretary of Commerce to provide industry advice to the Department on encryption key recovery for use by federal government agencies. All sessions will be open to the public.

DATES: The meeting will be held on December 17–18, 1997 from 9 a.m. to 6 p.m.

ADDRESSES: The meeting will take place at the Hotel Inter-Continental, 444 St. Charles Street, New Orleans LA.

FOR FURTHER INFORMATION CONTACT: Edward Roback, Committee Secretary and Designated Federal Official, Computer Security Division, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, Maryland, 20899; telephone 301–975–3696. Please do not call the conference facility regarding details of this meeting.

SUPPLEMENTARY INFORMATION:

1. Agenda

Opening Remarks
Chairperson's Remarks
News Updates (Members, Federal Liaisons, Secretariat)
Working Group (WG) Reports
Intellectual Property Issues (as necessary)
Public Participation
Plans for Next Meeting
Closing Remarks

Note that the items in this agenda are tentative and subject to change due to logistics and speaker availability.

2. Public Participation

The Committee meeting will include a period of time, not to exceed thirty minutes, for oral comments from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the individual identified in the ''for further information'' section. In addition, written statements are invited and may be submitted to the Committee at any time. Written comments should be directed to the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899. It would be appreciated if sixty copies could be submitted for distribution to the Committee and other meeting attendees.

3. Additional information regarding the Committee is available at its world wide web homepage at: http://csrc.nist.gov/tacdfipsfkmi/ .

4. Should this meeting be canceled, a notice to that effect will be published in the **Federal Register** and a similar notice placed on the Committee's electronic homepage.

Dated: November 5, 1997.

Mark Bohannon,

Chief Counsel for Technology Administation.

[FR Doc. 97–29955 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–CN–P

CONSUMER PRODUCT SAFETY COMMISSION

Agency Information Collection Activities Under OMB Review; Cellulose Insulation

AGENCY: Consumer Product Safety Commission (CPSC).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*) this notice announces that the CPSC has submitted to the Office of Management and Budget (OMB) a request for extension of approval through November 30, 2000, of current collection of information requirements regarding testing of cellulose insulation. These requirements are set forth in 16 CFR Part 1209, Amended Interim Safety Standard for Cellulose Insulation, which prescribes requirements for flammability and corrosiveness of cellulose insulation produced for sale to or use by consumers. The standard requires manufacturers, private labelers, and importers of cellulose insulation to test insulation for resistance to smoldering and small open-flame ignition, and for corrosiveness, and to maintain records of that testing.

DATES: Any comments must be submitted to OMB on or before December 15, 1997.

ADDRESSES: *Send comments to:* Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for CPSC, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION OR A COPY CONTACT: Robert E. Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504–0416.

SUPPLEMENTARY INFORMATION: Cellulose insulation is a form of thermal insulation used in houses and other residential buildings. Most cellulose insulation is manufactured by shredding and grinding used newsprint and adding fire-retardant chemicals.

In 1979, the CPSC issued the Interim Safety Standard for Cellulose Insulation, which is codified at 16 CFR Part 1209. That standard contains performance tests to assure that cellulose insulation will resist ignition from sustained heat sources, such as smoldering cigarettes or recessed light fixtures, and from small open-flame sources, such as matches or candles. The standard also contains tests to assure that cellulose insulation will not be corrosive to copper, aluminum, or steel, if exposed to water.

Certification regulations in the standard require manufacturers, importers, and private labelers of cellulose insulation subject to the standard to perform tests to demonstrate that their products meet the requirements of the standard. These parties are also required to maintain records of those tests. The certification requirements are codified at 16 CFR Subpart B.

The Commission uses the information compiled and maintained by these parties to help determine whether cellulose insulation subject to the standard complies with all applicable requirements. The Commission also uses this information to obtain corrective actions if cellulose insulation fails to comply with the standard in a way that creates a substantial risk of injury to the public.

OMB approved the collection of information in the certification regulations under control number 3041–0022. OMB's most recent extension of approval will expire on November 30, 1997. The Commission has requested an extension without change until November 30, 2000.

Burden statement: The Commission's staff estimates that the respondent burden will average 1,320 hours per response. That estimate includes the time needed to conduct the tests required by the regulations and to create and maintain records of the results of those tests.

Respondents/Affected entities: Businesses that manufacture, import, or private label cellulose insulation used in houses and other residential buildings.

Estimated number of respondents: 45.

Estimated Total Annual Burden on Respondents: 59,400 hours.

Frequency of Collection: As determined by respondents to be necessary to provide a reasonable testing program.

On August 28, 1997, the Commission published a **Federal Register** notice stating its intention to request an extension of approval of this collection of information, and requesting comments from the public. 62 FR 45630. The Commission received no comments on that notice.

Send comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CPSC, 725 17th Street, NW, Washington, DC 20503. Please refer to OMB Control No. 3041–0022 in any correspondence.

Dated: November 10, 1997.

Sadye E. Dunn,

Secretary Consumer Product Safety Commission.

[FR Doc. 97–30036 Filed 11–13–97; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 98–C0002]

Ross Stores, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provision acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1605.13(d). Published below is a provisionally-accepted Settlement Agreement with Ross, Inc., a corporation, ''containing a civil penalty of $200,000.''

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 29, 1997.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 98–C0002, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: November 10, 1997.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. Ross Stores, Inc., (hereinafter, ''Ross Stores'' or ''Respondent''), a corporation, enters into this Settlement Agreement (hereinafter, ''Agreement'') with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order incorporated herein. The purpose of this Agreement and Order is to settle the staff's allegations that Respondent sold and offered for sale, in commerce, certain women's 100% rayon sheer chiffon skirts and scarves and certain cotton/polyester reverse fleece shirts that failed to comply with the Clothing Standard for the Flammability of Clothing Textiles (hereinafter, ''Clothing Standard''), 16 CFR Part 1610, in violation of section 3 of the Flammable Fabrics Act (FFA), 15 U.S.C. § 1192.

I. The Parties

2. The ''staff'' is the staff of the Consumer Product Safety Commission (hereinafter, ''Commission''), an independent regulatory commission of the United States government established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2053.

3. Respondent Ross Stores is a corporation organized and existing under the laws of the State of Delaware with principal corporate offices at 8333 Central Avenue, Newark, California 94560. Respondent operates a chain of off-price retail stores offering apparel and apparel-related merchandise as well a merchandise for the home.

II. Allegations of the Staff

A. Rayon Sheer Chiffon Skirts

4. Between April 1994 and August 1994, Respondent sold, or offered for sale, in commerce, approximately 1,500 style no. 15016 and approximately 1,200 style no. PS 480 women's 100% sheer chiffon rayon skirts.

5. The skirts identified in paragraph 4 above are subject to the Clothing Standard, 16 CFR 1610, issued under section 4 of the FFA, 15 U.S.C. § 1193.

6. The staff tested samples of the skirts identified in paragraph 4 above for compliance with the requirements of the Clothing Standard. See 16 CFR 1610 .3 and .4. The test results showed that

the skirts violated the requirements of the Clothing Standard and, therefore, were dangerously flammable and unsuitable for clothing because of rapid and intense burning.

7. On August 6, 1994, the staff informed Respondent that the skirts identified in paragraph 4 above failed to comply with the Clothing Standard and requested that it review its entire product line for other potential violations.

8. Respondent knowingly sold, or offered for sale, in commerce, the skirts identified in paragraph 4 above, as the term ''knowingly'' is defined in section 5(e)(4) of the FFA, 15 U.S.C. § 1194(e)(4), in violation of section 3 of the FFA, 15 U.S.C. § 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. § 1194(e)(1).

B. Rayon Scarves

9. Between August 1994 and September 1995, Respondent sold, or offered for sale, in commerce, approximately 16,000 rayon scarves.

10. The scarves identified in paragraph 9 above are subject to the Clothing Standard, 16 CFR 1610, issued under section 4 of the FFA, 15 U.S.C. § 1193.

11. The staff tested samples of the scarves identified in paragraph 9 above for compliance with the requirements of the Clothing Standard. See 16 CFR 1610.3 and .4. The test results showed that the scarves violated the requirements of the Clothing Standard, and, therefore, were dangerously flammable and unsuitable for clothing because of rapid and intense burning.

12. Respondent knowingly sold, or offered for sale, in commerce, the scarves identified in paragraph 9 above, as the term ''knowingly'' is defined in section 5(e)(4) of the FFA, 15 U.S.C. § 1194(e)(4), in violation of section 3 of the FFA, 15 U.S.C. § 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. § 1194(e)(1).

C. Reverse Fleece Shirts

13. Between August 1996 and April 1997, Respondent sold, or offered for sale, in commerce, approximately 28,000 style no. 853020, approximately 400 style no. 11261217, and approximately 1,300 style no. 1266/2216 cotton/polyester reverse fleece shirts.

14. The reverse fleece shirts identified in paragraph 13 above are subject to the Clothing Standard, 16 CFR 1610, issued under section 4 of the FFA, 15 U.S.C. § 1193.

15. The staff tested samples of the reverse fleece shirts identified in paragraph 13 above for compliance with the requirements of the Clothing Standard. See 16 CFR 1610.3 and .4. The test results showed that the fleece wear violated the requirements of the Clothing Standard and, therefore, were dangerously flammable and unsuitable for clothing because of rapid and intense burning.

16. On January 8, 1997, April 8, 1997, and April 11, 1997, the staff informed Respondent that the reverse fleece shirts identified in paragraph 13 above failed to comply with the Clothing Standard.

17. Respondent knowingly sold, or offered for sale, in commerce, the reverse fleece shirts identified in paragraph 13 above, as the term ''knowingly'' is defined in section 5(e)(4) of the FFA, 15 U.S.C. § 1194(e)(4), in violation of section 3 of the FFA 15 U.S.C. § 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. § 1194(e)(1).

III. Response of Ross Stores

18. Ross Stores denies the allegations of the staff set forth in paragraphs 4 through 17 above, and in particular, that it knowingly sold, or offered for sale, in commerce, the violative skirts, scarves, and reverse fleece shirts identified in paragraphs 4, 9, and 13 above, in violation of section 3 of the FFA, 15 U.S.C § 1192.

19. Respondent states that it ordered the skirts, scarves, and reverse fleece shirts identified in paragraphs 4, 9, and 13 above from reliable vendors who purported to sell to Respondent skirts, scarves, and reverse fleece shirts that complied with all laws, including the Flammable Fabrics Act and the Clothing Standard.

20. Any payment referenced in the attached Order is proffered solely in compromise of the staff's allegations and shall not be construed as an admission of any liability for a civil penalty or otherwise.

21. Respondent participated with the Commission in voluntary recalls of the skirts on August 12, 1994, the scarves on September 6, 1995, and the reverse fleece shirts on February 28, 1997 and April 8, 1997.

22. Further, Respondent has received no reports of incidents or injuries from the use of any products enumerated in paragraphs 4, 9, and 13.

IV. Agreement of the Parties

23. The Commission has jurisdiction over Ross Stores and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.;* the Flammable Fabrics Act (FFA), 15 U.S.C. § 1191 *et seq.;* and the Federal Trade Commission Act (FTCA), 15 U.S.C. § 41 *et seq.*

24. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the FFA and the Clothing Standard. By entering into this Agreement, Respondent makes no admission, and the Commission makes no finding, of any fault, liability or statutory violation. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

25. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1605.13(d). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed to be finally accepted on the 20th day after the date it is published in the **Federal Register**.

26. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Ross Stores knowingly, voluntarily, and completely waives any rights if may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions; (3) to a determination by the Commission as to whether Ross Stores failed to comply with the FFA and the Clothing Standard as aforesaid, (4) to a statement of findings of facts and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

27. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, the Commission specifically waives its right to initiate any other civil, administrative or criminal action against the Respondent, its stockholders, officers, directors, employees, agents, successors, and assigns with respect to those alleged violations.

28. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by reference.

29. A violation of the attached Order shall subject Respondent to appropriate legal action.

30. The Commission may disclose the terms of this Settlement Agreement and Order to the public consistent with section 6(b) of the CPSA, 15 U.S.C. § 2055(b).

31. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or contradict its terms.

32. The provisions of the Settlement Agreement and Order shall apply to Ross Stores and each of its successors, assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device, or instrumentality.

Dated: September 30, 1997.

Respondent Ross Stores, Inc.

Michael Balmuth,

Vice Chairman and Chief Executive Officer, Ross Stores, Inc., 8333 Central Avenue, Newark, CA 94560.

Commission Staff.

Eric L. Stone, Director, Division of Administrative Litigation, Office of Compliance.

David Schmeltzer, Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207–0001.

Dated: October 02, 1997.

Dennis C. Kacoyanis, Trail Attorney, Ronald G. Yelenik, Trial Attorney, Division of Administrative Litigation, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Ross Stores, Inc., (hereinafter, ''Ross Stores'' or ''Respondent''), a corporation, and the staff of the Consumer Product Safety Commission (''Commission''); and the Commission having jurisdiction over the subject matter and Respondent; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement and Order be and hereby is accepted, as indicated below; and it is

Further Ordered, that Respondent pay to the United States Treasury a civil penalty of *Two Hundred Thousand Dollars* ($200,000.00) within twenty (2) days after service upon Respondent of the Final Order.

Provisionally accepted and Provisional Order issued on the 10th day of November 1997.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–30038 Filed 11–13–97; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting change.

SUMMARY: On October 9, 1997, 62 FR 5382, the Department of Defense published a notice to announce a meeting of the Defense Partnership Council to be held November 19, 1997. This notice is to announce that the meeting is changed to November 17, 1997, due to conflicts in members' schedules.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Boulevard, Suite B–200, Arlington, VA 22209–5144, (703) 696–1450.

Dated: November 7, 1997.

L.M. Bynum,

Alterante OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29974 Filed 11–13–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

In-Progress Air Force Cost Comparisons As of July 1, 1997

The Air Force is conducting the following cost comparisons in accordance with OMB Circular A–76, Performance of Commercial Activities.

Installation	State	Cost comparison	Announced full time equivalents
Maxwell AFB	AL	Grounds Maintenance	8
Clear	AK	Power Production	34
Eielson AFB	AK	Miscellaneous Services	11
Eielson AFB	AK	Admin Telephone PBX	10
Elmendorf AFB	AK	Power Production	36
Elmendorf AFB	AK	Military Family Housing Mgmt	22
Edwards AFB	CA	Base Supply	327
Los Angeles AFS	CA	Communication Functions	13
Los Angeles AFS	CA	Publications Distribution Office	5
Los Angeles AFS	CA	Education Services	28
March AFB	CA	Airfield Operations & Weather	41
March AFB	CA	Transient Aircraft Maintenance	0
March AFB	CA	Base Operating Support	237
Onizuka AFS	CA	Utilities Plant	25
Travis AFB	CA	Military Family Housing Maint	38
Vandenberg AFB	CA	Base Operating Support	217
Vandenberg AFB	CA	Structural Maintenance	32
Buckley ANGB	CO	Airfield Management	37
Falcon AFB	CO	Communication O&M	205
Falcon AFB	CO	Utilities Plant	22
Peterson AFB	CO	Base Operating Support	179
USAF Academy	CO	Mess Attendants	170
Eglin AFB	FL	Library	8
Eglin AFB	FL	Civil Engineering	96
Homestead AFB	FL	Airfield Operations & Weather	25
Homestead AFB	FL	Base Operating Support	149

Installation	State	Cost comparison	Announced full time equivalents
Hurlburt Com Field	FL	Grounds Maintenance	11
Hurlburt Com Field	FL	Transient Aircraft Maintenance	11
Patrick AFB	FL	Base Operating Support	148
Tyndall AFB	FL	BOS & Backshop Aircraft Main	1360
Dobbins AFB	GA	Control Tower Operations	33
Dobbins AFB	GA	Communication Functions	0
Dobbins AFB	GA	Weather Services	0
Dobbins AFB	GA	Base Operating Support	127
Robins AFB	GA	Audiovisual	42
Robins AFB	GA	Military Family Housing Maint	12
Robins AFB	GA	Education Services	29
Ramstein AB	Germany	Mess Attendants	33
Ramstein AB	Germany	Military Family Housing Maint	129
Ramstein AB	Germany	PMEL	79
Spangdahlem AB	Germany	Mess Attendants	16
Hickam AFB	HI	Base Operating Support	528
Scott AFB	IL	Base Supply	106
Grissom ARB	IN	Airfield Operations & Weather	35
Grissom ARB	IN	Transient Aircraft Maintenance	0
Grissom ARB	IN	Base Operating Support	170
New Orleans NAS	LA	Base Operating Support	66
Hanscom AFB	MA	Audiovisual	19
Hanscom AFB	MA	Vehicle O&M	64
Hanscom AFB	MA	Laboratory Support Services	14
Hanscom AFB	MA	Communication Functions	93
Hanscom AFB	MA	Data Processing	18
Otis ANGB	MA	Transient Aircraft Maintenance	3
Westover AFB	MA	Control Tower Operations	19
Westover AFB	MA	Weather Services	0
Westover AFB	MA	Base Operating Support	210
Minn/St Paul	MN	Communication Functions	0
Minn/St Paul	MN	Base Operating Support	104
Columbus AFB	MS	Base Operating Support	341
Keesler AFB	MS	Tech Training Center Equip Maint	253
Malmstrom AFB	MT	Base Supply	150
Multiple Instlns	Mult	Tech Training-Elect Prin Tng	157
Multiple Instlns	Mult	Admin Switchboard	59
McGuire AFB	NJ	Military Family Housing Maint	19
Cannon AFB	NM	Military Family Housing Maint	21
Holloman AFB	NM	Military Family Housing Maint	66
Kirtland AFB	NM	Base Supply	170
Kirtland AFB	NM	PMEL	51
Kirtland AFB	NM	Vehicle O&M	156
Niagra Falls IAP	NV	Weather Services	4
Niagra Falls IAP	NV	Base Operating Support	39
Offutt AFB	NE	Heating Systems	30
Wright Patterson AFB	OH	Base Operating Support	632
Youngstown Muni Arpt	OH	Base Operating Support	102
Tinker AFB	OK	Communication Functions	138
Tinker AFB	OK	Civil Engineering	567
Greater Pittsburg Arpt	PA	Base Operating Support	111
Willow Grove NAS	PA	Base Operating Support	78
Charleston AFB	SC	Audiovisual	13
Brooks AFB	TX	Laboratory Support Services	44
Carswell AFB	TX	Base Operating Support	91
Lackland AFB	TX	Grounds Maintenance	16
Lackland AFB	TX	Animal Caretaking	26
Laughlin AFB	TX	Base Communications	62
Sheppard AFB	TX	Tech Training-Telephone System	16
Hill AFB	UT	Grounds Maintenance	12
Hill AFB	UT	Recreational Support	7
Hill AFB	UT	Heating Systems	38
General Mitchell Field	WI	Base Operating Support	93
F E Warren AFB	WY	Base Supply	187

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–29919 Filed 11–13–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 13, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 7, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: 1998 National Assessment of Educational Progress (NAEP), Writing Special Study.

Frequency: One Time.

Affected Public: Individuals or households.

Reporting Burden and Recordkeeping:

Responses: 6,200

Burden Hours: 2,200

Abstract: The 1998 NAEP writing special study is designed to bolster the understanding of study NAEP writing achievement with information on student's best writing assignments, and the writing process. In addition, the study will collect information about teachers' emphasis on writing curriculum and instructional approaches. The study will be conducted with a sample of 6000 (4th and 8th grade) students and 200 teachers. The study will use a structured protocol to obtain more detailed and valid information about classroom instructional practices than a standard background questionnaire. Students will be asked to select three examples of their best writing and to fill out a brief questionnaire describing the samples of writing that they submit.

Office of the Under Secretary

Type of Review: New.

Title: Targeting and Resource Allocation Study.

Frequency: One time.

Affected Public: State education agencies, school districts and schools.

Reporting and Recordkeeping Hour Burden:

Responses: 6,097

Burden Hours: 6,000

Abstract: This study will examine targeting and resource allocation in major federal education programs, including Title I, Title II (Eisenhower Professional Development), Title IV (Safe and Drug-Free Schools and Communities), Title VI, and Goals 2000. The study will examine how resources are allocated among various strategies for improving student achievement, how the use of resources varies across schools and districts (e.g., by school poverty levels and size of allocation), and changes in the targeting of funds since the reauthorization of the Elementary and Secondary Education Act (ESEA) in 1994. The study will examine the extent to which funds are being used for strategies highlighted in Goals 2000 and the reauthorized Elementary and Secondary Education Act, including professional development, extended time, parent involvement, coordinated services, and schoolwide approaches. The study will obtain information on the kinds of expenditures, staff, and activities typically associated with different strategies; and how resource allocation decisions are made. The study will also examine the amount of federal funds retained at the state and district levels for administrative and other purposes, how those funds are used, and how much of the funds reach the school level.

[FR Doc. 97–29959 Filed 11–13–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Savannah River Operations Office

Interim Management of Nuclear Materials at the Savannah River Site

AGENCY: Department of Energy.

ACTION: Supplemental record of decision.

SUMMARY: The U.S. Department of Energy (DOE) prepared a final environmental impact statement (EIS), ''Interim Management of Nuclear Materials'' (DOE/EIS–0220, October 20, 1995), to assess the potential environmental impacts of actions necessary to manage certain nuclear materials at the Savannah River Site (SRS), Aiken, South Carolina, until decisions on their future use or ultimate disposition are made and implemented. Some of the particular materials considered in the EIS could present

environment, safety and health vulnerabilities in their current storage condition.

On December 12, 1995, DOE issued a Record of Decision (ROD) and Notice of Preferred Alternatives, 60 FR 65300 (December 19, 1995), on the interim management of several categories of nuclear materials at the SRS. That ROD announced DOE's decision to stabilize plutonium and uranium stored in vaults using a combination of four methods that were fully analyzed in the Final EIS: (1) Improving Storage, (2) Processing to Metal, (3) Processing to Oxide, and (4) Vitrification (F-Canyon). DOE also announced a narrowing of alternatives under consideration for the stabilization of plutonium-239 and neptunium-237 solutions in H-Canyon, and obsolete neptunium targets in K-Reactor.

On September 6, 1996, DOE issued a Supplemental ROD (61 FR 48474, September 13, 1996) to stabilize the H–Canyon plutonium-239 solutions to metal using the F–Canyon and FB-Line facilities, and to stabilize the H-Canyon neptunium-237 solution and obsolete neptunium targets (stored in K-Reactor) to glass using the F–Canyon vitrification capability.

Now, after further review of the plutonium and uranium materials stored in vaults, and considering DOE's recent adoption of a phased canyon strategy for current and potential nuclear material management missions, DOE has decided to: (1) add an additional method, Processing and Storage for Vitrification in the Defense Waste Processing Facility (DWPF), to those being implemented for the management of plutonium and uranium stored in vaults; and (2) amend its September 6, 1996, ROD to stabilize the plutonium-239 and neptunium-237 solutions stored in H-Canyon and obsolete neptunium-237 targets stored in K-Reactor to oxide forms using the H-Canyon facilities. These management methods were fully analyzed in the Final EIS.

FOR FURTHER INFORMATION CONTACT: This is the fourth ROD to be issued to supplement the initial ROD for the interim management of nuclear materials at the SRS. (See 61 FR 6633 (February 21, 1996); 61 FR 48474 (September 13, 1996); 62 FR 17790 (April 11, 1997).) For further information on the interim management of nuclear materials at the SRS or to receive a copy of the Final EIS, the initial ROD and Notice, or the supplemental RODs contact: Andrew R. Grainger, NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, Building 773–42A, Room 212, Aiken, South Carolina 29802, (800) 881–7292, Internet: drew.grainger@srs.gov.

For further information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Energy (DOE) prepared the final environmental impact statement (EIS), ''Interim Management of Nuclear Materials'' (DOE/EIS–0220, October 20, 1995), to assess the potential environmental impacts of actions necessary to manage certain nuclear materials at the Savannah River Site (SRS), Aiken, South Carolina, until decisions on their future use or ultimate disposition are made and implemented. Some of the particular materials considered in the EIS could present environment, safety and health vulnerabilities in their current storage condition.

The Final EIS identified Improving Storage, Processing to Metal, Processing to Oxide, and Vitrification (F-Canyon) using a combination of the F-Canyon, FB-Line, H-Canyon, HB-Line, and the to-be-constructed Actinide Packaging and Storage Facility (APSF) as the preferred alternative for managing the plutonium and uranium stored in vaults. The Final EIS identified Processing to Oxide, in conjunction with using the APSF, as the preferred alternative for managing the plutonium-239 and neptunium-237 solutions and obsolete neptunium targets.

On December 12, 1995, DOE issued a ROD and Notice of Preferred Alternatives (60 FR 65300) on the interim management of several categories of nuclear materials at the SRS. DOE decided to stabilize plutonium and uranium stored in vaults using a combination of four management methods: (1) Improving Storage, (2) Processing to Metal, (3) Processing to Oxide, and (4) Vitrification (F-Canyon). The amount of materials stabilized using each of the methods would be dependent upon: (a) the physical condition and chemical composition of the material (which DOE will determine upon opening each of the containers or packages inside a glove box in either FB-Line or HB-Line) and (b) the availability of the required facilities.

On February 8, 1996, DOE issued a supplemental ROD (61 FR 6633) for the stabilization of two of the remaining categories of nuclear materials (Mark-16 and Mark-22 fuels, and other aluminum-clad targets) analyzed in the Final EIS.

After considering a DOE staff study and recommendation on canyon facility utilization, DOE issued a second supplemental ROD on September 6, 1996 (61 FR 48474), for the stabilization of the neptunium-237 solution and obsolete neptunium targets, and plutonium-239 solutions.

On April 2, 1997, DOE issued a third supplemental ROD (62 FR 17790) for the stabilization of the remaining Taiwan Research Reactor (TRR) spent nuclear fuel (62 canisters, containing approximately 310 rods). These fuel rods were believed to be stable when the Final EIS and initial ROD were issued. However, given new evidence of apparent cladding failure from at least two canisters, and the fuel's storage, handling, and transportation history, DOE decided to stabilize in the F-Canyon and FB-Line facilities the remaining TRR fuel in the same manner as the original failed TRR fuel.

On July 17, 1997, the Secretary of Energy approved the adoption of a new phased canyon strategy on the use of the SRS canyon facilities, and DOE is now modifying the September 6, 1996 decision for the reasons explained below.

Interim Management of Nuclear Materials EIS

The Interim Management of Nuclear Materials (IMNM) Final EIS considered the interim management of certain nuclear materials at the SRS. These materials included approximately 3,000 containers of plutonium and uranium materials stored in vaults at the SRS, approximately 34,000 liters (9,000 gallons) of plutonium-239 solutions stored in the H-Canyon, approximately 6,100 liters (1,600 gallons) of neptunium-237 solution stored in H-Canyon, and nine (9) obsolete neptunium-237 targets for the production of plutonium-238 stored in K-Reactor. A small fraction of the vault containers, about five percent or 120 containers, contain a substantial fraction of the plutonium-238 isotope. Plutonium-238 is generally used as a heat source, and has been used to provide energy for deep space exploratory missions.

The plutonium and uranium vault materials contain potentially reactive compounds, plastics that can degrade and decompose, and unknown constituents that make them unsuitable for interim to long-term storage. The

plutonium and neptunium solutions are unsuitable for extended storage because of the greater potential for abnormal events (e.g., criticality, leaks, spills) that could result in releases of radioactive materials to the environment and exposure to workers and the public. The continued storage of the obsolete neptunium targets leads to increased worker radiation exposure that could be reduced if DOE consolidated neptunium storage, thereby advancing DOE's radiation protection policy of reducing radiation exposure to as low as reasonably achievable levels.

The IMNM Final EIS evaluated the potential environmental impacts of several alternatives for stabilizing SRS nuclear materials. For the plutonium and uranium stored in vaults, these alternatives included processing the materials to either a metal or an oxide form, processing to a glass form in a new vitrification capability to be installed in the F-Canyon facility, processing the material for vitrification (conversion to glass) in the Defense Waste Processing Facility (DWPF), and improving storage through heat treating, sorting, and repackaging. For the plutonium-239 and neptunium-237 solutions and obsolete neptunium targets, the alternatives included processing the materials to an oxide form, processing to a glass form in the new vitrification capability to be installed in the F-Canyon facility, and processing the material for vitrification in the DWPF. Processing to metal, using the F-Canyon/FB-Line facilities, was also evaluated for the plutonium-239 solutions. DOE also considered continued storage of the materials, i.e., the ''No Action'' alternative. The IMNM Final EIS identified Processing to Metal, Processing to Oxide, Vitrification (F-Canyon), and Improving Storage as the preferred alternatives for managing the plutonium and uranium vault materials, and Processing to Oxide as the preferred alternative for managing the plutonium-239 and neptunium-237 solutions, and obsolete neptunium targets.

Environmental Impacts of Alternatives

DOE performed evaluations of the potential impacts of managing all SRS nuclear materials for each of the alternatives identified in the IMNM Final EIS. For each alternative, the evaluations assumed all the materials in each category (e.g., plutonium and uranium materials stored in vaults [approximately 3,000 containers], H-Canyon plutonium-239 solutions [approximately 34,000 liters], and neptunium-237 solution [approximately 6,100 liters] and 9 obsolete neptunium targets) would be managed using each alternative. Summaries of the potential impacts from the alternatives were presented in the IMNM Final EIS [Table 2–5 (page 2–51) for the neptunium solution and targets, Table 2–6 (page 2–52) for the plutonium-239 solutions, and Table 2–8 (page 2–54) for the plutonium and uranium stored in vaults].

DOE has concluded that there would be minimal environmental impact from the implementation of any of these alternatives in the areas of geologic resources, ecological resources (including threatened or endangered species), cultural resources, aesthetic and scenic resources, noise, and land use. Impacts in these areas would be limited because facility modifications or construction of new facilities would occur within existing buildings or industrialized portions of the SRS. DOE anticipates that the existing SRS workforce would support any construction projects and other activities required to implement any of the alternatives. As a result, DOE expects negligible socioeconomic impacts from implementing any of the alternatives.

Emissions of hazardous air pollutants and releases of hazardous liquid effluents for any of the alternatives would be within applicable federal standards and existing regulatory permits for the SRS facilities. Similarly, high-level liquid waste, transuranic waste, mixed hazardous waste and low-level solid waste generated by implementation of any of the alternatives would be handled by existing waste management facilities. All of the waste types and volumes are within the capability of the existing SRS waste management facilities for storage, treatment or disposal.

Environmentally Preferable Alternatives

As described in the IMNM Final EIS, certain management alternatives are expected to result in lower environmental impacts than others. However, a single alternative was rarely estimated to have lower impacts for all environmental factors. DOE reviewed the potential environmental impacts estimated for the alternatives evaluated for each material category at the SRS, and identified the following as the environmentally preferable alternatives:

Plutonium and Uranium Stored in Vaults

Improving storage for plutonium and uranium stored in vaults is estimated to result in the lowest radiological dose to the offsite public but a relatively higher dose to the SRS workers. This alternative would result in the lowest level of air emissions with comparable levels of water emissions; and would generate the least amount of high-level (zero) and mixed waste, with comparable amounts of transuranic and low-level waste as compared to the other alternatives. The improving storage alternative reduces the quantity of materials requiring chemical processing through the canyon facilities.

Plutonium-239 Solutions—Vitrification (F-Canyon)

Vitrification in F-Canyon of the H-Canyon plutonium-239 solutions is estimated to result in the lowest radiological doses to the offsite public and the SRS workers; result in comparable levels of hazardous pollutant emissions to the air and water; and generate the least amount of transuranic, mixed, and low-level waste, but comparable amounts of high-level waste as compared to the other alternatives.

Neptunium-237 Solution and Obsolete Targets—Vitrification (F-Canyon)

Vitrification in F-Canyon for stabilizing the solution and targets containing neptunium is estimated to result in slightly higher radiological doses to the SRS workers but result in the lowest radiological doses to the offsite public; result in higher airborne emissions of hazardous pollutants with comparable levels of liquid effluent emissions; and generate the least amount of high-level, transuranic and mixed wastes, but comparable amounts of low-level waste as compared to the other alternatives.

Decision

DOE has decided to supplement its previous decision for the management of plutonium and uranium stored in vaults (60 FR 65300), and amend its previous decision for the management of plutonium-239 solutions stored in H-Canyon, neptunium-237 solution stored in H-Canyon, and obsolete neptunium targets stored in K-Reactor (61 FR 48474).

Plutonium and Uranium Stored in Vaults

DOE has decided to implement Processing and Storage for Vitrification in the DWPF as an additional method for managing plutonium and uranium stored in vaults. This method is being implemented principally for a small quantity, approximately 10 kilograms, of plutonium-bearing materials containing plutonium-238. Plutonium-238 is an isotope of plutonium used generally as a heat source in National Aeronautics and Space Administration and other

national programs. Approximately five percent (120) of the 3,000 containers of plutonium and uranium stored in vaults are expected to be managed using this method. The plutonium-238 material is unsuitable for programmatic purposes without isotopic enrichment. The capability for plutonium-238 isotopic enrichment does not exist within the DOE complex and is not being developed. Other low-fissile content plutonium and uranium vault materials, upon inspection, may also be managed in this manner. The potential impacts from this action would be low and well within the potential impacts identified in the IMNM Final EIS. (The IMNM Final EIS considered the impacts of managing all of the plutonium and uranium stored in vaults with this management method.)

This decision permits the stabilization and ultimate disposition of scrap and residue material containing plutonium-238 in DWPF glass canisters. Some additional small fraction of low-fissile content plutonium and uranium vault materials may also, after inspection, be managed in this manner. The fissile content of these materials, diluted or poisoned as may be necessary, will not present criticality or waste disposal concerns within the waste management system. This management method involves minimal facility operations and can be initiated quickly to alleviate the vulnerabilities of continued vault storage. The remainder of the containers of plutonium and uranium stored in vaults will be stabilized using one of the four previously selected management methods (60 FR 65300, December 19, 1995).

The IMNM Final EIS (section 2.3.1, page 2–19) describes technical challenges that must be overcome to stabilize plutonium and uranium vault materials using the high-level waste system and the DWPF. The most significant is control of potential nuclear criticality. Plutonium-238 does not present a threat of inadvertent criticality because, unlike plutonium-239 and uranium-235 (the principal nuclear materials in the vault materials), very large quantities of plutonium-238 would have to be assembled to result in a criticality. Quantities of this magnitude would not occur in the high-level waste tanks. However, this management method will also entail the transfer of plutonium-239 mixed with the plutonium-238 (and potentially other vault materials containing low concentrations of plutonium-239 and uranium-235) to the high-level waste tanks. Therefore, dilution and/or neutron poisoning of the transferred materials as considered in the IMNM Final EIS may be required to ensure nuclear criticality safety requirements are met.

DOE has determined that adding this method for managing a small fraction of plutonium and uranium materials would be advantageous to the overall materials stabilization program. The facility, HB-Line, where plutonium-238 materials are processed, has completed plutonium-238 processing activities for programmatic purposes and DOE has now determined that HB-Line should be prepared for the stabilization of other materials in order to complete the SRS materials stabilization mission as soon as possible within existing resource and facility limitations. Eliminating the purification and resulting solution conversion processing of plutonium-238 at HB-Line enables this capability to be used for the stabilization of other materials.

This decision also eliminates a need to store plutonium-238, not expected to have any future programmatic use, in the new SRS storage vault, the APSF. This will allow DOE to save associated design, construction, and operating costs by eliminating the need for a cooled-storage array module in the APSF.

Plutonium-239 Solutions

DOE has decided to stabilize the H-Canyon plutonium-239 solutions by processing them to oxide in the H-Canyon and HB-Line facilities. The plutonium-239 solutions will undergo processing in H-Canyon as necessary to remove impurities that would interfere with the conversion-to-oxide process in HB-Line. The resulting stabilized plutonium oxide will be stored in an existing vault at the SRS until the new APSF is available. The stabilized plutonium will be stored until DOE implements disposition decisions on this surplus weapons-useable plutonium.

The SRS has an existing facility (HB-Line, Phase II) designed to purify and convert plutonium-239 (and neptunium) to an oxide, but it has never been operated. In the September 6, 1996 decision (61 FR 48474) for the stabilization of this plutonium-239, DOE had expected that by not starting up the Phase II facility, substantial costs associated with its future decontamination and decommissioning could be avoided. After further consideration, however, it has become clear that the facility, by virtue of its location within the H-Canyon structure and its inter-connection with other HB-Line processes, has been radioactively contaminated. The Department now believes that future decontamination and decommissioning will be required whether or not the HB-Line Phase II facility ever operates. Thus, operating the facility to purify and convert plutonium-239 (and neptunium) to an oxide will not add substantial costs to the facility's future decontamination and decommissioning.

Processing the plutonium-239 solutions in H-Canyon and HB-Line also will eliminate the need to transport 34,000 liters (9,000 gallons) of this material from H-Canyon to F-Canyon. This will eliminate the need to transport liquids containing fissile materials and associated transfer costs. HB-Line processing also will permit operation of the metal production part of the FB-Line, which was built in the early 1960's, to be terminated sooner.

The quantity of oxide produced (plus the metal to be produced as a result of decisions made in the December 12, 1995 (60 FR 65300) and April 2, 1997 (62 FR 17790) RODs) will constitute only a small fraction of DOE's existing inventory of weapons-useable plutonium. DOE believes that the addition of this small amount does not present new nuclear proliferation concerns. DOE already has made a commitment that plutonium from DOE's stabilization actions will not be used for nuclear explosive purposes.

Neptunium-237 Solution and Obsolete Neptunium Targets

DOE has decided to stabilize the neptunium-237 solution and obsolete neptunium targets to oxide in the H-Canyon and HB-Line facilities. The nine obsolete targets will be transported from K-Reactor to H-Canyon. At H-Canyon, the targets will be dissolved and processed to separate the neptunium from other materials (principally aluminum). These other materials will be sent to the high-level waste tanks for eventual treatment through the Saltstone and DWPF facilities. The existing neptunium solution and those generated from the obsolete targets will be converted to an oxide in the HB-Line facilities after purification in H-Canyon. In addition, neptunium separated from the stabilization of the Mark-16 and Mark-22 fuels (as announced in the February 8, 1996 supplemental ROD (61 FR 6633) will be stabilized along with the neptunium solution and targets. The resulting canisters containing the neptunium oxide will be stored in either the H- or F-Canyon facility or the new APSF, when constructed, until DOE implements programmatic decisions on the future use of the neptunium.

DOE has selected processing to oxide in H-Canyon/HB-Line for several reasons. The SRS has an existing facility

(HB-Line, Phase II) designed to purify and convert neptunium (and plutonium-239) to an oxide. For the reasons discussed above regarding the stabilization of plutonium-239 solutions, not operating the Phase II line for neptunium stabilization would not save significant decontamination and decommissioning costs. In addition, DOE could use the HB-Line Phase III line, an operational facility, to allow neptunium stabilization activities to begin sooner than previously scheduled. HB-Line Phase III, however, has limited processing capacity. Relying solely on HB-Line Phase III for neptunium conversion would extend stabilization completion several years. Processing the neptunium-237 solution in H-Canyon and HB-Line, however, will eliminate the need to transport 6,100 liters (1,600 gallons) of this material from H-Canyon to F-Canyon. Furthermore, recent difficulties encountered in the development program for vitrification of the americium and curium solution indicate that the schedule and cost for vitrification of the neptunium in F-Canyon were significantly underestimated.

To maintain the neptunium in a concentrated physical form, thus preserving the potential for future use, DOE evaluated alternatives for converting the neptunium to either an oxide or glass. Either form was originally determined acceptable to support future use of the material, if required. DOE has now determined that to best preserve the neptunium for potential programmatic use (and to minimize associated future waste generation) it should be converted to a stable oxide. Neptunium oxide is the traditional form produced at the SRS and is the form used for programmatic purposes (i.e., plutonium-238 production).

Issued at Washington, DC, October 31, 1997.

Alvin L. Alm,

Assistant Secretary for Environmental Management.

[FR Doc. 97–30005 Filed 11–13–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Caliper Technologies, Inc.

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of Intent to Grant Exclusive or Partially Exclusive Patent License.

SUMMARY: Notice is hereby given of an intent to grant to Caliper Technologies, Inc., of Palo Alto, California, an exclusive or partially exclusive license to practice the invention described in Israel Patent Application S.N. 119,342, entitled ''Method for Priming and DNA Sequencing,'' and corresponding Patent Applications in the U.S.A., Japan, certain European countries, and possible other countries. The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license may be exclusive, or partially exclusive, but will be subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. § 209(c), unless within 60 days of this notice the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than January 13, 1998.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR Part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Caliper Technologies, Inc., of Palo Alto, California, has applied for an exclusive license to practice the subject invention and has a plan for commercialization of the invention.

The proposed license is expected to be exclusive or partially exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty and other fees. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, D.C., on November 7, 1997.

Paul A. Gottlieb,

Assistant General Counsel, for Technology Transfer and Intellectual Property.

[FR Doc. 97–30003 Filed 11–13–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–886–001]

Brooklyn Navy Yard Cogeneration Partners, L.P.; Notice of Filing

November 7, 1997.

Take notice that on October 30, 1997, Brooklyn Navy Yard Cogeneration Partners, L.P. tendered for filing its compliance filing in the above-referenced docket.

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 November 21, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29946 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2878–000]

Delmarva Power & Light Company and Pennsylvania Power & Light Company; Notice of Filing

November 7, 1997.

Take notice that on October 31, 1997, Delmarva Power & Light Company and Pennsylvania Power & Light Company, now known as PP&L, Inc., tendered for filing an amendment in the above-captioned docket.

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 or 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 November 21, 1997. 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29948 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES98–5–000]

Electric Energy, Inc., Notice of Application

November 7, 1997.

Take notice that on November 3, 1997, Electric Energy, Inc. filed an application with the Commission seeking authorization pursuant to Section 204 of the Federal Power Act, to issue up to $35,000,000 of notes under the terms of certain unsecured revolving credit agreements or under substantially similar thereto from time to time over the 24-month period immediately following the date of the Commission's approval of the application.

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 385.214). All such motions or protests should be filed on or before December 2, 1997. 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 available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29953 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–58–000]

Kern River Gas Transmission; Notice of Request Under Blanket Authorization

November 7, 1997.

Take notice that on October 31, 1997, Kern River Gas Transmission Company (Kern River), P.O. Box 58900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP98–58–000 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 operate the Hunter Park Meter Station, located in Salt Lake County, Utah, as a certificated delivery point under Section 7(c) of the Natural Gas Act (NGA) for the delivery of gas under Kern River's blanket certificate issued in Docket No. CP89–2048–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Kern River proposes to operate the Hunter Park Meter Station, located in Salt Lake County, Utah, as NGA jurisdictional facilities for the delivery of gas to any eligible shipper under Kern River's blanket transportation certificate. Kern River states the Hunter Park Meter Station was originally constructed in September 1993, pursuant to 18 CFR Section 284.3 as facilities to be utilized solely for transportation authorized by Section 311(a) of the Natural Gas Policy Act for Mountain Fuel Supply Company (Mountain Fuel).

Kern River declares the Hunter Park delivery point consists of a meter station with an 8-inch tap, one 12-inch turbine meter run, and appurtenant piping and facilities. Kern River states the original cost of the Hunter Park Meter Station was $315,532, which was reimbursed by Mountain Fuel.

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 not protest is filed within the time allowed therefore, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29942 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2993–000]

MidAmerican Energy Company; Notice of Filing

November 7, 1997.

Take notice that on October 28, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted to the Commission for filing an amendment to its initial filing in this proceeding. The change consists of the Second Amended and Restated Second Amendment dated October 1, 1997 entered into by MidAmerican and Central Iowa Power Cooperative (CIPCO) to Interconnection Agreement dated June 13, 1983 entered into by Iowa-Illinois Gas and Electric Company (a predecessor by merger to MidAmerican) and CIPCO.

MidAmerican states that the purpose of the rate schedule change is to

establish an additional connection by CIPCO; revise provisions relating to the basis upon which energy is delivered by CIPCO to MidAmerican at normally closed points or connection; revise provisions relating to the normal operating status of two Points of Connection; and revise the basis for billing the transmission service charge, but not the amount of the charge, as a result of the changes to provisions relating to the normal operating status of two points of connection.

MidAmerican requests an effective date in accordance with Section 5 of the Second Amended and Restated Second Amendment and further requests the Commission to accept the rate schedule change for filing within 60 days of the date of this submission to the Commission. MidAmerican has served a copy of the filing on CIPCO.

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 November 21, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29949 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4031–000]

New York State Electric & Gas Corporation; Notice of Filing

November 7, 1997.

Take notice that New York State Electric & Gas Corporation filed on October 30, 1997 the revised Summary of Quarterly Activity (the ''Summary'') for the calendar year quarter ending June 30, 1997 pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1985), and part 35 of the Commission's Rules of Practice and Procedure, 18 CFR part 35, and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's June 9, 1997 order (the ''Order'') in Docket No. ER97–2518–000.

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 November 21, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29950 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4345–000]

OGE Energy Resources, Inc., Notice of Filing

November 7, 1997.

Take notice that on October 29, 1997, OGE Energy Resources, Inc. (''OERI'') made a compliance filing with the Commission in the above-referenced docket in accordance with the Commission's October 17, 1997 order conditionally accepting for filing, without suspension or hearing, OERI's market-based power sales rates.

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 November 21, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29951 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4704–000]

Rochester Gas and Electric Corporation; Notice of Filing

November 7, 1997.

Take notice that Rochester Gas and Electric Corporation (RG&E) on October 31, 1997, tendered for filing an amendment to its filing in the above-referenced proceeding.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of September 22, 1997 for the Virginia Electric and Power Company Service Agreement.

Copies of this filing have been sent to Virginia Power and the New York Public Service Commission.

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 November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make the 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29952 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2596–000]

Rochester Gas & Electric Corp.; Notice of Meeting

November 7, 1997.

Rochester Gas & Electric Corporation (RG&E) has applied to the Commission for a subsequent license for the Station 160 Project No. 2596. The project is located on the Genesee River, in Livingston County, New York.

RG&E and the New York State Department of Environmental Conservation (DEC) are in the process of negotiating terms and conditions for Section 401 water quality certification for the Station 160 Project. RG&E and DEC have scheduled a meeting to facilitate the discussion. Commission staff will attend the meeting.

Meeting Date: Monday, November 24, 1997 from 11:00 a.m.

Location: New York State Department of Conservation offices, 50 Wolf Road, Albany, New York.

Meeting Scope: RG&E and DEC to discuss change in impoundment fluctuation at Station 2 and status of the 401 Water Quality Certification Settlement Agreement for Station 160.

Interested parties are welcome to attend this meeting. For further information please contact: Hal Waggoner, Rochester Gas & Electric Corporation, at (716) 724–8105.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29954 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–63–000]

Tennessee Gas Pipeline Company; Notice of Application

November 7, 1997.

Take notice that on October 31, 1997, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations thereunder, requesting authority for Tennessee to abandon, by sale to Enogex, Inc. (Enogex), the Buzzard Gap System in Latimer County, Oklahoma, all as more fully set forth in the application on file with the Commission and open to public inspection.

Tennessee states that, by a Purchase and Sale Agreement dated September 10, 1997, and subsequent amendment dated October 19, 1997, Tennessee and Enogex mutually agreed that Tennessee will sell to Enogex all of Tennessee's rights, title and interests in and to the Buzzard Gap System and all rights of way, permits, licenses and other agreements associated with the system.

Tennessee states that the public interest will be served by the sale of the Buzzard Gap System to Enogex. Tennessee states that the Buzzard Gap System was constructed by Tennessee's merchant service. Tennessee also states that, as a result of Order No. 636, Tennessee has restructured its services and is now solely a transporter of gas. Tennessee, therefore, states that it no longer needs the Buzzard Gap System. Tennessee further states that the Buzzard Gap System is not integral to Tennessee's operations in the post-restructuring environment. Tennessee states that granting the requested abandonment authorization will enable Tennessee to streamline its transmission operations for its principal activity of mainline gas transportation. Finally, Tennessee states that the sale of the Buzzard Gap System will not adversely affect any of Tennessee's existing customers.

Tennessee requests that the Commission find that (1) upon the sale of the Buzzard Gap System to Enogex, the transferred facilities will be intrastate facilities which are exempt from the Commission's NGA jurisdiction, and (2) Enogex's acquisition of such facilities will not subject Enogex to the Commission's NGA jurisdiction. Tennessee also requests that the Commission grant all other authorizations and waivers that are necessary to effectuate the transactions contemplated in its application.

Any person desiring to be heard or to make any protests with reference to said application should on or before November 28, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

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 petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29945 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2460–001]

Unitil Power Corp.; Notice of Filing

November 7, 1997.

Take notice that on October 10, 1997, Unitil Power Corp. (Unitil Power) tendered for filing pursuant to Rules 205 and 207, an amendment to its April 8, 1997, Petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its market-based rate schedule to be effective June 1, 1997. Unitil Power indicates in its amended filing that it will prohibit power sales to affiliates absent a separate 205 filing.

A copy of Unitil Power's amendment was served on the New Hampshire Public Utilities Commission.

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 November 21, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29947 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–60–000, CP98–62–000, CP98–64–000, and CP98–65–000]

Viking Voyageur Gas Transmission Company, L.L.C.; Notice of Applications

November 7, 1997.

Take notice that on October 31, 1997, Viking Voyageur Gas Transmission Company, L.L.C. (Viking Voyageur), 825 Rice Street, St. Paul, Minnesota 55117–5484, filed in Docket Nos. CP98–60–000, CP98–62–000, CP98–64–000, and CP98–65–000 applications pursuant to Section 7(c) and Section 3 of the Natural Gas Act (NGA) and Parts 284 and 157 of the Commission's regulations for: a certificate of public convenience and necessity to construct, own, operate, and maintain natural gas pipeline facilities; authorization pursuant to Section 3 of the NGA and a Presidential Permit for the siting, construction, operation, and maintenance of certain facilities for the importation of natural gas; a blanket certificate authorizing non-discriminatory, open-access transportation services; and blanket certificate authorization to engage in certain routine activities, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

As part of a coordinated pipeline project designed to transport 1.4 Bcf per day of natural gas from Empress, Alberta to the Joilet, Illinois area, Viking Voyageur proposes to construct the United States portion of the pipeline facilities. The proposed pipeline facilities will interconnect with several interstate pipelines and local distribution companies and will directly provide service to various delivery points in Minnesota, Wisconsin, and Illinois. Upon acceptance of the requested certification, Viking Voyageur will be a natural gas company subject to the Commission's jurisdiction.

In Docket No. CP98–60–000, Viking Voyageur requests authorization to construct, own, operate, and maintain approximately 773 miles of 42-inch diameter pipeline originating at a point of interconnection with the Canadian portion of the coordinated project at the U.S./Canada border at Noyes, Minnesota (near Emerson, Manitoba). The proposed pipeline facilities would extend through Minnesota and Wisconsin to a terminus in Will County, Illinois. Viking Voyageur also proposes to construct twenty-two meter stations and compression facilities totaling 124,000 horsepower. The compression facilities will be located in Kittson and Otter Tail Counties, Minnesota and Polk and Waushara Counties, Wisconsin. The project cost is estimated to be about $1.24 billion.

Viking Voyageur requests a preliminary determination on non-environmental issues by April 1, 1998, and a final order granting certificate authority by November 1, 1998, in order to meet a proposed in-service date of November 1, 1999.

In Docket No. CP98–62–000, Viking Voyageur submitted an application pursuant to Section 3 of the NGA, part 153 of the Commission's regulations, and Executive Order 10485, as amended by Executive Order 12038, and the Secretary of Energy's Delegation Order No. 0204–112, for Section 3 authorization and a Presidential Permit to site, construct, operate, and maintain certain facilities for the importation of natural gas to be located at the international border between the United States of America and Canada near Noyes, Minnesota.

In Docket No. CP98–64–000, Viking Voyageur requests a blanket certificate under Part 284, Subpart G of the Commission's regulations. Viking Voyageur filed a *pro forma* tariff that offers firm and interruptible transportation with flexible delivery points. Viking Voyageur offers two negotiated rate options—either a 10-year or a 15-year negotiated rate contract—as alternatives to Commission approved cost-of-service recourse rates for a 15-year term for firm transportation.

In Docket No. CP98–65–000, Viking Voyageur requests a blanket certificate authorizing construction operation, and abandonment of certain facilities under Part 157, Subpart F of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 28, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE, 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. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. 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.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have environmental comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3, 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 these applications if no motion to intervene is

filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Viking Voyageur to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29944 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–59–000]

Williams Natural Gas Company; Notice of Request under Blanket Authorization

November 7, 1997.

Take notice that on October 31, 1997, Williams Natural Gas Company (Williams), Post Office Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP98–59–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon in place a portion of the 12-inch Independence pipeline lateral, along with related facilities and services, all of which are located in Cass County, Missouri. Williams makes such request under its blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Williams proposed to abandon in place, and cap approximately 6.09 miles of the Independence 12-inch lateral pipeline. Williams also proposes to abandon in place, by sale to Missouri Gas Energy (MGE) approximately 1.95 miles of the Independence 12-inch lateral pipeline, along with related services and facilities, and the Raymore town border station. It is stated that the 12-inch Independence pipeline was originally constructed, to enable Williams to supply the natural gas requirements of MGE, in the Independence, Missouri area.[1] The Raymore town border station was originally installed in 1963 and certificated in Docket No. CP63–345.[2]

Williams states that the Lee's Summit town border meter will become a single point of delivery for MGE. Williams further states that to maintain service to the Lee's Summit town border location, it will construct a tie-over line from its Sugar Creek line to the Lee's Summit town border station pursuant to Section 311 of the NGPA.

Williams indicates that the most recent volumes of gas delivered to the Raymore town border station was 7,565 MMcf on a peak day with 595,035 MMcf delivered annually. It is stated that service to the Raymore town border facility will continue to be provided by MGE.

Williams indicates that MGE will integrate into its system, the facilities that Williams has designated to sell to MGE in this proceeding. It is averred that one domestic customer, located on the 1.95-mile segment, will be impacted by the proposed abandonment.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29943 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

[1] The 12-inch pipeline segment proposed to be abandoned herein, was certificated in Docket No. G–756, 5 FPC 820, Cities Service Gas Company (1946).

[2] Cities Service Gas Company, 30 FPC 1,100 (1963).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–56–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

November 7, 1997.

Take notice that on October 30, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP98–56–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate new metering and associated appurtenant facilities for use in providing delivery of transportation service gas to Bear Paw Operating Company, Inc. (Bear Paw), under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 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.

Williston Basin states that the facilities to be constructed at the proposed metering facility will consist of a building, an orifice meter, SCADA communication equipment and miscellaneous piping, gauges and valves, all of which will be constructed on existing right-of-way at the Baker Compressor Plant in Section 12, T7N, R59E, Fallon County, Montana. Williston Basin states that Bear Paw has requested installation of this metering facility to allow Williston Basin to make deliveries of up to 4,800 Mcf per day to Bear Paw to be used as emergency fuel at the Big Horn plant. The estimated cost of the proposed metering facilities is $11,400. The actual cost of the facility is 100% reimbursable by Bear Paw.

Williston Basin states that the addition of the proposed facilities will have no significant effect on its peak day or annual requirements, that the total volumes delivered will not exceed total volumes authorized prior to this request, that the existing tariff does not prohibit the addition of new delivery points and that there is sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29939 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Determination of Excess Petroleum Violation Escrow Funds for Fiscal Year 1998

AGENCY: U.S. Department of Energy, Office of Hearings and Appeals.

ACTION: Notice of determination of excess monies pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986.

SUMMARY: The Petroleum Overcharge Distribution and Restitution Act of 1986 requires the Secretary of Energy to determine annually the amount of oil overcharge funds held in escrow that is in excess of the amount needed to make restitution to injured parties. Notice is hereby given that $20,610,767 of the amounts currently in escrow is determined to be excess funds for fiscal year 1998. Pursuant to the statutory directive, these funds will be made available to state governments for use in specified energy conservation programs.

FOR FURTHER INFORMATION: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0107, (202) 426–1492 [Mann]; (202) 426–1449 [Klurfeld].

SUPPLEMENTARY INFORMATION: The Petroleum Overcharge Distribution and Restitution Act of 1986 (hereinafter PODRA), contained in Title III of the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99–509, establishes certain procedures for the disbursement of funds collected by the Department of Energy (hereinafter DOE) pursuant to the Emergency Petroleum Allocation Act of 1973 (hereinafter EPAA) or the Economic Stabilization Act of 1970 (hereinafter ESA). These funds, commonly referred to as oil overcharge funds, are monies obtained through enforcement actions instituted to remedy actual or alleged violations of those Acts.

PODRA requires the DOE, through the Office of Hearings and Appeals (hereinafter OHA), to conduct proceedings under 10 CFR Part 205, Subpart V, to accept claims for restitution from the public and to refund oil overcharge monies to persons injured by violations of the EPAA or the ESA. In addition, PODRA requires the Secretary of Energy to determine annually the amount of oil overcharge funds that will not be required for restitution to injured parties in these refund proceedings and to make this excess available to state governments for use in four energy conservation programs. This determination must be published in the **Federal Register** within 45 days after the beginning of each fiscal year. The Secretary has delegated this responsibility to the OHA Director.

Notice is hereby given that based on the best currently available information, $20,610,767 is in excess of the amount that is needed to make restitution to injured parties.

To arrive at that figure, the OHA has reviewed all accounts in which monies covered by PODRA are deposited. PODRA generally covers all funds now in DOE escrow which are derived from alleged violations of the EPAA or the ESA, with certain exclusions. Excluded are funds which (1) have been identified for indirect restitution in orders issued prior to enactment of PODRA; (2) have been identified for direct restitution in a judicial or administrative order; or (3) are attributable to alleged violations of regulations governing the pricing of crude oil and subject to the settlement agreement in *In re The Department of Energy Stripper Well Exemption Litigation,* M.D.L. No. 378 (D. Kan., July 7, 1986). As of September 30, 1997, the total in escrow subject to the PODRA procedures was $96,366,739.

The OHA has employed the following methodology to determine the amount of excess funds. We took special account of the provision of PODRA which directs that ''primary consideration [be given] to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making [direct] restitution.'' Thus, in proceedings in which refund claims are pending, we have on a claim-by-claim basis examined pending claims and established reserves sufficient to pay the amount of these claims. The reserves also include all refunds ordered by the OHA since the end of the last fiscal year on September 30, 1997, but not yet paid. For proceedings in which all claims have been considered or in which no claims have been filed, and the deadline for filing claims has passed, all funds remaining are excess. Small amounts of interest accrued, until transfer, on funds in accounts that were closed (with a zero balance) in the fiscal year 1997 PODRA determination (61 FR 58545 (1996)) are included as part of the ''excess'' for fiscal year 1998. No ''other commitments'' are reflected in the reserves.

As indicated above, the total escrow account equity subject to PODRA is $96,366,739. The total amount needed as reserves for direct restitution in those cases is $75,755,972. When this figure is subtracted from the former, the remainder—$20,610,767—is the amount in fiscal year 1998 that is ''in excess'' of the amount that will be needed to make restitution to injured persons. The Appendix to this Notice sets forth for each refund case within the OHA's jurisdiction the total amount eligible for distribution under PODRA and the ''excess'' amount.

Accordingly, $20,610,767 will be transferred to a separate account within the United States Treasury and made available to the States for use in the designated energy conservation programs in the manner prescribed by PODRA.

Dated: November 7, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

AMOUNT AVAILABLE FOR INDIRECT RESTITUTION IN FY 1998

Name of company	Consent order number	Equity as of Sept. 30, 1997	Amount available in FY 98
ATLANTIC RICHFIELD CO (ARCO)	RARH00001Z	$11,566,398.41	$7,000,000.00
ENRON CORPORATION	730V00221Z	21,225,255.49	3,200,000.00
TEXACO INC	RTXE006A1Z	3,166,580.85	3,166,580.85

AMOUNT AVAILABLE FOR INDIRECT RESTITUTION IN FY 1998—Continued

Name of company	Consent order number	Equity as of Sept. 30, 1997	Amount available in FY 98
ANCHOR GASOLINE CORPORATION	740S01247Z	4,821,029.39	1,500,000.00
GETTY OIL COMPANY	RGEA00001Z	6,515,165.75	1,500,000.00
EASON OIL COMPANY	740S01314Z	4,771,886.91	1,000,000.00
PERMIAN CORPORATION	650X00246T	1,607,933.32	1,000,000.00
WITCO CHEMICAL CORP	240S00054Z	912,335.34	912,335.34
HOUMA OIL CO	640H10422W	432,725.63	432,725.63
GULF OIL CORPORATION	RGFA00001Z	3,914,723.65	400,000.00
ESTE OIL COMPANY	533H00163T	76,895.24	76,895.24
PRODUCT TRACKING—PODRA	999DOE005W	68,191.04	68,191.04
G & G OIL COMPANY	550H00332T	59,892.61	59,892.61
KICKAPOO OIL	570H00214T	49,785.49	49,785.49
BELL FUELS INC	570H00195T	41,441.15	41,441.15
RECO PETROLEUM INC	320H00304T	32,290.43	32,290.43
GENERAL PETROLEUM	550H00075T	28,128.31	28,128.31
VERMONT MORGAN CORP	110H00514T	24,729.79	24,729.79
SKINNEY'S INC	400H00227T	19,514.04	19,514.04
CAPITOL 66 OIL COMPANY	422H00238T	19,229.53	19,229.53
MAXWELL OIL CO.	000H00425Z	18,854.94	18,854.94
LAMPTON–LOVE INC	422T00013T	15,834.29	15,834.29
CUMBERLAND FARMS DAIRY INC	120K00497T	7,567.04	7,567.04
EMPIRE GAS CORPORATION	720T00521Z	7,392.49	7,392.49
SOS MONARCH OIL CORP	240H00498T	7,193.33	7,193.33
N C GINTHER COMPANY	710V03022T	5,983.41	5,983.41
METROPOLITAN PETROLEUM CO, INC	414H00171Z	5,736.27	5,736.27
JEDCO INC	421K00107W	4,326.42	4,326.42
E–Z SERVICE INC	400H00220T	3,722.26	3,722.26
BEACON BAY ENTERPRISES, INC	999K90120T	1,015.95	1,015.95
MOCKABEE GAS & FUEL CO	311H00342W	752.83	752.83
ELWOOD CHEVRON SERVICE	999K90098T	547.67	547.67
DALCO PETROLEUM	660T00642Z	39.86	39.86
MARATHON PETROLEUM CO	RMNA00001Z	23.33	23.33
SUNSET BLVD CAR WASH	999K90113T	22.54	22.54
GENERAL EQUITIES, INC.	110H00527Z	15.41	15.41
QUANTUM CHEMICAL CORPORATION	720V01245Z	0.02	0.02
AOC ACQUISITION CORPORATION	RCKH016A1Z	10,089,118.08	0.00
GOOD HOPE REFINERIES INC.	150S00154Z	3,973,915.80	0.00
GULF STATES OIL & REFINING	6E0S00057T	609,991.91	0.00
HUDSON OIL CO. INC	740S01258W	9,214,807.75	0.00
INTERCOASTAL OIL CO	940X00076T	35,303.15	0.00
KENNY LARSON OIL CO	000H00439W	5,152.10	0.00
MACMILLAN OIL COMPANY, INC	730T00031Z	601,344.51	0.00
OASIS PETROLEUM CORP	940X00217Z	2,174,279.49	0.00
SHELL OIL COMPANY	RSHA00001Z	5,670.793.37	0.00
TESORO PETROLEUM CORP	BUBBBBBBBB	2,117,333.61	0.00
VESSELS GAS PROCESSING, LTD.	740V01387W	2,441.538.79	0.00
Totals		96,366,738.99	20,610,767.51

[FR Doc. 97–30004 Filed 11–13–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

(ER–FRL–5486–3)

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 27, 1997 Through October 31, 1997 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) 564–7176. 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–AFS–K65199–AZ Rating EC2, Windmill Range Allotment Management Plan, Cattle Grazing Use, Implementation, Coconino National Forest, Mormon Lake, Peaks and Sedona Ranger Districts, Coconino and Yavapal County, AZ.

Summary: EPA expressed environmental concerns and recommeded that the FEIS should include specific information on water quality monitoring, enforcement measures to ensure full compliance with the proposed allotment management plan, and fall back options in case adequate funding and resources are not obtained or if monitoring indicates continuing decline of rangeland conditions. EPA suggested reconsideration of Alternative G or a modification of preferred Alternative F to address critical resource needs in the Munds Pocket and Foxboro herd range.

ERP No. D–AFS–K65200–CA Rating EC2, San Juan Fuels and Wildlife Project, Implementation, Tahoe National Forest, Nevada City Ranger District, Nevada County, CA.

SUMMARY: EPA expressed environmental concerns about potential exceedences of the threshold of concern (TOC) in five subwatersheds in the analysis area, and recommended that additional road obliterations be added to the project plan.

Final EISs

ERP No. F–BLM–K67044–CA Soledad Mountain Open Pit Leap Leach Gold Mine Project, Construction and Operation, Plan-of-Operations Approval, Mojave, Kern County, CA.

SUMMARY: EPA continued to have environmental concerns and recommended that BLM assure against significant impacts to local air quality from possible aggregate loading and hauling operations. EPA also recommended that the Record of Decision include specific actions for the Mitigation and Monitoring Program.

Dated: November 10, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–30022 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5486–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed November 3, 1997 Through November 7, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970429, Draft Supplement, NPS, CA, Yosemite Valley Comprehensive Implementation Plan, General Management Plan, Yosemite National Park, Mariposa, Madera and Tuolumne Counties, CA, Due: January 13, 1998, Contact: Alan Schmierer (415) 427–1441.

EIS No. 970430, Draft EIS, AFS, OR, Crown Pacific Limited Partnership Land Exchange Project, Implementation, Consolidate Land Ownership and Enhance Future Resource, Deschutes, Fremont and Winema National Forests, Deschutes, Jefferson, Klamath and Lake Counties, OR, Due: January 9, 1998, Contact: Kathy Farrell (541) 383–5571.

EIS No. 970431, Final EIS, FHW, NY, Stutson Street BIN–3317120 Over Genesee River (PIN 4751.05.121), from the Interchange of the Lake Ontario State Parkway and Latta Road to Lake Shore Boulevard, COE Section 10 and 404 Permit, and Coast Guard Bridge Permits, in the City of Rochester, Town of Greece and Irondequoit, Monroe County, NY, Due: December 15, 1997, Contact: Harold J. Brown (518) 431–4127.

EIS No. 970432, Final EIS, AFS, ID, Middle Fork Analysis Area Management Plan, Implementation, Nez Perce National Forest, Selway Ranger District, Idaho County, ID, Due: December 15, 1997, Contact: Jerome A. Bird (208) 926–4258.

EIS No. 970433, Final EIS, FHW, PA, US 202 Section 700 Corridor, Improvements, from PA 63 in Montgomeryville to the PA–611 Bypass in Doylestown Township, COE Section 404 Permit and Right-of-Way, Montgomery and Bucks Counties, PA , Due: December 31, 1997, Contact: Ronald W. Carmichael (717) 221–3461.

EIS No. 970434, Draft EIS, COE, FL, Sunny Isles (North Miami) Proposed Modification to Segment of the Dade County Beach Erosion Control and Hurricane Protection Project, Dade County, FL, Due: December 29, 1997, Contact: Kenneth Dugger (904) 232–1686.

EIS No. 970435, Final EIS, FRC, MS, Destin Natural Gas Pipeline Project, Construction and Operation, Six Major Interstate Pipelines in the Gulf of Mexico, Southern Natural Gas, COE Section 10 and 404 Permits, Right-of-Way and Special-Use Permits, MS, Due: December 15, 1997, Contact: Paul McKee (202) 208–1088.

EIS No. 970436, Draft EIS, EDA, PA, Lackawanna
County New Business Park, Development and Operation, Funding Support from Economic Development Administration (EDA) under Title I, Site Lies Within Moosic Mountain Range, Straddling Jessup and Olyphant Boroughs, Lackawanna County, PA, Due: December 29, 1997, Contact: Edward L. Hummel (215) 597–6767.

EIS No. 970437, FINAL EIS, FHW, WI, WI-TH–29 (Wisconsin Corridors 2020 Project) Improvements, Linking I–94 in eastern Dunn to WI-TH–29/CTH J Interchange in south-central Chippewa, Funding and COE 404 Permit, Dunn and Chippewa Counties, WI, Due: December 15, 1997, Contact: Johnny M. Gerbitz (608) 829–7500.

EIS No. 970438, Draft EIS, COE, CA, 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, Due: December 29, 1997, Contact: Tiffany Welch (805) 641–2935.

EIS No. 970439, Draft EIS, IBR, CA, Programmatic EIS—Central Valley Project Improvement Act (CVPIA) of 1992 Implementation, Central Valley, Trinity, Contra Costa, Alameda, Santa Clara and San Benito Counties, CA, Due: February 06, 1998, Contact: Alan Candlish (916) 978–5190.

EIS No. 970440, Draft Supplement, SCS, WV, North Fork Hughes River Watershed Project, New Information Concerning Zebra Mussels Assessment and Recreational Benefits Update, Ritchie County, WV, Due: December 29, 1997, Contact: Lynn Shutts (Ext 167) (304) 291–4152.

EIS No. 970441, Final EIS, AFS, OR, Kalmiopsis Wilderness, Approval for Motorized Vehicular Access to the Private Property within the Chetco River Drainage, Special-Use-Permit Issuance, Illinois Valley Ranger District, Siskiyou National Forest, Curry County, OR, Due: December 15, 1997, Contact: Don McLennan (541) 592–2166.

EIS No. 970442, Draft EIS, USN, CA, Hunters Point (Former) Naval Shipyard Disposal and Reuse, Implementation, City of San Francisco, San Francisco County, CA, Due: December 29, 1997, Contact: Mary Doyle (650) 244–3024.

EIS No. 970443, Final EIS, COE, AZ, Tucson Drainage Area Arizona, Implementation, Reduce Flooding, City of Tucson, Pima County, AZ, Due: December 15, 1997, Contact: William Butler (213) 452–3845.

EIS No. 970444, Final Supplement, NOA, Snapper Grouper Fishery, Amendment 8 to the Fishery Management Plan, Regulatory Impact Review, South Atlantic Region, Due: December 15, 1997, Contact: Rolland A. Schmitter (301) 713–2239.

EIS No. 970445, Draft EIS, NPS, CA, Backcounty and Wilderness Management Plan, General Management Plan Amendment, Joshua Tree National Park, Riverside and San Bernardino Counties, CA, Due: December 29, 1997, Contact: Alan Schmierer (415) 427–1441.

Amended Notices

EIS No. 970426, Draft EIS, AFS, KY, Daniel Boone National Forest Off-Highway Vehicle (OHV) Management Policy, Modification, Several Counties, KY, Due: January 09, 1998, Contact: Kevin Lawrence (606) 745–3100.

Published FR—11–07–97—Due Date correction.

Dated: November 10, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–30023 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5920–9]

Investigator-Initiated Grants: Request for Applications

AGENCY: Environmental Protection Agency

ACTION: Notice of request for applications.

SUMMARY: This notice provides information on the availability of the fiscal year 1998 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedule are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research area within the solicitation and are listed below.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703R), 401 M Street SW, Washington DC 20460, telephone (800) 490–9194. The complete announcement can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa.

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Ecological Indicators, (2) Drinking Water, (3) Air Pollution Chemistry and Physics, (4) Urban Air Toxics, (5) Health Effects and Exposures to Particulate Matter and Associated Air Pollutants, and (6) Decision-making and Valuation for Environmental Policy (joint with the National Science Foundation). Applications must be received as follows: January 15, 1998, for topic (6); January 29, 1998, for topics (3) and (5); February 12, 1998, for topic (4); and February 26, 1998 for topics (1) and (2).

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact person for the Ecological Indicators RFA is Barbara Levinson (levinson.barbara@epamail.epa.gov), telephone 202–564-6911; for Drinking Water, William Stelz (stelz.william@epamail.epa.gov), telephone 202–564–6834; for Air Pollution Chemistry and Physics, Urban Air Toxics, and Health Effects and exposures to Particulate Matter and Associated Air Pollutants is Deran Pashayan (pashayan.deran@epamail.epa.gov), telephone 202–564–6913; and for Decision-making and Valuation for Environmental Policy is Deborah Hanlon (hanlon.deborah@epamail.epa.gov), telephone 202–5646836.

Dated: November 3, 1997.

Approved for publication:

S. A. Lingle,

Acting Assistant Administrator for Research and Development.

[FR Doc. 97–30018 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5921–9]

Mississippi River/Gulf of Mexico Watershed Nutrient Task Force Meeting

The U.S. Environmental Protection Agency (EPA) Announces the Following Meeting

Name: First Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force.

Time and Date: 9:30 a.m.–5:00 p.m., December 4, 1997.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209, telephone 703/524–6400.

Status: Open to the public, limited only by the space available. The room accommodates approximately 150 people.

Purpose: A Task Force consisting of Federal, State, and Tribal members, will lead an effort to coordinate and support nutrient management and hypoxia related activities in the Mississippi River and Gulf of Mexico watersheds.

Matters To Be Discussed: Agenda items include: eutrophication of large areas of the Gulf of Mexico associated with drainage of the Mississippi River Basin; economic and ecological effects of recurring periods of low dissolved oxygen (hypoxia) in the Gulf of Mexico; and coordination of activities to reduce the size, severity, and duration of this phenomenon. The public will be afforded an opportunity to provide comments on these issues. Anyone interested in speaking should contact the person listed below prior to the meeting.

Contact Person for More Information: Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), 401 M Street, S.W. (4503F), Washington, D.C. 20460, telephone 202/260–7061; Internet: belefski.mary@epamail.epa.gov.

Dated: November 10, 1997.

Dana Minerva,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 97–30016 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5921–5]

Announcement and Notice of Availability of the General Policy on Superfund Ability to Pay Determinations

SUMMARY: As part of EPA's continuing commitment to foster fairness in the enforcement process, the Agency is issuing this policy to explain what is necessary for an acceptable ability to pay (ATP) settlement in Superfund cases. It is EPA's intent to balance the need for settling environmental liability equitably without jeopardizing the viability of a business or creating an undue financial hardship for either businesses or individuals. The main text of the policy document addresses general issues that apply to the ATP process and ATP settlements. The policy document also contains two appendices that address issues specific to making ATP determinations for individuals and businesses. The policy document establishes an ''undue financial hardship'' standard for determining a party's ability to pay its share of Superfund cleanup costs, and uses a two-part analysis to determine what is an acceptable ATP settlement amount. The first part of the analysis, called the ''balance sheet phase,'' looks at the assets, liabilities, and owners' equity of the ATP Candidate, calculating the amount of money available from excess cash, the sale of assets that are not ordinary and necessary, borrowing against assets, and owners' equity. The second part of the analysis, called the ''income and cash flow statement phase,'' looks at the income and expenses of the party and generally calculates ''available income'' for a Superfund settlement over a five-year period. In calculating ''available income,'' the analysis takes into account ''increased future needs'' (i.e., ordinary and necessary expenses that will be incurred by the ATP Candidate that have not been incurred in the past or that were incurred previously but which are expected to be significantly greater than in the past).

FOR FURTHER INFORMATION CONTACT: Policy and Guidance Branch, Policy and Program Evaluation Division, Office of Site Remediation Enforcement, 401 M St., SW, 2273A, Washington, D.C. 20460. Phone: (202) 564–5115. The policy is available electronically at http://www.epa.gov/envirosense/oeca/osre/osredoc.html. Copies of the policy can be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Each order must reference the NTIS item number, PB97–199731. For telephone orders or further information on placing an order, call NTIS at (703) 487–4650 or (800) 553-NTIS. For orders via E-mail/Internet, send to the following address: orders@ntis.fedworld.gov.

Dated: September 30, 1997.

Barry Breen,

Director, Office of Site Remediation Enforcement.

[FR Doc. 97–30011 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5921–6]

Announcement and Notice of Availability of the Guidance on EPA Participation in Bankruptcy Cases

SUMMARY: The purpose of this guidance is to identify the factors to be considered by the Environmental Protection Agency in determining whether to participate in a bankruptcy case, including whether to pursue collection of costs or penalties against debtors who have liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or other environmental statutes. This guidance also addresses issues in bankruptcy cases relating to the abandonment of contaminated property, cleanup activities under CERCLA on property included in the bankruptcy estate, and the impact of the automatic stay on different types of administrative and judicial enforcement activities. It supersedes the ''Guidance Regarding CERCLA Enforcement Against Bankrupt Parties,'' OSWER Directive #9832.7 (May 24, 1984) and the ''Revised Hazardous Waste Bankruptcy Guidance,'' OSWER Directive #9832.8 (May 23, 1986).

FURTHER INFORMATION CONTACT: Andrea Madigan, USEPA Region IV, 61 Forsyth Street, Atlanta, GA 30303. Phone: (404) 562–9518. Copies of the document are available from the Policy and Guidance Branch, Policy and Program Evaluation Division, Office of Site Remediation Enforcement, 401 M St., SW, 2273A, Washington, D.C. 20460. Phone: (202) 564–5115. The guidance document is also available electronically at http://www.epa.gov/envirosense/oeca/osre/osredoc.html. Copies of the policy can be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Each order must reference the NTIS item number, PB98–103146. For telephone orders or further information on placing an order, call NTIS at (703) 487–4650 or (800) 553–NTIS. For orders via E-mail/Internet, send to the following address: orders@ntis.fedworld.gov.

Dated: September 30, 1997.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–30014 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5921–8]

Announcement and Notice of Availability of an Addendum to the ''Interim CERCLA Settlement Policy'' Issued on December 5, 1984

SUMMARY: This memorandum is an addendum to the ''Interim CERCLA Settlement Policy'' which was issued by the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Justice (DOJ) on December 5, 1984 (50 FR 5024, February 5, 1985). That policy sets forth the general principles governing settlements with potentially responsible parties under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). On June 3, 1996, EPA issued an ''Interim Guidance on Orphan Share Compensation for Settlors of Remedial Design/Remedial Action and Non-Time-Critical Removals.'' Because that guidance document does not apply to CERCLA cost recovery settlements in which the parties are not agreeing to perform remedial design/remedial action work or a non-time critical removal, EPA and DOJ are issuing the addendum to provide the Regions with direction for addressing potential compromises of CERCLA cost recovery claims due to the existence of a significant orphan share.

FOR FURTHER INFORMATION CONTACT: Laura Bulatao (202–564–6028) or Deniz Ergener (202–564–4233), Office of Site Remediation Enforcement, 401 M St., SW, 2273A, Washington, D.C. 20460 or Bob Brook in the Environmental Enforcement Section of the Department of Justice at (202) 514–2738. This addendum is available electronically at http://www.epa.gov/envirosense/oeca/osre/osredoc.html. Copies of this document can be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Each order must reference the NTIS item number, PB98–103138. For telephone orders or further information on placing an order, call NTIS at (703) 487–4650 or (800) 553-NTIS. For orders via E-mail/Internet, send to the following address: orders@ntis.fedworld.gov.

Dated: September 30, 1997.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance Environmental Protection Agency.

[FR Doc. 97–30012 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5921–7]

Announcement and Notice of Availability of the Interim Policy on Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Punitive Damages Claims for Noncompliance with Administrative Orders

SUMMARY: This policy is intended to make calculation of civil penalties and punitive damages under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for purposes of settlement a fair and effective process for deterring noncompliance with EPA's administrative orders. The policy contains an innovative approach toward penalty calculation which takes into account factors particularly relevant to CERCLA cases by incorporating both harm and equitable adjustment factors into a single ''harm-recalcitrance'' matrix. Factors such as the noncomplier's degree of responsibility for the site and ability to finance compliance with an administrative order are considered early in the calculation process to encourage companies that have greater responsibility for the creation of the CERCLA site and/or are better able to finance a cleanup to step forward and work with other viable potentially responsible parties to take responsibility

for cleanups. The policy provides for smaller penalties for noncompliance by smaller contributors to Superfund sites, companies with limited financial resources, and less sophisticated parties. This policy reserves the highest penalties for the most egregious offenders—the noncompliers who are financially capable of performing, who are most responsible for creating the Superfund site, and whose failure to perform results in actual harm to human health, the environment, or EPA's enforcement and response program, or results in serious inequities to complying parties. Consistent with the Agency's ''Policy on Civil Penalties'' (Feb. 16, 1984), this policy should be used only in cases where the government is settling civil penalty and punitive damages claims.

FURTHER INFORMATION CONTACT: Steven Rollin, Policy and Guidance Branch, Policy and Program Evaluation Division, Office of Site Remediation Enforcement, 401 M St., SW, 2273A, Washington, D.C. 20460. Phone: (202) 564–5142. The policy is available electronically at http://www.epa.gov/envirosense/oeca/osre/osredoc.html. Copies of this document can be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Each order must reference the NTIS item number, PB97–208086. For telephone orders or further information on placing an order, call NTIS at (703) 487–4650 or (800) 553-NTIS. For orders via E-mail/Internet, send to the following address: orders@ntis.fedworld.gov.

Dated September 30, 1997.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–30013 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5921–2]

Proposed CERCLA Administrative De Minimis Settlement—Chemical Handling Corporation Site, Jefferson County, Colorado

AGENCY: Environmental Protection Agency.

ACTION: Notice and Request for Public Comment.

SUMMARY: In accordance with the requirements of Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative *de minimis* settlement under section 122(g) of CERCLA, 42 U.S.C. 9622(g), concerning the Chemical Handling Corporation site located at 11811 Upham Street, near the City of Broomfield, in unincorporated Jefferson County, Colorado (''Site''), with the settling parties listed in the Supplementary Information portion of this notice. The settlement, embodied in a proposed Administrative Order on Consent (''AOC''), is designed to resolve fully each settling party's liability at the Site through a covenant not to sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973. The proposed AOC requires the Potentially Responsible Parties (''PRPs'') listed in the Supplementary Information section below to pay an aggregate total of $131,646.24 to address their liability to the United States related to response actions taken at the Site.

OPPORTUNITY FOR COMMENT: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado. Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before December 15, 1997.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado. Comments and requests for a copy of the proposed settlement should be addressed to Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, and should reference the Chemical Handling Corporation Site, Jefferson County, Colorado and EPA Docket No. CERCLA VIII–97–05.

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6970.

SUPPLEMENTARY INFORMATION: Notice of proposed administrative *de minimis* settlement under section 122(g) of CERCLA, 42 U.S.C. 9622(g): In accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice is hereby given that the terms of the Administrative Order on Consent (''AOC'') have been agreed to by the following settling parties, for the following amounts (where the name of a party is followed by a ''/,'' that indicates that the name following the ''/'' is the name of the party as it appears on the AOC signature page):

AOC CERCLA, VIII–97–05

Name of party	Settlement amount
ADK Pressure Equipment Corp/Joslyn Company, LLC	$2,129.10
Advantage Advertising	263.72
Antique Refinisher, Inc	263.72
B.F. Pirelli's/Brad Fukui	263.72
Boyd Distributing/Boyd Investment Co	131.86
Cascade Collision/Cascade Collision, Inc	131.86
Chemcraft Sadolin International/Robert Schwartz	5,221.61
Coat Rite/Coats and Colors, Inc	145.04
Don's Auto Body	580.66
E/M Corporation/West Lafayette Corporation	8,148.88
E.T.I. Tank Cleaners/Southern Tank Cleaning, Inc	725.22

AOC CERCLA, VIII–97–05—Continued

Name of party	Settlement amount
Easter-Owens Electric Co	4,180.77
Econo Auto Painting (Little Rock)	2,535.56
Econo Auto Painting (Little Rock)	
Econo Auto Painting (Sherwood)	
Ed Black's Chevrolet Center/Casa Chevrolet	1,305.40
Front Range Dodge/Front Range Auto, Inc	395.58
Golden Geophysical/Fairfield Industries Incorporated	967.77
GTE Maintenance Department/GTE Southwest, Inc	19,581.04
Hallmark Cabinets	638.73
Harpers/FHL Group	4,206.30
Hoffmantown Body Shop	851.64
J.M. Martinac Shipbuilding/J.M. Martinac Shipbuilding Corporation	12,348.76
Kevin's Body Shop/Kevin's Auto Body and Paint	851.64
King Fiber Glass Corp., Fiber Resin Supply Div./CMI/Composite Materials Inc	10,026.11
Kresco Industrial Coatings/RFI Industries Inc	263.72
Lazer Products/Paper Manufacturers Company	263.72
Martin Marrietta ISG/Lockheed Martin	145.04
Metaltech Industries, Inc	1,374.24
New Mexico State Land Office	92.30
Odyssey Transportation/Odyssey Transportation Inc., of Nevada	741.71
Pacific Enterprises Oil Co	870.27
Partridge Industrial Coatings	5,535.65
Peachwood HOA, Inc./Peachwood Homeowners Association	448.32
Pollard Friendly Motor Co	580.66
Precision Body Shop Volkswagen/Suzuki/Precision Sales and Service Inc./RDS Inc	1,793.28
Precision Prefinish Inc./Precision Prefinishing, Inc	3,336.03
Rovalve, Technaflow/Technaflow, Inc	5,366.66
Smith.Wolf Construction	5,037.01
Sorrells Body Shop, Inc	212.91
Spradley Lincoln Mercury	395.58
Starr Corp./Starr Corp. International	387.11
Starwood Air Service/Aspen Base Operation, Inc	263.72
Teledyne Getz (Denseo)/Teledyne Water Pik, division of Teledyne Industries, Inc	9,871.27
Teledyne Pines (H & H Tool)/Edward W. Slavin, Jr	425.82
Television Technology, Inc./Larcan—TTC	4,471.10
Town & Country Auto Center/Emanuel Bugelli	395.58
Twin City Optical/Twin City Optical Co., Inc	395.58
United Express—Air Wisconsin/Air Wisconsin Airlines Corporation	4,645.30
Verticel Honeycomb/Hexacomb Corporation	2,109.74
Western Slope Refining	6,329.23
Total	131,646.24

By the terms of the proposed AOC, the setting parties will pay a combined $131,646.24 to the Hazardous Substance Superfund. This payment represents approximately 4.6% of the $2,859,862.00 in response costs that EPA has incurred through March 31, 1997. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the United States and by private parties is between $2,926,862.00 and $3,000,000.00. To date, approximately $1,000,000.00 of these response costs have been recovered, primarily through earlier *de minimis* settlements. The setting parties under this AOC arranged for the disposal of 42,351.25 gallons of hazardous substances to the Site. This amount represents approximately 3.55% of the 1,193,613.15 gallons of hazardous substances manifested to the Site by all generators, both *de minimis* and non-*de minimis*.

In exchange for payment, EPA will provide the settling parties with a covenant not to sue under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and under section 7003 of the Solid Waste Disposal Act, as amended (also known as the Resource Conservation and Recovery Act), which will resolve fully each settling party's liability at the Site.

The amount that each individual PRP will pay, as shown above, was based upon the number of gallons of hazardous substances manifested to the Site. The total amount of settlement dollars owed by each party to the settlement was arrived at by multiplying the cost per gallon by the number of gallons a party manifested to the Site (''Base Amount'') and then adding to this amount a premium payment equal to 9% or 60% (see discussion below) of the Base Amount. The cost per gallon of $2.1494287739 was derived by dividing the estimated total response costs at the time of calculation of $2,887,862.00 by the 1,193,613.15 total gallons of hazardous substances manifested to the Site.

To be eligible for the *de minimis* settlement, each PRP must have contributed no more than .7% of the total volume of hazardous substances manifested to the Site. PRPs that were identified or located subsequent to EPA's first *de minimis* settlement offer in March 1996 were allowed to participate in the current proposed settlement at the 9% premium level. PRPs that had been offered the opportunity to participate in EPA's first *de minimis* settlement offer in March 1996, but chose not to do so, have been allowed to participate in the current

proposed *de minimis* settlement at a 60% premium level.

It is so agreed:

Dated: November 5, 1997.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 97–30031 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5920–2]

Proposed Administrative Order on Consent With Compromise of CERCLA Response and Oversight Costs

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed AOC.

SUMMARY: U.S. EPA is proposing to sign and issue an Administrative Order on Consent (AOC) under Section 106 of CERCLA for a removal action at the Lake (Petro) Station Superfund Site. Respondents have agreed to perform a full clean up, in return for USEPA waiving response and oversight costs of approximately $20,000. U.S. EPA Today is proposing to sign and issue this AOC because it achieves a necessary removal action at a Site where there was problematic historical evidence of liability.

DATES: Comments on this proposed settlement must be received by December 15, 1997.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Ms. Noemi Emeric at (312) 886–0995 before visiting the Region V Office). Ms. Noemi Emeric, OPA (P19–J), U.S. Environmental Protection Agency, Region V, Office of Superfund, Removal and Enforcement Response Branch, 77 W. Jackson Blvd., Chicago, Illinois 60604.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Ms. Noemi Emeric, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 886–0995.

FOR FURTHER INFORMATION CONTACT: Ms. Noemi Emeric, Office of Public Affairs, at (312) 886–0995.

SUPPLEMENTARY INFORMATION: The Lake (Petro) Station Truck Stop Superfund Site is a 44 acre Truck Stop facility consisting of several buildings and parking lots. The Site is bordered immediately to the north by a creek and a truck stop, to the south by Interstate Highway 94, to the east by an interstate highway exchange, and to the west by Ripley Street. On July 18, 1996, several drums were discovered in the rear of the property by Mr. Jack Danskins, Regional Manager of Welsh Oil, Inc. He observed seven 55-gallon drums, six 30-gallon drums, and sixteen 5-gallon containers. There was spilled material from one of the 5-gallon containers which covered an approximate two-square-foot area. Welsh Oil, Inc., contracted OSI Environmental, Inc., for assistance (stabilization of the materials). After U.S. EPA and the Indian a Department of Environmental Management (IDEM) were contacted, and had sampled and assessed the situation, U.S. EPA contacted the named Respondent parties (due to some of the containers bearing their companies names) and negotiated an Administrative Order on Consent for the remainder of the removal action.

A 30-day period, beginning on the date of publication, is open pursuant to 42 U.S.C. section 122(i) of CERCLA for comments on the proposed settlement.

Comments should be sent to Ms. Noemi Emeric of the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

Thomas Turner,

Assistant Regional Counsel, United States Environmental Protection Agency.

[FR Doc. 97–30015 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5920–5]

Final NPDES General Permits for Discharges Resulting From Implementing Corrective Action Plans for Cleanup of Petroleum UST Systems in Texas (TXG830000), Louisiana (LAG830000), Oklahoma (OKG830000) and New Mexico (NMG830000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final issuance of NPDES general permits.

SUMMARY: EPA Region 6 today issues National Pollutant Discharge Elimination System (NPDES) general permits authorizing discharges resulting from implementing Corrective Action Plans for the cleanup of Petroleum UST Systems in Texas, Louisiana, Oklahoma, New Mexico and the Pueblos of Santa Clara, San Juan, Pojoaque, Nambe and Picuris. A Petroleum UST System is an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils. The permits place limits on benzene, Total BTEX and pH for all discharges, as well as limits on polynuclear aromatic hydrocarbons (PAH) for discharges from cleanups of Petroleum UST Systems other than gasoline, jet fuel and kerosene. Additional limits include those on lead and Total Petroleum Hydrocarbons in the Texas permit, lead and TOC in the Louisiana permit, Total Organic Carbon and Total Phenols in the Oklahoma permit, and lead, Chemical Oxygen Demand, No Visible Oil Sheen, as well as a biomonitoring requirement, in the New Mexico permit.

DATES: The limits and monitoring requirements in these permits shall become effective December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Wilma Turner, EPA Region 6 1445 Ross Avenue, Dallas Texas 75202–2733, telephone (214) 665–7516. Copies of the complete response to comments may be obtained from Ms. Turner. The general permits and response to comments may be found on the Internet at http://www.epa.gov/earth1r6/6wq/6wq.htm.

SUPPLEMENTARY INFORMATION: Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Operators of facilities discharging waste waters resulting from the cleanup of underground storage tank systems that contain petroleum substances, such as motor fuels, jet fuels and fuel oils.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in Part I,

Section A.1 of these permits. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. section 1342, EPA proposed and solicited public comment on NPDES General Permits TXG830000, LAG830000, OKG830000 and NMG830000 at 61 FR 37894 (July 22, 1996). The comment period closed on September 20, 1996. Region 6 received written comments from Texas Natural Resources Conservation Commission, Louisiana Department of Environmental Quality, Oklahoma Department of Environmental Quality, Louisiana Mid-Continent Oil and Gas Association, Texas Mid-Continent Oil and Gas Association, American Petroleum Institute and Amoco Corporation.

EPA Region 6 has considered all comments received. In response to the comments, minor changes were made in the Texas and Louisiana permits and some monitoring frequency changes were made in the Oklahoma permit. Several changes were made to the permits for the Santa Clara and Pojoaque Pueblos as a result of conditional certifications received from these Pueblos. The Colorado River Salinity Standards requirements were removed from the Santa Clara and Pojoaque Pueblo permits. In addition, the COD limit was removed and a Total Phenols limit was added to the Santa Clara Pueblo permit.

Most of the commentors requested increasing the benzene and BTEX limits to those contained in current state-issued permits. Louisiana Department of Environmental Quality (LDEQ) commented that the overall influent and effluent averages for benzene and BTEX from LDEQ data were higher than the assumptions and the limits in the proposed permits. At EPA's request, they submitted these data to the Region. EPA declines to increase the BAT limits from those that were proposed. The administrative record supports the BAT limits for benzene and BTEX as proposed, as does the large body of data submitted by LDEQ. An examination of the nearly 2000 LDEQ data points each for both benzene and BTEX showed the proposed permit limits could be met the vast majority of the time. When the proposed limits were not being met, they were generally very high levels and caused by treatment system malfunctions.

Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. The Region has received certification from the Texas Natural Resources Conservation Commission for TXG830000, the Louisiana Department of Natural Resources for LAG830000 and the New Mexico Environment Department for NMG830000. In addition, certification was received by the Pueblo of San Juan, and certifications with conditions were received by the Pueblos of Santa Clara and Pojoaque. The conditions of these certifications and the changes made to the permit requirements applying to discharges at these Pueblos are discussed in the Supplemental Information section, above. Certification was waived by the Oklahoma Department of Environmental Quality for OKG830000 and by the Pueblos of Nambe and Picuris. Certification was denied by the Pueblos of Sandia and Isleta. As a result of these certification denials, the general permits will not cover discharges at the Pueblos of Sandia and Isleta.

B. Endangered Species Act

The permit limits are sufficiently stringent to assure state water quality standards, both for aquatic life protection and human health protection, will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of these permits is unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA received written concurrence from the United States Fish and Wildlife Service.

C. Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this permit.

D. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12866.

E. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

F. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As discussed previously in the Fact Sheet for the proposed permits, compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by these permits. This lack of significant impact is due, in part, to the State Reimbursement Fund's reimbursement to the discharger of all NPDES permit compliance costs, except for a small deductible amount. EPA Region 6 therefore certifies, pursuant to the provisions of 5 U.S.C. 605(b), that the permits issued today will not have a significant impact on a substantial number of small entities.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq: the ''Act''), these permits authorize discharges to Waters of the United States resulting from the cleanup of Petroleum UST Systems (as defined in 40 CFR 280) in Texas, Louisiana, Oklahoma, New Mexico and the Pueblos of Santa Clara, San Juan, Pojoaque, Nambe and Picuris in New Mexico. These permits do not authorize such discharges in the Pueblos of Sandia and Isleta in New Mexico. The discharges are authorized in accordance with effluent limitations and other conditions set forth in Parts I and II of these permits.

In order for discharges to be authorized by these permits, operators of facilities discharging waste waters resulting from the cleanup of Petroleum UST Systems must submit written notification to the Regional Administrator that they intend to be covered (See Part I.A.2). Unless otherwise notified in writing by the Regional Administrator after submission of the notification, operators requesting coverage are authorized to discharge under these general permits. Operators who fail to notify the Regional Administrator of intent to be covered

are not authorized to discharge under these general permits.

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historic Places are not authorized to discharge under these permits.

These permits shall become effective at midnight, Standard Time on December 15, 1997.

These permits and the authorization to discharge shall expire at midnight, Central Standard Time on December 16, 2002.

Signed this 28th day of October, 1997.

Oscar Ramirez, Jr.,

Deputy Director, Water Quality Protection Division, EPA Region 6.

Part I. Requirements for NPDES Permits

Section A. Permit Applicability and Coverage Conditions

1. Discharges Covered

Discharges covered by these permits are discharges to Waters of the United States resulting from implementing corrective action plans, as required by 40 CFR Part 280, for cleanup of ground water contaminated by releases from Petroleum UST Systems. A Petroleum UST System is defined in 40 CFR Part 280 as an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils.

2. Notification Requirements

Dischargers desiring coverage under these general permits must submit a Notice of Intent (NOI) which shall include the legal name and address of the operator, the location of the discharge (including the street address, if applicable, and county of the facility for which the notification is submitted), the name of the receiving water, and a description of the activity and the pollutant source (for example, gasoline, diesel, etc.). The NOI shall also include the application/permit number if an application for an individual NPDES permit has previously been submitted for the facility of if an individual NPDES permit has been previously been issued to the facility. The NOI shall be submitted (1) for existing discharges, within 30 days of the effective date of these permits, (2) for new discharges, at least fourteen (14) days prior to commencement of discharge.

All notifications of intent to be covered and any subsequent reports shall be sent to the following address: Customer Service Branch (6WQ–C), U.S. Environmental Protection Agency, Region 6, P.O. Box 50625, Dallas, TX 75250.

Upon receipt of the NOI, the facility will be notified of its specific facility identification number that must be used on all correspondence with the Agency.

3. Termination of Operations

Where all discharges associated with activities authorized by this permit are eliminated, or where the operator of the discharge associated with activity at a facility changes, the operator of the facility must submit a Notice of Termination that is signed in accordance with Part II.D.11 of this permit. The Notice of Termination shall include the following information: legal name, mailing address and telephone number of the operator; the facility identification number assigned by the Agency; and the location of the discharge.

Section B

1. Any operator authorized by these permits may request to be excluded from the coverage under these general permits by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator.

2. When an individual NPDES permit is issued to an operator otherwise subject to these general permits, the applicability of the general permit to the permittee is automatically terminated on the effective date of the individual permit.

Section C. General Permit Limits

1. Permit Conditions Applicable to TXG830000

Flow	Daily avg	Daily max estimate
Benzene	5 ug/l (1)	5 ug/l (1)
Total BTEX	100 ug/l (2)	100 ug/l (2)
Total Petroleum Hydrocarbons	15 mg/l (3)	15 mg/l (3)
Total Lead	250 ug/l	250 ug/l
Polynuclear Aromatic Hydrocarbons	10 ug/l (4)	10 ug/l (4)
pH 6.0–9.0 Std. Units		

Monitoring shall be 1/week using grab samples, except for Polynuclear Aromatic Hydrocarbons (PAH's). If compliance with the limit is demonstrated for at least 6 months, the minimum frequency shall be reduced to 2/month upon the permittee's submission of a certification of such compliance. If a subsequent non compliance occurs, the frequency shall revert to 1/week until another 6 month period of compliance occurs.

PAH monitoring shall be 1/month using grab samples. If compliance with the limits is demonstrated for at least 6 months, the minimum frequency shall be reduced to once per 3 months upon the permittee's submission of a certification of such compliance. If a subsequent non compliance occurs, the frequency shall revert to 1/month.

Flow shall be monitored 1/week.

(1) For Discharge Monitoring Report calculations and reporting requirements for benzene, analytical test results less than 10 ug/l may be reported as zero.

(2) BTEX shall be measured as the sum of benzene, toluene, ethylbenzene, and xylenes. EPA Method 8020 shall be used for the measurement of xylenes including ortho-, meta-, and para-xylenes.

(3) Shall be measured using EPA Method 418.1.

(4) The Daily Max limit and monitoring requirement for PAH's do not apply to discharges from the cleanup of Petroleum UST Systems containing only gasoline, jet fuel and/or kerosene. The Daily Max value of any of the following PAH's shall not exceed 10 ug/l: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(ghi)perylene, benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3,cd)pyrene, naphthalene, phenanthrene, pyrene.

2. Permit Conditions Applicable to LAG830000

Flow	Monthly avg	Daily max estimate
Benzene	5 ug/l (1)	5 ug/l (1)
Total BTEX	100 ug/l (2)	100 ug/l (2)
Total Lead	50 ug/l	50 ug/l
TOC	50 mg/l	50 mg/l
Polynuclear Aromatic Hydrocarbons	10 ug/l (3)	10 ug/l (3)
pH 6.0—9.0 Std. Units		

Monitoring shall be 1/week using grab samples, except for PAH's. After demonstrating permit limit compliance for 4 consecutive weeks, the frequency shall be reduced to 1/month upon the permittee's submission of a certification of such compliance. After a subsequent limit violation, the frequency reverts week until another 4 week compliance period is demonstrated. During the first 4 weeks of discharge, however, a limit violation increases frequency to daily until a sample demonstrates compliance, after which it will revert to 1/week for the remainder of the initial 4 week discharge period.

PAH monitoring shall be 1/month using grab samples with the requirements corresponding to those listed above applying except the frequency after 4 consecutive months of compliance is 1/quarter and a violation reverting the frequency to 1/month until 4 consecutive months of compliance are achieved.

Flow shall be monitored 1/week.

(1) For Discharge Monitoring Report calculations and reporting requirements for benzene, analytical test results less than 10 µg/l may be reported as zero.

(2) BTEX shall be measured as the sum of benzene, toluene, ethylbenzene, and xylenes. EPA Method 8020 shall be used for the measurement of xylenes including ortho-, meta-, and para-xylenes.

(3) The limits and monitoring requirements for PAH's do not apply to discharges from the cleanup of Petroleum UST Systems containing only gasoline, jet fuel and/or kerosene. The Daily Avg and Daily Max value of any of the following PAH's shall not exceed 10 µg/l: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(ghi)perylene, benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3,cd)pyrene, naphthalene, phenanthrene, pyrene.

3. Permit Conditions Applicable to OKG830000

Flow	Daily avg	Daily max estimate
Benzene	5 µg/l (1)	5 µg/l (1)
Total BTEX	100 µg/l (2)	100 µg/l (2)
Polynuclear Aromatic Hydrocarbons	10 µg/l (3)	10 µg/l (3)
Total Phenols	0.15 mg/l	0.25 mg/l
Total Organic Carbon	75 mg/l	95 mg/1

pH 6.5—9.0 Std. Units

Monitoring shall be once per week using grab samples, except for PAH's. After demonstrating permit limit compliance for six consecutive months, the minimum frequency will be reduced to two per month upon the permittees submission of a certification of such compliance. If a subsequent violation occurs, the frequency shall revert to once per week.

PAH's shall be monitored 1/month. Flow shall be monitored daily.

(1) For Discharge Monitoring Report calculations and reporting requirements for benzene, analytical test results less than 10 ug/l may be reported as zero.

(2) BTEX shall be measured as the sum of benzene, toluene, ethylbenzene, and xylenes. EPA Method 8020 shall be used for the measurement of xylenes including ortho-, meta-, and para-xylenes.

(3) The limits and monitoring requirements for PAH's do not apply to discharges from the cleanup of Petroleum UST Systems containing only gasoline, jet fuel and/or kerosene. The Daily Avg and Daily Max value of any of the following PAH's shall not exceed 10 ug/l: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(ghi)perylene, benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3,cd)pyrene, naphthalene, phenanthrene, pyrene.

4. Permit Conditions Applicable to NMG830000 for the State of New Mexico and the Pueblos of Santa Clara, San Juan, Pojoaque, Nambe and Picuris

a. Permit Limits

Flow	Daily avg	Daily max estimate
Benzene	5 ug/l (1)	5 ug/l (1)
Total BTEX	100 ug/l (2)	100 ug/l (2)
Polynuclear Aromatic Hydrocarbons	10 ug/l (3)	10 ug/l (3)
pH 6.0— 9.0 Std. Units		
Chemical Oxygen Demand (COD)(4)	125 mg/l	125 mg/l
Total Lead	50 ug/l	50 ug/l
Total Phenols (5)	4.6 ug/l	4.6 ug/l
No Visible Oil Sheen		

There shall be no discharge of floating solids or visible foam in other than trace amounts.

All facilities located within the Colorado River System shall comply with the Colorado River Salinity Control Forum's policies for implementation of Colorado River Salinity Standards. Note: this requirement does not apply to discharges at the Pueblos of Santa Clara and San Juan.

Monitoring shall be 1/week for Flow, Benzene, BTEX, pH, COD and Lead using grab samples. PAH's shall be monitored 1/month using grab samples. No Visible Oil Sheen shall be monitored 2/week using grab samples of the effluent collected in a wide mouth glass container of at least 500 ml capacity. The Oil Sheen observations must be reported and recorded.

(1) For Discharge Monitoring Report calculations and reporting requirements for benzene, analytical test results less than 10 ug/l may be reported as zero.

(2) BTEX shall be measured as the sum of benzene, toluene, ethylbenzene, and xylenes. EPA Method 8020 shall be used for the measurement of xylenes including ortho-, meta-, and para-xylenes.

(3) The Daily Max limit and monitoring requirement for PAH's do not apply to discharges from the cleanup of Petroleum UST Systems containing only gasoline, jet fuel and/or kerosene. The Daily Max value of any of the following PAH's shall not exceed 10 ug/l: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(ghi)perylene, benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3,cd)pyrene, naphthalene, phenanthrene, pyrene.

(4) The COD limit and monitoring requirement does not apply to Santa Clara Pueblo discharges.

(5) The Total Phenols limits and monitoring requirements apply only to Santa Clara Pueblo discharges.

b. Whole Effluent Toxicity Testing (48-Hour Acute NOEC Freshwater)

Whole effluent toxicity testing (48 hr. static renewal [1]	Frequency	Type
Pimephales promelas (Fathead minnow)	1/Quarter	24-Hr. Composite.

[1] The first biomonitoring test shall be conducted on the effluent prior to the initial discharge. If no significant lethal effects are experienced in the first year of testing, the testing frequency will be reduced to once/year.

(1) Scope and Methodology

(a) The permittee shall test the effluent for toxicity in accordance with the provisions in this section.

Critical Dilution: 100% effluent.
Composite Sample Type: 24-hour composite.
Test Species/Methods: 40 CFR Part 136.

Pimephales promelas (Fathead minnow) acute static renewal 48-hour definitive toxicity test using EPA/600/4–90/027F, or the latest update thereof. A minimum of five (5) replicates with eight (8) organisms per replicate must be used in the control and in each effluent dilution of this test.

(b) The NOEC (No Observed Effect Concentration) is defined as the greatest effluent dilution which does not result in lethality that is statistically different from the control (0% effluent) at the 95% confidence level.

(2) Persistent Lethality

The requirements of this subsection apply only when a toxicity test demonstrates significant lethal effects at the critical dilution. Significant lethal effects are herein defined as a statistically significant difference at the 95% confidence level between the survival of the appropriate test organism in a specified effluent dilution and the control (0% effluent).

(a) The permittee shall conduct a total of two (2) additional tests for any species that demonstrates significant lethal effects at the critical dilution. The two additional tests shall be conducted monthly during the next two consecutive months. The permittee shall not substitute either of the two additional tests in lieu of routine toxicity testing. The full report shall be prepared for each test required by this section in accordance with procedures outlined in Item 4 of this section.

(b) If one or both of the two additional tests demonstrates significant lethal effects at the critical dilution, the permittee shall submit an application for an individual NPDES permit.

(3) Required Toxicity Testing Conditions

(a) Test Acceptance

The permittee shall repeat a test, including the control and the critical dilution, if the procedures and quality assurance requirements defined in the test methods or in this permit are not satisfied, including the following additional criteria:

i. Each toxicity test control (0% effluent) must have a survival equal to or greater than 90%.

ii. The percent coefficient of variation between replicates shall be 40% or less in the control (0% effluent) for the Fathead minnow survival test.

iii. The percent coefficient of variation between replicates shall be 40% or less in the critical dilution, *unless* significant lethal effects are exhibited for the Fathead minnow survival test.

Test failure may not be construed or reported as invalid due to a coefficient of variation value of greater than 40%. A repeat test shall be conducted within the required reporting period of any test determined to be invalid.

(b) Statistical Interpretation

For the Fathead minnow survival test, the statistical analyses used to determine if there is a statistically significant difference between the control and the critical dilution shall be in accordance with the methods for determining the No Observed Effect Concentration (NOEC) as described in EPA/600/4–90/027F or the most recent update thereof.

If the conditions of Test Acceptability are met in Item 3.a above and the percent survival of the test organism is equal to or greater than 80% in the critical dilution concentration, the test shall be considered to be a passing test, and the permittee shall report an NOEC of not less than the critical dilution for the DMR reporting requirements found in Item 4 below.

(c) Dilution Water

i. Dilution water used in the toxicity tests will be receiving water collected as close to the point of discharge as possible but unaffected by the discharge. The permittee shall substitute synthetic dilution water of similar pH, hardness, and alkalinity to the closest downstream perennial water for;

(A) toxicity tests conducted on effluent discharges to receiving water classified as intermittent streams; and

(B) toxicity tests conducted on effluent discharges where no receiving water is available due to zero flow conditions.

ii. If the receiving water is unsatisfactory as a result of instream toxicity (fails to fulfill the test acceptance criteria of Item 3.a), the

permittee may substitute synthetic dilution water for the receiving water in all subsequent tests provided the unacceptable receiving water test met the following stipulations:

(A) a synthetic dilution water control which fulfills the test acceptance requirements of Item 3.a was run concurrently with the receiving water control;

(B) the test indicating receiving water toxicity has been carried out to completion (i.e., 48 hours);

(C) the permittee includes all test results indicating receiving water toxicity with the full report and information required by Item 4 below; and

(D) the synthetic dilution water shall have a pH, hardness, and alkalinity similar to that of the receiving water or closest downstream perennial water not adversely affected by the discharge, provided the magnitude of these parameters will not cause toxicity in the synthetic dilution water.

(d) Samples and Composites

i. The permittee shall collect two flow-weighted composite samples from the outfall(s) listed at Item 1.a above.

ii. The permittee shall collect a second composite sample for use during the 24-hour renewal of each dilution concentration the for both tests. The permittee must collect the composite samples so that the maximum holding time for any effluent sample shall not exceed 36 hours. The permittee must have initiated the toxicity test within 36 hours after the collection of the last portion of the first composite sample. Samples shall be chilled to 4 degrees Centigrade during collection, shipping, and/or storage.

iii. The permittee must collect the composite samples such that the effluent samples are representative of any periodic episode of chlorination, biocide usage or other potentially toxic substance discharged on an intermittent basis.

iv. If the flow from the outfall(s) being tested ceases during the collection of effluent samples, the requirements for the minimum number of effluent samples, the minimum number of effluent portions and the sample holding time are waived during that sampling period. However, the permittee must collect an effluent composite sample volume during the period of discharge that is sufficient to complete the required toxicity tests with daily renewal of effluent. When possible, the effluent samples used for the toxicity tests shall be collected on separate days. The effluent composite sample collection duration and the static renewal protocol associated with the abbreviated sample collection must be documented in the full report required in Item 4 of this section.

v. Multiple Outfalls: If the provisions of this section are applicable to multiple outfalls, the permittee shall combine the composite effluent samples in proportion to the average flow from the outfalls listed in Item 1.a above for the day the sample was collected. The permittee shall perform the toxicity test on the flow-weighted composite of the outfall samples.

(4) Reporting

(a) The permittee shall prepare a full report of the results of all tests conducted pursuant to this Part in accordance with the Report Preparation Section of EPA/600/4–90/027F, for every valid or invalid toxicity test initiated, whether carried to completion or not. The permittee shall retain each full report pursuant to the provisions of PART II.C.3 of this permit. The permittee shall submit full reports only upon the specific request of the Agency.

(b) A valid test for each species must be reported on the DMR during each reporting period specified in PART II.D.4 of this permit. Only ONE set of biomonitoring data is to be recorded on the DMR for each reporting period. The data submitted should reflect the LOWEST Survival results during the reporting period. All invalid tests, repeat tests (for invalid tests), and retests (for tests previously failed) performed during the reporting period must be attached to the DMR for EPA review.

(c) The permittee shall report the following results of each valid toxicity test on the subsequent monthly DMR for that reporting period in accordance with PART II.D.4 of this permit. Submit retest information clearly marked as such with the following month's DMR. Only results of valid tests are to be reported on the DMR.

Pimephales promelas (Fathead minnow)

i. If the No Observed Effect Concentration (NOEC) for survival is less than the critical dilution, enter a ''1''; otherwise, enter a ''0'' for Parameter No. TEM6C.

ii. Report the NOEC value for survival, Parameter No. TOM6C.

Part II. (Applicable to TXG830000, LAG830000, OKG830000 and NMG830000)

Section A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR Part 122.41, et. seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the ''Act'') as well as ALL applicable regulations.

2. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for terminating coverage under this permit, or for requiring a permittee to apply for and obtain an individual NPDES permit.

3. Toxic Pollutants

a. Notwithstanding Part II.A.4, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.

b. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR 122.62–64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

6. Duty To Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

7. Criminal and Civil Liability

Except as provided in permit conditions on ''Bypassing'' and ''Upsets'', nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the Permit may subject the Permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

8. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

9. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law, tribal law or regulation under authority preserved by Section 510 of the Act.

10. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

B. Proper Operation and Maintenance

1. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

2. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

4. Bypass of Treatment Facilities

a. *Bypass not Exceeding Limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II.B.4.b. and 4.c.

b. *Notice.* (1) Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated Bypass. The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part II.D.7.

c. *Prohibition of Bypass.* (1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required by Part II.B.4.b.

(2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part II.B.4.c(1).

5. Upset Conditions

a. *Effect of an Upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part II.B.5.b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. *Conditions Necessary for a Demonstration of Upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part II.D.7; and,

(4) The permittee complied with any remedial measures required by Part II.B.2.

c. *Burden of Proof.* In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Unless otherwise authorized, solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or waste water control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

C. Monitoring and Records

1. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by the law to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must

be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

4. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

5. Monitoring Procedures

a. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.

b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.

c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR Part 122.29(b); or,

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements listed at Part II.D.10.a.

2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

Coverage under these permits is not transferable to any person except after notice to the Director.

4. Discharge Monitoring Reports and Other Reports

Monitoring results obtained during the previous 12 months shall be summarized and reported to EPA and the appropriate State agency on the 28th day of the month following the end of the twelve month period on Discharge Monitoring Report (DMR) Form EPA No. 3320–1 in accordance with the ''General Instructions'' provided on the form. The permittee shall submit the original DMR signed and certified as required by Part II.D.11 and all other reports required by Part II.D. to the EPA at the address below. Duplicate copies of DMR's and all other reports shall be submitted to the appropriate State agency(ies) at the following address(es):

EPA

Compliance Assurance and Enforcement Division, Water Enforcement Branch (6EN–W), U.S. Environmental Protection Agency, Region 6, P.O. Box 50625, Dallas, TX 75250

New Mexico

Program Manager, Surface Water Quality Bureau, New Mexico Environment Department, 1190 Saint Francis Drive, Santa Fe, NM 87502

Oklahoma

Director, Oklahoma Department of Environmental Quality, 1000 NE 10th Street, Oklahoma City, OK 73117–1212

Louisiana

Assistant Secretary for Water, Water Pollution Control Division, Louisiana Department of Environmental Quality, P.O. Box 82215, Baton Rouge, LA 70884–2215

Pueblo of Santa Clara

Governor, Santa Clara Pueblo, P.O. Box 580, Espanola, NM 87532

Pueblo of Pojoaque

Manager, Environmental Department, Pueblo of Pojoaque, Route 11, Box 208, Santa Fe, MN 87501

Pueblo of San Juan

Governor, San Juan Pueblo, P.O. Box 1099, San Juan Pueblo, MN 87566

Pueblo of Nambe

Governor, Pueblo of Nambe, Route 1, Box 117BB, Santa Fe, NM 87501

Pueblo of Picuris

Governor, Pueblo of Picuris, P.O. Box 127, Penasco, NM 87553

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

7. Twenty-Four Hour Reporting

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally to the EPA Region 6 24-hour voice mail box telephone number 214–665–6593 within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,

(3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

b. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and,

(3) Violation of a maximum daily discharge limitation for any pollutants listed by the Director in Part II of the permit to be reported within 24 hours.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

d. For discharges covered by LAG830000: Louisiana State regulations require notification of noncompliances which may endanger health or the environment to Louisiana Department of Environmental Quality within one hour of becoming aware of the circumstances of the violation.

8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Parts II.D.4 and D.7 and Part I.C at the time monitoring reports are submitted. The reports shall contain the information listed at Part II.D.7.

9. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

10. Changes in Discharges of Toxic Substances

The permittee shall notify the Director as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

(1) One hundred micrograms per liter (100 ug/L);

(2) Two hundred micrograms per liter (200 ug/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/L) for 2,4-dinitro-phenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;

(3) Five (5) times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the Director.

b. That any activity has occurred or will occur which would result in any discharge, on a non routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

(1) Five hundred micrograms per liter (500 ug/L);

(2) One milligram per liter (1 mg/L) for antimony;

(3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the Director.

11. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified.

a. ALL PERMIT APPLICATIONS shall be signed as follows:

(1) by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,

(b) FOR A CORPORATION—The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) FOR A PARTNERSHIP OR SOLE PROPRIETORSHIP—by a general partner or the proprietor, respectively.

b. ALL REPORTS required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

(3) The written authorization is submitted to the Director.

c. Certification. Any person signing a document under this section shall make the following certification:

''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.''

12. Availability of Reports

Except for applications, effluent data, permits, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

E. Penalties for Violations of Permit Conditions

1. Criminal

a. *Negligent Violations.* The Act provides that any person who negligently violates permit conditions implementing Section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. *Knowing Violations.* The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. *Knowing Endangerment.* The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and

who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

d. *False Statements.* The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act)

2. Civil Penalties

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

3. Administrative Penalties

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

a. *Class I Penalty.* Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

b. *Class II Penalty.* Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

F. Definitions

All definitions contained in Section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. *Act* means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.

2. *Administrator* means the Administrator of the U.S. Environmental Protection Agency.

3. *Applicable Effluent Standards and Limitations* means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards or performance, toxic effluent standards and prohibitions, and pretreatment standards.

4. *Applicable Water Quality Standards* means all water quality standards to which a discharge is subject under the Act.

5. *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.

6. *Daily Discharge* means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the ''daily discharge'' is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the ''daily discharge'' is calculated as the average measurement of the pollutant over the sampling day. ''Daily discharge'' determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the ''daily discharge'' determination of concentration shall be arithmetic average (weighted by flow value) of all samples collected during that sampling day.

7. *Daily Average* (also known as MONTHLY AVERAGE) discharge limitations means the highest allowable average of ''daily discharge(s)'' over a calendar month, calculated as the sum of all ''daily discharge(s)'' measured during a calendar month divided by the number of ''daily discharge(s)'' measured during that month. When the permit establishes daily average concentration effluent limitations or conditions, the daily average concentration means the arithmetic average (weighted by flow) of all ''daily discharge(s)'' of concentration determined during the calendar month where C = daily concentration, F = daily flow and n = number of daily samples; daily average discharge =

$$\frac{C_1F_1 + C_2F_2 + \cdots + C_nF_n}{F_1 + F_2 + \cdots + F_n}$$

8. *Daily Maximum* discharge limitation means the highest allowable ''daily discharge'' during the calendar month.

9. *Director* means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.

10. *Environmental Protection Agency* means the U.S. Environmental Protection Agency.

11. *Grab Sample* means an individual sample collected in less than 15 minutes.

12. *National Pollutant Discharge Elimination System* means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of the Act.

13. *Severe Property Damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

14. *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

15. The term *''MGD''* shall mean million gallons per day.

16. The term *''mg/L''* shall mean milligrams per liter or parts per million (ppm).

17. The term *''μg/L''* shall mean micrograms per liter or parts per billion (ppb).

[FR Doc. 97–29864 Filed 11–13–97; 8:45 am]
BILLING CODE 6560–50–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 office 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.: 202–010776–105.

Title: Asia North America Rate Agreement (''ANERA'')

Parties:

American President Lines, Ltd.

Hapag-Lloyd Container Line GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd
Neptune Orient Lines, Ltd
Nippon Yusen Kaisha Line
Orient Overseas Container Lines, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Sea-Land Service, Inc.

Synopsis: The proposed modification adds a new Article 5.1(q) which authorizes the parties to consider and act upon proposals and recommendations of the Equipment Interchange Discussion Agreement with respect to activities within the scope of the ANERA agreement.

Agreement No.: 224–201040.

Title: Jaxport/Trailer Bridge Lease Agreement.

Parties: Jacksonville Port Authority (''Port'') Trailer Bridge, Inc. (''Trailer Bridge'').

Synopsis: The Agreement provides for the rental by Trailer Bridge of 17 acres at the Port's Blount Island Terminal and for Trailer Bridge's preferential, but non-exclusive use of to be constructed triple deck loading facility.

By Order of the Federal Maritime Commission.

Dated: November 7, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–29916 Filed 11–13–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 28, 1997.

A. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Michael Frank Maluccio, La Crescenta, California; Maluccio Company, Glendale, California; Nicholas J. Maluccio Trust, Glendale, Calfornia; and Malcor, Lancaster, California, parties acting in concert; to acquire voting shares of Verdugo Banking Company, Glendale, California.

Board of Governors of the Federal Reserve System, November 7, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29908 Filed 11–13–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Mystic Financial, Inc., Medford, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Medford Co-operative Bank, Medford, Massachusetts.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Hometown Bancorp, Ltd., Fond du Lac, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of St. Cloud Bancshares, Inc., St. Cloud, Wisconsin, and thereby indirectly acquire State Bank of St. Cloud, St. Cloud, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Western Bancshares Employee Stock Ownership Trust, Booneville, Arkansas; to become a bank holding company by acquiring at least 30.4 percent of the voting shares of First Western Bancshares, Inc., Booneville, Arkansas, and thereby indirectly acquire Citizens Bank, Booneville, Arkansas.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. GEBSCO, Inc., Cochrane, Wisconsin; to merge with Firstmondovi, Inc., Mondovi, Wisconsin, and thereby indirectly acquire Bank of Mondovi, Mondovi, Wisconsin.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. State National Bancshares, Inc., Lubbock, Texas; to acquire 100 percent of the voting shares of First Sierra, Bancshares, Inc., Truth or Consequences, New Mexico, and thereby indirectly acquire Sierra Bank, Las Cruces, New Mexico.

2. State National Bancshares, Inc., Lubbock, Texas, and State National Bancshares of Delaware, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of First National Bank of Denver City, Denver City, Texas.

F. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. VIB Corp., El Centro, California; to become a bank holding company by acquiring 100 percent of the voting shares of Valley Independent Bank, El Centro, California.

Board of Governors of the Federal Reserve System, November 7, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29909 Filed 11–13–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Nonbanking Activities or to Acquire Companies That are Engaged in Nonbanking Activities

Popular, Inc., Hato Rey, Puerto Rico (Notificant), has provided notice pursuant to section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. § 1843(c)(8)) (BHC Act), and section 225.24 of the Board's Regulation Y (12 CFR 225.24), to acquire through its wholly owned subsidiary, Popular Cash Express, Inc., Orlando, Florida, certain assets of Florida Exchange, Ltd., Oak Park, Illinois, and Mirando-J., Inc., Oak Park, Illinois, and thereby engage in the approved and new nonbanking activities. The approved activities are: (1) extending credit, servicing loans, and related activities, pursuant to § 12 C.F.R. 225.28(b)(1) of the Board's Regulation Y; (2) leasing personal and real property, pursuant to § 225.28(b)(3) of the Board's Regulation Y; (3) providing financial and investment advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y; (4) providing transactional services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; (5) providing investing and trading services, pursuant to § 12 C.F.R. 225.28(b)(8)(ii) of the Board's Regulation Y; (6) acting as principal, agent or broker for insurance related to extensions of credit, pursuant to § 225.28(b)(11)(i) of the Board's Regulation Y; (7) acting as agent or broker for insurance directly related to an extension of credit as would be sold by a finance company, pursuant to § 225.28(b)(ii) of the Board's Regulation Y; (8) issuing and selling money orders, savings bonds, and traveler's checks, pursuant to § 225.28(b)(13) of the Board's Regulation Y. Notificant also proposes to engage in (1) check cashing services; (2) accepting bill payments; (3) accepting or disbursing change in exchange for currency in a different denomination; and (4) transmitting or wiring money on a worldwide basis. *See Midland Bank, PLC*, 76 Fed. Res. Bull. 860 (1990); and *Norwest Corporation*, 81 Fed. Res. Bull. 974 (1995) and 81 Fed. Res. Bull. 1130 (1995).

In addition, the Notificant proposes to engage, either alone or as an incident to other activities, in the following new nonbanking activities that the Board previously has not determined are closely related to banking under section 4(c)(8) of the BHC Act: (1) selling bus passes, transit tokens, prepaid phone cards, event and attraction tickets, prepaid cellular phone time and other similar forms of alternate media of value; (2) selling postage stamps and postage-paid envelopes; (3) providing mailboxes and related services; (4) providing notary public services; (5) providing vehicle registration services and selling, distributing and renewing license plates and license tags for motor vehicles; (6) providing photocopying and facsimile transmission services; and (7) entering into arrangements with automobile clubs to promote membership in and services of such clubs. These activities will be conducted worldwide.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity that the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. A particular activity may be found to meet the ''closely related to banking'' test if it is demonstrated that banks generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 794, 806 (1984).

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on this issues presented by the notice and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 5, 1997. Any request for a hearing on this notice must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This notice may be inspected at the office of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 7, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29910 Filed 11–13–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Docket No. R–0989

Policy Statement on Payments System Risk; Modification to the Time Credits are Posted to Federal Reserve Accounts for Checks Drawn on Local Federal Reserve Banks for Purposes of Measuring Daylight Overdrafts

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy Statement.

SUMMARY: The Board has modified the daylight overdraft measurement rules to accommodate an earlier afternoon presentment deadline for checks drawn on local Federal Reserve Banks.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Myriam Payne, Senior Financial Services Analyst (202/452–3219), or Stacy Panigay, Financial Services Analyst (202/452–2934), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired *only*: Telecommunications Device for the Deaf, Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

When the Board modified the Payments System Risk Reduction policies in 1992 (57 FR 47093, October 14, 1992), it adopted a set of ''posting rules'' which comprise a schedule for the intraday timing of debits and credits to institutions' Federal Reserve accounts for different types of payments. With the implementation of these rules along with the imposition of fees for daylight overdrafts, the Board was interested in inducing behavioral changes to control risk and increase efficiency in the payments system. Under the daylight overdraft measurement rules that became effective on October 14, 1993, depository institutions that deposit in separately sorted cash letters Checks Drawn on Local Federal Reserve Banks

(i.e., Federal Funds checks), U.S. Treasury Checks, Postal Money Orders, and U.S. Savings Bonds Deposited under the EZ-Clear Program by 4 p.m. ET receive credit for these items at 5 p.m. ET.

Analysis of Federal Funds Checks Presentment Deadline

The Board believes that establishing a consistent presentment deadline for Federal Funds checks in all Federal Reserve districts will help reduce the routine use of Federal Funds checks.[1] Federal Funds checks are an inappropriate means of providing regular access to an institution's Federal Reserve account and their routine use is contrary to the Federal Reserve's strategy of promoting efficient and effective methods of payment. In almost all cases where Federal Funds checks are used as the payment instrument, the transaction could have been made through a more secure and efficient method, such as a funds transfer network. To discourage the use of Federal Funds checks and encourage depository institutions' use of more efficient means of payment, a 3 p.m. local time presentment deadline for Federal Funds checks will be implemented.

Policy Statement on Payments System Risk

The Federal Reserve Board has adopted the following changes to the ''Federal Reserve System Policy Statement on Payments System Risk,'' under the heading ''I. Federal Reserve Policy'':

Modified Procedures for Measuring Daylight Overdrafts

Post at 5:00 p.m. Eastern Time:

- Treasury checks, postal money orders, and EZ-Clear Savings Bond redemptions in separately sorted deposits. These items must be deposited by 4:00 p.m. Eastern Time.
- Local Federal Reserve Bank checks. These items must be presented before 3:00 p.m. Eastern Time.
- Processed manual letters of credit.

+/- Same-day ACH transactions. These transactions include ACH return items, check truncation items, and flexible settlement items.

Post after the close of Fedwire funds transfer system:

+/- All other non-Fedwire transactions. These transactions include the following: local Federal Reserve Bank checks presented after 3:00 p.m. Eastern Time but before 3:00 p.m. local time; noncash collection; credits for U.S. Treasury and government agency definitive security interest and redemption payments if the coupons or securities are received on or after the maturity date; Treasury Tax and Loan (TT&L) calls; subscriptions for SLGS; currency and coin shipments; small-dollar credit adjustments; all debit adjustments; and small-dollar check collections. Discount window loans and repayments are normally posted after the close of Fedwire as well; however, in unusual circumstances a discount window loan may be posted earlier in the day with repayment 24 hours later, or a loan may be repaid before it would otherwise become due.

By order of the Board of Governors of the Federal Reserve System, November 7, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29962 Filed 11–13–97; 8:45 am]

BILLING CODE 6210–01–P

[1] Federal Funds checks are drafts drawn by a depository institution against its account at a Federal Reserve Bank. These funds represent immediately available funds when presented for payment, and thus, when used, the checks are most often used to settle same-day securities transactions, interbank transfers, international transactions, real estate transactions, payments to state and local governments, Federal Reserve Bank transactions and for other situations where a bank check is required for legal reasons.

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:45 a.m., Wednesday, November 19, 1997, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., 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: November 12, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30108 Filed 11–12–97; 10:40 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, November 19, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda:

1. Proposed 1998–1999 Federal Reserve Board budget.

2. Proposed 1998–1999 budget for the Office of Inspector General.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: November 12, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30109 Filed 11–12–97; 10:40 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet on Monday, November 24, 1997, from 9:00 a.m. to 5:00 p.m., and Tuesday, November 25, 1997, from 8:30 a.m. to 3:00 p.m., in room 7C13 of the General Accounting Office building, 441 G St., NW., Washington, D.C.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact Government Auditing Standards. Any interested person may attend the meeting as an observer. Council discussions and reviews are open to the public.

For further information contact: Marcia Buchanan, Assistant Director, Government Auditing Standards, AIMD, (202) 512–9321.

Dated: November 7, 1997.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 97–29911 Filed 11–13–97; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), Data Policy and Standards Staff; Meeting

Name: ICD–9–CM Coordination and Maintenance (C&M) Committee meeting.

Times and Dates: 9 a.m.–5 p.m. December 4, 1997; 9 a.m.–5 p.m. December 5, 1997.

Place: The Health Care Financing Administration, Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public. In the interest of security, non-government employees must show a photo I.D., and sign-in to gain entrance to the building.

Purpose: The ICD–9–CM Coordination and Maintenance Committee will hold its final meeting of the 1997 cycle on Thursday, December 4 (Vol. 3 (Procedures)), and Friday, December 5 (Volumes 1 and 2 (Diagnosis)). The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters To Be Discussed: Agenda items will include:

Injury aftercare status
Palliative care
Ostomy complications
Late effects of CVA
Diabetes
Group B strep carrier status
Complications of artificial skin replacement
Update on ICD–10 Procedure Coding System
Platelet inhibitors
Artificial skin grafts
Stereotactic radiosurgery
Cardiomyostimulator
Percutaneous vascular puncture closure
Amniofusion
Injection or infusion of thrombolytic agent
Addenda

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Amy L. Blum, 301/436–7050 ext. 164 (diagnosis), or Amy Gruber 410/786–1542 (procedures), NCHS, CDC, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782.

Dated: November 7, 1997.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–29969 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Immunization Program (NIP) of the Centers for Disease Control and Prevention (CDC); Meeting

Name: Adolescent Immunization Meeting.

Time and Date: 7:30 a.m.–4 p.m. December 4, 1997.

Place: J.W. Marriott Hotel, Lenox, 3300 Lenox Road, NE Atlanta, Georgia 30326. Telephone 404/262–3344, fax 404/262–8803.

Status: The meeting is open to the public subject to the availability of conference room space. The meeting will be a round table discussion with public and private medical providers and experts who deal with adolescent health and immunization issues. Written comments will be accepted during the meeting or at the address below. Attendees must provide and pay for their own travel expenses.

Purpose: The meeting will bring together a small group of public and private medical experts, in adolescent health and immunization, to collaborate with the CDC in developing adolescent immunization disease reduction and coverage goals/objectives.

Matters To Be Discussed: CDC speakers will present background information; sample goals/objectives; year 2000 and possible 2010 Healthy People objectives; and other adolescent immunization health information. In addition, CDC speakers will describe vaccine-preventable diseases associated with adolescents and estimated immunization coverage levels.

Specific agenda items include adolescent immunization coverage goals; coverage estimates for childhood and adolescent immunization; adolescent disease reduction goals; epidemiology of vaccine preventable diseases in adolescents; implementation perspectives; HEDIS 3.0 adolescent immunization measures; and managed care organization adolescent immunization policies.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Edith Gary, Health Services Research and Evaluation Branch, Immunization Services Division, CDC, NIP, 1600 Clifton Road, NE, M/S E–52, Atlanta, Georgia 30333. Telephone 404/639–8209, fax 404/639–8615, e-mail exg1@cdc.gov.

Dated: November 7, 1997.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–29970 Filed 11–13–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0431]

Iatric Corp.; Revocation of Product License for Coccidioidin, USP (BioCox)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the biological product license issued to Iatric Corp., Tempe, AZ, for the manufacture of Coccidioidin, USP (BioCox). In a letter to FDA dated May 13, 1997, Iatric Corp. voluntarily requested revocation of its product license for Coccidioidin, USP (BioCox). In a letter dated June 25, 1997, FDA informed the firm that its product license for Coccidioidin, USP (BioCox) was revoked.

DATES: The revocation of the product license became effective June 25, 1997.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA has revoked the product license issued to Iatric Corp., 2330 South Industry Park Ave., Tempe, AZ 85282, for the manufacture of Coccidioidin, USP (BioCox).

FDA inspected Iatric Corp. on April 7 through 11, 1997. The inspection of the facility revealed serious deviations from applicable Federal regulations. The inspection also included a concurrent investigation concerning the interstate distribution of the product. The deficiencies noted included, but were not limited to, the following: (1) Failure

of each person engaged in the manufacturing, processing, packing, or holding of a drug product to have the necessary education, training, and experience to perform their assigned functions § 211.25(a) (21 CFR 211.25(a)); (2) failure to thoroughly investigate any unexplained discrepancy in drug product production and control records or the failure of a batch to meet any of its specifications (21 CFR 211.192); (3) failure to establish separate or defined areas or other control systems for manufacturing and processing operations to prevent contamination or mixups (§ 211.42(c) (21 CFR 211.42(c)) and 21 CFR 600.11(a)); (4) failure to establish and follow appropriate written procedures designed to prevent microbiological contamination of drug products purporting to be sterile and to assure that such procedures include validation of any sterilization processes (21 CFR 211.113(b)); (5) failure to report adverse experience information (21 CFR 600.80(c)); (6) failure to establish laboratory controls that include scientifically sound and appropriate specifications, standards, sampling plans, and test procedures designed to assure that components, drug product containers, closures, in-process materials, labeling, and drug products conform to appropriate standards of identity, strength, quality, and purity (21 CFR 211.160(b)); (7) failure to provide adequate space for the orderly placement of equipment and materials to prevent mixups between different components, drug product containers, closures, labeling, in-process materials, or drug products, and to prevent contamination (§ 211.42(b)); (8) failures to establish and/or follow written procedures for production and process controls designed to assure that the drug products have the identity, strength, quality, and purity they purport or are represented to possess and to assure that such procedures, including any changes, are drafted, reviewed, and approved by the appropriate organizational units and reviewed and approved by quality control (21 CFR 211.100); (9) failure to maintain buildings used in the manufacture, processing, packing, or holding of a drug product in a good state of repair (21 CFR 211.58); and (10) failure to demonstrate that adequate ventilation is provided (21 CFR 211.46(a)).

Based on the results of FDA's inspection and investigation, FDA determined that the firm's Coccidioidin, USP (BioCox) was adulterated within the meaning of section 501(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(b)) and in violation of section 351(a) of the Public Health Service Act (the PHS Act) (42 U.S.C. 262(a)). These products were also misbranded within the meaning of section 502(a) of the act (21 U.S.C. 352(a)).

FDA concluded that the nature of the deficiencies noted at Iatric Corp. were the direct consequence of a disregard for the applicable regulations and standards in the license application. These deficiencies also demonstrated management's failure to exercise control over the establishment in all matters relating to compliance and to ensure that personnel are adequately trained and supervised and have a thorough understanding of the procedures that they perform, as required by § 211.25. FDA determined that these deficiencies constitute a danger to the public health that warranted suspension under § 601.5(b) (21 CFR 601.5(b)) and 21 CFR 601.6(a).

In a letter to the firm dated April 25, 1997, FDA suspended the establishment license (U.S. License No. 0416) and product license for Coccidioidin, USP (BioCox). In a letter dated May 13, 1997, Iatric Corp. requested voluntary revocation of its product license for the manufacture of Coccidioidin, USP (BioCox).

FDA has placed copies of the letters relevant to the license revocation on file under the docket number found in brackets in the heading of this document with the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under § 601.5(a), section 351 of the PHS Act, and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the product license issued to Iatric Corp. for the manufacture of Coccidioidin, USP (BioCox) was revoked, effective June 25, 1997.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67(c).

Dated: October 31, 1997.

Mark Elengold,

Acting Deputy Director, Center for Biologics Evaluation and Research.

[FR Doc. 97–30028 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0453]

HealthTronics, Inc.; Premarket Approval of Lithotron™ Lithotripsy System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by HealthTronics, Inc., Marietta, GA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the LithoTron™ Lithotripsy System. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 21, 1997, of the approval of the application.

DATES: Petitions for administrative review by December 15, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Russell P. Pagano, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION: On May 16, 1997, HealthTronic, Inc., Marietta, GA 30060, submitted to CDRH an application for premarket approval of the LithoTron™ Lithotripsy System. The device is an extracorporeal shockwave lithotripter and is indicated for use in patients with renal and upper ureteral calculi between 4 and 20 millimeters in size.

In accordance with the provisions of section 515(c)(2) of the the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval was not referred to the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On July 21, 1997, CDRH approved the application by a letter to the applicant from the Deputy Director of Clinical and

Review Policy of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 15, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 17, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–30029 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0458]

NeuroControl, Corp.; Premarket Approval of Freehand System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by NeuroControl, Corp., Cleveland, OH, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Freehand System . After reviewing the recommendation of the Neurological Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 15, 1997, of the approval of the application.

DATES: Petitions for administrative review by December 15, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Levering G. Keely, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517.

SUPPLEMENTARY INFORMATION: On June 17, 1996, NeuroControl Corp., Cleveland, OH 44106, submitted to CDRH an application for premarket approval of the Freehand System . The system includes: Implantable receiver-stimulator Model 202–1, implantable epimysial electrode set Model 203–1, surgical electrode positioning kit Model 207–1, patient external system Model 204–1, and programming system Model 209–1. The system is an upper extremity neuroprosthesis and is intended to improve a patient's ability to grasp, hold, and release objects. The system is indicated for use in patients who: (1) Are tetraplegic due to C5 or C6 spinal cord injury (ASIA Classification), (2) have adequate functional range of motion of the upper extremity, (3) have intact lower motor neuron innervation of the forearm and hand musculature, and (4) are skeletally mature.

On September 25, 1996, the Neurological Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On August 15, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 15, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 16, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–30030 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs 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 December 4, 1997, 8:30 a.m to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Rhonda W. Stover, or Robinette Taylor, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12544. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 4, 1997, the committee will hear presentations from the Institute of Medicine on the marketed product Halcion® (triazolam, Pharmacia and Upjohn Co.).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 1, 1997. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 1, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 10, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30034 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL)

Program: Application Form—0915–0038—Extension, No Change. The Health Education Assistance Loan (HEAL) program provides federally-insured loans to students in schools of allopathic medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, or chiropractic, and graduate students in health administration or clinical psychology. Eligible lenders, such as banks, savings and loan associations, credit unions, pension funds, State agencies, HEAL schools, and insurance companies, make HEAL loans which are insured by the Federal Government against loss due to borrowers' death, disability, bankruptcy, and default. The basic purpose of the program is to assure the availability of funds for loans to eligible students who need to borrow money to pay for their educational costs.

The HEAL program is being phased out and no new loans will be made after September 30, 1998, unless reauthorization is enacted. We are, however, requesting a 3-year extension of the OMB approval of the HEAL Application Form HRSA–700 because lenders will continue to use this form for consolidation loans through fiscal year (FY) 2000. Students use the application to apply for HEAL loans (through FY 1998) and consolidation of loans, schools use the application to determine a student's eligibility and maximum approval amount of each loan (through FY 1998 only), and lenders use the application to determine student eligibility and the amount of the installment or disbursement to be given to the borrower, and to process consolidation loans.

The estimate of burden for the application form for FY 1998 is as follows:

Type of respondent	Number of respondents	Responses per respondent	Total number of responses	Burden per response (minutes)	Total burden hours
Applicants	8,230	1	8,230	25	3,429
Schools	190	41	7,730	32	4,123
Lenders	11	748	8,230	35	4,801
Total	8,431		24,190		12,353

The estimate of burden for the application form for FY 1999 and 2000 (for consolidation loans only) is as follows:

Type of respondent	Number of respondents	Responses per respondent	Total number of responses	Burden per response (minutes)	Total burden hours
Applicants	500	1	500	25	208
Lenders	11	45	500	35	292
Total	511		1,000		500

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 7, 1997.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–30027 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Health Resources and Services Administration

Notice of a Cooperative Agreement with the American Public Health Association

The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau announces that it will award a sole source cooperative agreement to the American Public Health Association (APHA).

The purpose of this cooperative agreement is to assist, collaboratively with APHA, in the development and dissemination of resource materials relating to the care and treatment of individuals with HIV/AIDS and the prevention of the disease among individuals who are at risk. In addition, this agreement will assist with the training of health professionals in the care, treatment, and prevention of HIV/AIDS. Specifically, these activities will include, but not be limited to, identifying areas where best practice standards need to be investigated and developed; identifying and developing science expertise in areas agreed to by HRSA as critical to the appropriate delivery of HIV/AIDS care; using that expertise to develop best practices; and disseminating to the public health community information on best practices.

HRSA will provide consultation, including administrative and technical assistance as needed, for the execution and evaluation of all aspects of this cooperative agreement. HRSA may also participate and/or collaborate with the APHA in any workshops or symposia to exchange current information, opinions, and research findings during this agreement.

The goal of HRSA in entering into this cooperative agreement is to strengthen effective HIV/AIDS treatment programs at all levels throughout the United States and its territories; to prevent HIV transmission and effect, maintain, measure, and evaluate behavioral change among individuals whose behavior places them at risk of HIV infection; to reduce risks of further transmission and to maintain the health of asymptomatic clients; and to increase collaboration, support and technical competence among agencies, organizations, groups, and constituencies.

Authorizing Legislation

This cooperative agreement is authorized under Section 2692 of the Public Health Service Act.

Background

Assistance will be provided to the American Public Health Association. No other applications are solicited. The HIV/AIDS Bureau is committed to providing program expertise throughout the nation to ensure that the providers of HIV/AIDS services to underserved and vulnerable populations deliver appropriate and quality care. The Bureau believes that APHA is uniquely qualified to work with HRSA to meet this goal for the following reasons:

1. APHA has more than 50,000 members and affiliates from 50 occupations of public health, including medicine, social work, nursing, health education, epidemiology, and program evaluation. It represents all disciplines and specialities of public health. It stimulates and coordinates the development of the scientific basis for the Association's professional and public health policy programs. The development of a public health HIV/AIDS science and service delivery assistance program with APHA automatically covers all relevant disciplines and specialities needed for this effort. Because of the rapidly changing field of HIV/AIDS service delivery, it is impossible to predict which expertise will be needed of the 50 public health occupations.

2. The mission of this organization is to ''prevent disease and promote health'' throughout the United States making APHA a national leader. APHA has a history of providing science expertise to develop best practices for the delivery of public health programs, including HIV/AIDS services. Currently, it provides professional education and services for its members in a variety of areas. The APHA has valuable experience with issues important to the delivery of HIV/AIDS care—health care in jails and prisons, outreach to underserved groups, women's health, and primary health care delivery in community settings. This experience enables the APHA to contribute significantly to this effort. APHA can identify areas needing best practices, identify experts in these areas, and assign individual experts and groups to develop best practices.

3. APHA has established relationships with the major associations that represent single public health disciplines, such as the American Medical Association, and associations that represent health profession schools, such as the Association of Schools of Public Health. It can use these ties to further identify needed experts in the HIV/AIDS service field.

Approximately $100,000 is available in fiscal year 1997 for the first year of a 3-year project period for this cooperative agreement. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact Mr. William Aspden, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Room 7–05, Rockville, Maryland 20857 or telephone (301) 443–1993.

Dated: November 7, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–30026 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–54]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* January 13, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Josie D. Harrison, Reports Liaison Officer, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, S.W. Room 5124, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, (202) 708–0836, extension 221 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as mended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information is: (1) 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; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology.

This Notice also lists the following information:

Title of Proposal: Housing Discrimination Information Form (Revision of the Housing Discrimination Complaint Form, HUD–903 (English); HUD 903–A, (Spanish).

OMB Control Number: 2529–0011.

Description of the need for the information and proposed use: The Department will use the Housing Discrimination Information Form for the collection of information from person(s) who wish to file a housing discrimination complaint. The form contains information necessary for HUD to make an initial determination regarding HUD's jurisdiction under the Fair Housing Act. Subsequently such date is used for notifying person(s) against whom a complaint is filed as required by Section 810 [42 U.S.C. 3610] of the Fair Housing Act; and Part 103, Subpart B, of the implementing regulations, 24 CFR Part 14 et. al., Implementation of the Fair Housing Amendments Act of 1988; Final Rule. The revised form is user-friendly; enhances the quality and clarity of information collected; reduces the time to complete it—from one hour to 20 minutes—and makes the public aware of their fair housing rights. The form will be distributed nationwide, as a printed, postage-paid flyer in English and Spanish. Further, once the form is approved, it will be downloaded onto the Internet for intrieval by complainants.

Agency form numbers, if applicable: Form HUD–903.1

Members of affected public: Individuals, households, or other entities who wish to file a complaint of housing discrimination under the Fair Housing Act.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: On an annual basis, 10,750 complainants, 1 response per complainant requiring 20 minutes per response = 3583 hours of response.

Status of the proposed information collection: Revision of a currently approved information collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, U.S.C. Chapter 35, as amended.

Dated: November 6, 1997.

Susan M. Forward,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 97–29961 Filed 11–13–97; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4196–N–05]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 15, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone

numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 4, 1997.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public/Private Partnerships for Mixed-Finance Development for Public Housing Units, (FR–4196).

Office: Public and Indian Housing.

OMB Approval Number: 2577–0033

Description of the Need for the Information and its Proposed use: The forms will provide the Department with sufficient information to determine relative funding priorities for localities, PHA eligibility to participate in the program, and whether project proposals meet the program requirements. PHAs must also provide information that must be met by the partnership before HUD will approve a proposal for mixed-finance development.

Form Number: HUD–52483A, 52651A, 52485, 51971–1, 51971–11, and 52482.

Respondents: State, Local, or Tribal Government and Business or Other For-Profit.

Frequency of Submission: Recordkeeping and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collections	334		1		13		4,635
Progress reviews	35		1		48		1,680
Recordkeeping	20		1		64		1,280

Total Estimated Burden Hours: 7,595.

Status: Reinstatement, with changes.

Contact: William Flood/David Sowell, HUD (202) 708–0282; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 4, 1997.

[FR Doc. 97–29960 Filed 11–13–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–29]

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.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD 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 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 13, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days form the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (3010) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available for suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this

Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *COE:* Mr. Robert Swieconek, Army Corps of Engineers, Management & Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–1749:

Transportation: Mr. Philip Rockmaker, Acting Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–1803; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; *Navy:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: November 6, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/14/97

Suitable/Available Properties

Buildings (by State)

California

3 Bldgs. La Mesa Village
Naval Support Activity
#39, 40, 117
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740030
Status: Excess
Comment: 3906 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

9 Bldgs. La Mesa Village
Naval Support Activity
#31, 33, 35, 36, 41, 116, 118, 121, 122
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740031
Status: Excess
Comment: 7109 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

5 Bldgs. La Mesa Village
Naval Support Activity
#32, 38, 42, 119, 123
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740032
Status: Excess
Comment: 4392 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

12 Bldgs. La Mesa Village
Naval Support Activity
#24–25, 45–48, 54–55, 57, 59, 113–114
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740033
Status: Excess
Comment: 4257 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

Bldg. 26 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740034
Status: Excess
Comment: 1276 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

23 Bldgs. La Mesa Village
Naval Support Activity
1–5, 27–30, 50–53, 83–85, 124–125, 129–132, 136
Monterey CA 93943–
Landholding Agency: Navy
Property Navy: 779740035
Status: Excess
Comment: 4482 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

9 Bldgs. La Mesa Village
Naval Support Activity
#137, 142–149
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740036
Status: Excess
Comment: 4482 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

Bldg. 115 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740037
Status: Excess
Comment: 6000 sq. ft., needs rehab, presence of lead paint, most recent use—carport

Bldg. 120 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740038
Status: Excess
Comment: 5200 sq. ft., needs rehab, presence of lead paint, most recent use—housing

Bldg. 23 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740039
Status: Excess
Comment: 2800 sq. ft., needs rehab, presence of lead paint, most recent use—carport

Bldg. 34 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740040
Status: Excess
Comment: 8600 sq. ft., needs rehab, presence of lead paint, most recent use—carport

Bldg. 37 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740041
Status: Excess
Comment: 5200 sq. ft., needs rehab, presence of lead paint, most recent use—carport

Bldg. 44 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740042
Status: Excess
Comment: 2400 sq. ft., needs rehab, presence of lead paint, most recent use—carport

Bldg. 49 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740043
Status: Excess
Comment: 7685 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—carport

Bldg. 56 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740044
Status: Excess
Comment: 2400 sq. ft., needs rehab, presence of lead paint, most recent use—carport

Missouri

Meteorological Observatory
323 Farm Road
Monett Co: Berry MO 65708–9351
Landholding Agency: GSA
Property Number: 549740006
Status: Surplus
Comment: 2230 sq. ft., most recent use—weather service office, presence of asbestos
GSA Number: 7–C–MO–0639

Nebraska

Forecast Office
11404 N 72nd Street
Omaha Co: Douglas NE 58102–
Landholding Agency: GSA
Property Number: 549740005
Status: Surplus
Comment: 4755 sq. ft., most recent use—weather service office, presence of asbestos
GSA Number: 7–C–NE–0522

Texas

Bldg. 115
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630001
Status: Surplus
Comment: 500 sq. ft., most recent use-garage, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 114
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630002
Status: Surplus
Comment: 3150 sq. ft. per floor, 2-story, most recent use— residence, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 113
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA

Property Number: 879630003
Status: Surplus
Comment: 200 sq. ft., most recent use—garage, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 112
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630004
Status: Surplus
Comment: 2880 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 111
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630005
Status: Surplus
Comment: 2880 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 110
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630006
Status: Surplus
Comment: 500 sq. ft., most recent use—garage, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 109
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630007
Status: Surplus
Comment: 2880 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 428
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630009
Status: Surplus
Comment: 2700 sq. ft., most recent use—warehouse/office, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 433
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630010
Status: Surplus
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 439
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630011
Status: Surplus
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 440
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630012
Status: Surplus
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 441
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630013
Status: Surplus
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 442
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630014
Status: Surplus
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 106
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630015
Status: Surplus
Comment: 2000 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 105
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630016
Status: Surplus
Comment: 1634 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 104
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630017
Status: Surplus
Comment: 1634 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 103
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630018
Status: Surplus
Comment: 1634 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 102
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630019
Status: Surplus
Comment: 1634 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Virginia

Bldg. 2069
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779740064
Status: Excess
Comment: 5000 sq. ft., most recent use—storage, off-site use only

Housing
Rt. 637—Gwynnville Road
Gwynn Island Co: Mathews VA 23066–
Landholding Agency: GSA
Property Number: 879120082
Status: Excess
Comment: 929 sq. ft., one story residence
GSA Number: 4–U–DE–461

Land (by State)

Colorado

Erie Substation
Hwy 87
Co: Weld CO
Landholding Agency: GSA
Property Number: 549740002
Status: Excess
Comment: 2.75 acres, most recent use—elecrtical substation, (transmission lines).

Nebraska

Radar Site
Hwy 92
Gandy Co: Logan NE 69163–
Landholding Agency: GSA
Property Number: 549740007
Status: Surplus
Comment: .52 acres
GSA Number: 7–C–NE–0523

South Dakota

Old Oahe Lock & Dam
Lake Oahe Project
Ft. Pierre Co: Stanley SD 57501–
Landholding Agency: GSA
Property Number: 549740004
Status: Excess
Comment: 1.91 acres, most recent use—old railroad grade, subject to existing easements
GSA Number: 7–D–SD–0520

Wyoming

Pavillion Substation
Wind River Meridian
Co: Fremont WY
Landholding Agency: GSA
Property Number: 549740003
Status: Excess
Comment: 0.11 acre tract, most recent use—powerline substation

Unsuitable Properties

Buildings (by State)

California

Bldg. 80
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740011
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. 95
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740012
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. 175
Naval Weapons Station, Concord
Concord CA 94520–5100

Landholding Agency: Navy
Property Number: 779740013
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. 179
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740014
Status: Excess
Reason: Secured Area

Bldg. 180
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740015
Status: Excess
Reason: Secured Area

Bldg. 197
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740016
Status: Excess
Reason: Secured Area

Bldg. A6A
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740017
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. A26
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740018
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. A30
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. E102
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740020
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. E104
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740021
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. E111
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740022
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1A9
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740023
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1A29
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740024
Status: Excess
Reason: Within 2000 ft. of flammable or explosive materials Secured Area

Bldg. 1A30
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740025
Status: Excess
Reason: Secured Area

Bldg. 1A35
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740026
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1A41
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740027
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1A44
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740028
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1A47
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740029
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 27, 30, 33, 36
Naval Command, Control & Ocean Surv. Center
San Diego CA
Landholding Agency: Navy
Property Number: 779740045
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Connecticut

Hezekiah S. Ramsdell Farm
West Thompson Lake
North Grosvenordale Co: Windham CT 06255–9801
Landholding Agency: COE
Property Number: 319740001
Status: Unutilized
Reason: Floodway Extensive deterioration

Michigan

Quarters B
U.S. Coast Guard
Marquette MI 49855–
Landholding Agency: DOT
Property Number: 879740001
Status: Unutilized
Reason: Secured Area

Missouri

South Coast Guard Base
Iron Street
St. Louis MO 63111–2536
Landholding Agency: GSA
Property Number: 549740010
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material Floodway Extensive deterioration
GSA Number: 7–U–MO–0576–B

North Carolina

Bldg. TC–614
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779740046
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. TT–38
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779740047
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 156
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740048
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 183
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740049
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 925
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740050
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 926
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740051
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 938
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740052
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 954
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy

Property Number: 779740053
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 1021
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740054
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 1098
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740055
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 1655
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740056
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 1738
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740057
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 1989
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740058
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 3172
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740059
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 3178
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740060
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 4260
Marine Corps Air Station
Havelock Co: Craven NC 28533
Landholding Agency: Navy
Property Number: 779740061
Status: Excess
Reason: Secured Area Extensive deterioration

Pennsylvania

Bldg. 022
Naval Inventory Control Point
Mechanicsburg PA 17055–0788
Landholding Agency: Navy
Property Number: 779740062
Status: Unutilized
Reason: Extensive deterioration

Bldg. 913
Naval Inventory Control Point
Mechanicsburg PA 17055–0788
Landholding Agency: Navy
Property Number: 779740063
Status: Unutilized
Reason: Extensive deterioration

Virginia

Bldg. 2081
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779740065
Status: Excess
Reason: Extensive deterioration

Bldg. 3138
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779740066
Status: Excess
Reason: Extensive deterioration

Land (by State)

South Carolina

1156 sq. ft. site
89 & 91 Broad Street
Charleston SC
Landholding Agency: GSA
Property Number: 549740009
Status: Excess
Reason: Other Secured Area
Comment: landlocked
GSA Number: 4–G–SC–592

Wyoming

Cody Industrial Area
Cody Co: Park WY 82414-
Landholding Agency: GSA
Property Number: 549740008
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 7–I–WY–0539

[FR Doc. 97–29856 Filed 11–13–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–836274

Applicant: Lance K. Parks, Billings, MT.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–833085

Applicant: Wayne Clark, Aurora, CO.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–836264

Applicant: Richard N. Biewer, St. Clair, MI.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT 835829

Applicant: Curtis H. Springer, Urbana, OH.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the South Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–836256

Applicant: Charles Chappell, Gibsonia.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–836255

Applicant: Robert Chappell, Oley, PA.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 7, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–29918 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application From the County of San Diego, California, for an Incidental Take Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The County of San Diego, California (County), has applied to the Fish and Wildlife Service for a 50-year permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) to incidentally take up to 85 species. Take would occur in conjunction with urban growth within the southern coastal portion of the County. The application includes the County of San Diego Subarea Plan (Subarea Plan) and an Implementing Agreement, both of which were prepared in accordance with the regional Multiple Species Conservation Program (MSCP). The Subarea Plan would provide for the incidental take of species listed under the Act and those that may be listed in the future. The County's planning area includes approximately 252,132 acres of unincorporated land. The Subarea Plan addresses 85 sensitive plant and animal species and their habitats, and creates a process for the issuance of permits and other authorizations under the Federal and California Endangered Species Acts, and the California Natural Community Conservation Planning Act. The County's Subarea Plan and Implementing Agreement are available for public review and comment. The Service specifically requests comment on the appropriateness of the ''No Surprises'' assurances contained in section 9 of the Implementing Agreement.

DATES: Written comments on the permit application should be received on or before December 15, 1997.

ADDRESSES: Comments should be addressed to Mr. Gail Kobetich, Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments may be sent by facsimile to (760) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Barrett, Assistant Field Supervisor, at the above Carlsbad address; telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Persons wishing to obtain copies of the documents or additional background material should contact the County of San Diego, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, Mail Station 0650, San Diego, California 92123; telephone (619) 260–8316. Documents will be available for public inspection, by appointment, during normal business hours (8 a.m. to 12 p.m. and 1 p.m. to 5 p.m.), Monday through Friday, at the above County office and at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Background

Under section 9 of the Act and its implementing regulations, the take of wildlife species listed as threatened or endangered is prohibited. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempting to engage in any such conduct. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Under limited circumstances, the Service may issue permits to take listed wildlife if such taking is incidental to, and not the purpose of, otherwise lawful activities. The taking prohibitions of the Act do not apply to listed plants on private lands unless such take is in violation of trespass law or would violate State law. Regulations governing permits for endangered and threatened species are in 50 CFR 17.22 and 17.32. Under section 10(a)(1)(B) of the Act, the Service may issue incidental take permits for listed species with an approved conservation plan. Among other criteria, issuance of such permits must not jeopardize the continued existence of listed plant and animal species.

The MSCP Plan is a regional habitat conservation plan that includes 12 local jurisdictions. Each jurisdiction is expected to apply for incidental take permits in conjunction with finalization of a subarea plan that is consistent with the regional MSCP Plan. The cities of San Diego and Poway finalized their subarea plans and received take authorizations under the MSCP on July 18, 1997, and July 19, 1996, respectively. The City of La Mesa has submitted an application, subarea plan, environmental assessment, and implementing agreement for which a 30-day public review period was announced in the **Federal Register** on October 31, 1997 (62 FR 58976). The County of San Diego submitted an application with its Subarea Plan and Implementing Agreement on November 6, 1997.

The regional MSCP Plan covers an approximately 900-square-mile area (580,000 acres) in southwestern San Diego County. Under the MSCP Plan, approximately 171,917 acres of vacant land, including 167,667 acres of wildlife habitat, will be preserved and managed within a designated area referred to as the Multiple Habitat Planning Area.

Nearly half of the MSCP planning area is within the County of San Diego Subarea. Approximately 73 percent (184,248 acres) of the County Subarea provides habitat for native plants and wildlife, whereas the remaining 27 percent is disturbed, developed, or agricultural land. Of the existing habitat in the County Subarea, approximately 55 percent (101,268 acres) is expected to be preserved under the Subarea Plan, in a manner consistent with the regional MSCP Plan.

The Subarea Plan is divided into three segments: the Lake Hodges segment, the Southern segment, and the Metro-Lakeside-Jamul segment. The Lake Hodges and Southern segments include projects where development and preserve boundaries have been determined and delineated in the Subarea Plan. Several major and minor amendment areas have been designated in these segments. Take for species within these amendment areas would only be authorized after they have become part of the Subarea Plan through the appropriate amendment process. The Metro-Lakeside-Jamul segment is composed of lands where preserve boundaries will be determined in the future based upon standards, goals, and criteria described in the Subarea Plan and in the County's Biological Mitigation Ordinance.

Environmental Documentation

To ensure compliance with the National Environmental Policy Act and the California Environmental Policy Act, in January, 1997, the Service (lead Federal Agency) and the City of San Diego (lead local agency) completed a final Environmental Impact Report/Statement on the MSCP Plan and draft subarea plans. This culminated a 2-year period during which the Service complied with scoping and public notice requirements, providing extensive opportunity for public comment on the MSCP Plan, draft subarea plans, template implementing

agreements, and the draft Environmental Impact Report/Statement (60 FR 12246, 60 FR 25734, 60 FR 32990, 61 FR 45983, 61 FR 54675, 62 FR 14938). No further environmental documentation is necessary for the County Subarea Plan because it has not changed significantly since finalization of the Environmental Impact Report/Statement.

Five project alternatives were analyzed in the final Environmental Impact Report/Statement: (1) proposed project alternative (approve and implement the MSCP Plan that would establish a preserve within the Multi-Habitat Planning Area; (2) no project/no action alternative; (3) coastal sage scrub alternative; (4) biologically preferred alternative; and (5) public lands alternative. Each alternative was evaluated for its potential to result in significant adverse environmental impacts and the adequacy or inadequacy of the proposed measures to avoid, minimize, and substantially reduce and mitigate such negative effects.

The preferred alternative analyzed by the Service was approval of the MSCP Plan and issuance of incidental take permits with the mitigating, minimizing, and monitoring measures outlined in the proposed project alternative. The underlying goal of the preferred alternative is to implement ecosystem-based conservation measures aimed at the protection of multiple vegetation types on a regional scale, while accommodating compatible development. The MSCP plan is expected to result in the implementation of a comprehensive preserve strategy for coastal sage scrub and related vegetation types in the planning area, that is expected to provide long-term benefits to the 85 covered species and their habitats.

The Service will evaluate the permit application from the County of San Diego, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the Act. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Authority

This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended, and Service regulations for implementing the National Environmental Policy Act (40 CFR 1506.6). All comments received will become part of the public record and may be released.

Dated: November 6, 1997.

John H. Doebel,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–29967 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Liquor Ordinance for the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation of Arizona

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953 , 67 Stat. 586, 18 U.S.C. § 1161. I certify that Ordinance No. 15, Tribal Liquor Ordinance for the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation of Arizona, was duly adopted and certified by the Kaibab Paiute Tribal Council on October 5, 1996. The Ordinance provides for the regulation of the sale, possession and consumption of liquor in the area of the Kaibab Indian Reservation, under the jurisdiction of the Kaibab Band of Paiute Indians, and is in conformity with the laws of the State of Arizona.

DATES: This Ordinance is effective November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street NW, MS 4603–MIB, Washington, D.C. 20240–4001; telephone (202) 208–3463.

SUPPLEMENTARY INFORMATION: The Tribal Liquor Ordinance for the Kaibab Band of Paiute Indians is to read as follows:

Tribal Liquor Ordinance for the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation of Arizona

Section 1–10–010: Legislative Control

Federal law currently prohibits the introduction of liquor into Indian country and expressly delegates to tribes the decision regarding when and to what extent liquor transactions shall be permitted on their reservations. The Kaibab Band of Paiute Indians (herein, the ''Tribe'') has decided to open certain lands described below within its jurisdiction to the possession, consumption and sale of liquor by enacting this Ordinance, which is adopted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. § 1161) and shall serve as the ''Liquor Ordinance'' referenced herein. The lands which are open to the sale, possession, and consumption of alcoholic beverages shall be only commercial establishments in which the Tribe owns a controlling interest and which are located on the Reservation; provided that any Tribal convenience store shall only be open to sale and possession, but not consumption, of alcoholic beverages.

Section I–10–020: Control Desired

This Ordinance shall govern all liquor sales and distribution on the reservation, will increase the ability of the Tribe to control reservation liquor distribution and possession, and will provide an additional source of revenue for tribal operations.

Section I–10–030: Goals of Regulation

Tribal regulation of the sale, possession, and consumption of liquor on the reservation is necessary to protect the health, security, and general welfare of the Tribe, and to address tribal concerns relating to alcohol use on the reservation. In order to further these goals and to provide an additional source of governmental revenue, the Tribe has adopted this Ordinance, which shall be liberally construed to fulfill the purposes for which it has been adopted. This Ordinance is authorized by the Preamble and Article VI, Section I (a), (b), (c), (d), (e), (h), (j), and (k) and Section 2 (e) of the Constitution and By-laws of the Tribe which provide, among other things, that the Tribal Council shall have the power ''to promulgate ordinances and resolutions to promote and protect the peace, health, education, safety and welfare of the band, its members and all other persons within its jurisdiction.

Section 1–20–010: Definitions of Words

As used in This Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) ''Alcohol'' means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

(b) ''Alcoholic Beverage'' is synonymous with the term ''liquor'' as defined at Section 1–20–010(d) hereof.

(c) ''Beer'' means any beverage obtained by the fermentation or infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in

water and which contains not more than four percent of alcohol by volume.

(d) ''Liquor'' includes the four varieties of liquor herein defined (alcohol, spirits, wine, and malt liquor), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating. Every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or malt liquor, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, containing more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

(e) ''Malt Liquor'' means beer, strong beer, ale, stout, and porter.

(f) ''Package'' means any container or receptacle used for holding liquor.

(g) ''Reservation'' means all lands of the Tribe described or referenced in the Tribe's Constitution, including, but not limited to, any lands which may in the future come within the jurisdiction of the Tribe by any lawful means.

(h) ''Sale'' and ''Sell'' mean exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as ''beer'' or by any name whatsoever commonly used to describe ''malt liquor'' or ''liquor'' or ''wine'' by any person to any person.

(i) ''Spirits'' means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(j) ''Strong Beer'' means any beverage obtained by the alcoholic fermentation or infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in water, including ale, stout, and porter, containing more than four percent of alcohol by weight.

(k) ''This Ordinance'' means this liquor code, which shall serve the Tribe as the liquor ordinance referenced at 18 U.S.C. § 1161.

(l) ''Tribe'' means, and ''Tribal'' refers to, the Kaibab Band of Paiute Indians, a federally recognized Tribe of Native American Indians, listed at 53 F.R. 52829–02 as the ''Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona.''

(m) ''Tribal Council'' shall mean the duly elected Tribal Council of the Tribe which is the governing body of the Tribe.

(n) ''Tribal Court'' means the Tribal Courts of the Tribe as established pursuant to the Constitution and ordinances of the Tribe.

(o) ''Wine'' means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during, or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding seventeen percent of alcohol by weight.

Section 1–30–010: Authorization

The Tribe, its members and other persons, including, but not limited to, corporations, partnerships, associations and natural persons, are hereby authorized to introduce, sell, purchase, distribute, warehouse, possess and consume alcoholic beverages within certain areas of the Reservation as described in Section 1–10–010, in accordance with the laws of the State of Arizona (including Arizona liquor licensing provisions); provided, however, that any person or entity, other than the Tribe, which sells alcoholic beverages within the reservation must first obtain a tribal liquor license from the Tribal Council and such sales shall be subject to taxes and license fees as may be established by duly enacted resolution of the Tribal Council.

Section 1–30–020: Distribution of Taxes and Fees

All taxes and license fees related to the sale or introduction of alcoholic beverages on the reservation shall be remitted to the Tribal Council through the Tribal Comptroller, who shall keep accurate records of all such receipts, and shall be subject to distribution by the Tribal Council in accordance with its usual appropriation procedures for governmental and social services.

Section 1–30–030: Tribal Liquor License Elements

Tribal liquor licenses shall authorize the holder thereof to sell alcoholic beverages at wholesale or at retail in cans, bottles or any other package within a defined area; provided, however, that a tribal liquor license shall be valid only if the holder thereof is in compliance with the laws of any other jurisdiction which may have any authority with regard to liquor sales and regulation on the reservation.

Tribal liquor licenses shall set forth the location and description of the building and premises for which each license is issued and shall define the area where the holder of each tribal liquor license may sell alcoholic beverages for a period of one year.

Section 1–40–010: General

Notwithstanding any other provision of this Ordinance, no penalty may be imposed pursuant or related to this Ordinance in contravention or in excess of any limitation imposed by the Indian Civil Rights Act of 1968, 82 Stat. 77, 25 U.S.C. § 1301 *et seq.* (''ICRA'') or other applicable Federal law.

Section 1–40–020: Illegal Transportation, Still, or Sale Without Permit

Any person who, within the reservation and without a valid tribal liquor license, sells or offers for sale or transport in any manner any liquor within the boundaries of the reservation in violation of this Ordinance, or who operates or has in his possession any spirit distillation device or any substance meant or specifically concocted to be distilled into liquor (not including devices or mash related to the home manufacture of beer, strong beer, or wine solely for the purpose of personal consumption and not for sale), shall be guilty of an Offense punishable upon conviction in the Tribal Court.

Section 1–40–030: Illegal Purchase of Liquor

Any person who buys liquor within the boundaries of the reservation other than from an individual or entity properly licensed pursuant to this Ordinance shall be guilty of an Offense punishable upon conviction in the Tribal Court.

Section 1–40–040: Furnishing Liquor to Minors

Except in the case of liquor given or administered to a person by his physician or dentist for medicinal purposes, no person under the age of 21 years shall consume, acquire or have in his possession any alcoholic beverages except when such beverages are used in connection with religious services. No person shall permit any other person under the age of 21 to consume liquor on his premises or on any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of an Offense punishable upon conviction in the Tribal Court.

Section 1–40–050: Sales of Liquor to a Minor

Any person who shall sell any liquor to any person under the age of 21 years shall be guilty of an Offense punishable upon conviction in the Tribal Court and shall be further subject to forfeit any

license issued pursuant to this Ordinance; provided, however, that the forfeiture of any license issued pursuant to this Ordinance may occur only after notice and a hearing according to the procedures set forth in Section 1–50–020 of this Ordinance.

Section 1–40–060: Unlawful Transfer of Identification

Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be guilty of an Offense punishable upon conviction in the Tribal Court. Corroborative testimony of a witness other than the minor shall be a requirement of conviction under this section.

Section 1–40–070: Possession of False or Altered Identification

Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of an Offense punishable upon conviction in the Tribal Court.

Section 1–40–080: General Penalties

Any person guilty of a violation of this Ordinance for which no penalty has been specifically provided shall be liable upon conviction for the maximum penalty prescribed in the Tribal Law and Order Code.

Section 1–40–090: Identification; Proof of Minimum Age

Where there may be a question of a person's right to purchase liquor by reason of his/her age, such person shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(a) Liquor control authority card of identification of any state;

(b) Driver's license of any state or ''Identicard'' issued by any state Department of Motor Vehicles;

(c) United States Active Duty Military Identification;

(d) Passport; or

(e) Identification or Enrollment Card issued by the Tribe or any other federally-recognized tribe.

Section 1–40–100: Illegal Items Declared Contraband

Alcohol beverages which are possessed contrary to the terms of this Ordinance are hereby declared to be contraband. Any officer who shall make an arrest under this section shall seize all contraband which he shall have the authority to seize consistent with the Tribe's Constitution, the Tribal Law and Order Code, the ICRA and any other applicable Federal law.

Section 1–40–110: Non-Indian Violations

Nothing in this Ordinance shall be construed to require or authorize the criminal trial and punishment by the Tribal Court of any non-Indian except to the extent allowed under Federal law. In general, when any provision of this Ordinance is violated by a non-Indian, he or she shall be referred to state and/or Federal authorities for prosecution under applicable law. It is the expressed intent of the Tribe that any non-Indian referred to state and/or Federal authorities pursuant to this section be prosecuted to the furthest extent of applicable law.

Section 1–50–010: Declaration of Nuisance

Any room, house, building, boat, vessel, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance and all property kept in and used in maintaining such place, including tribal liquor licenses related to any such property, are hereby declared to be a common nuisance.

Section 1–50–020: Institution Action

The Chairperson of the Tribal Council or the head of the tribal law enforcement department may institute and maintain an action in the Tribal Court in the name of the Tribe to abate and perpetually enjoin any nuisance declared under article Section 1–50–010 of this Ordinance or any other violation of this Ordinance. The plaintiff shall be required to file grounds in the action, and restraining orders, temporary injunctions, and permanent injunctions may be granted in the case as in other injunction proceedings. Upon final judgment against the defendant, the Tribal Court may order the forfeiture of any license issued pursuant to this Ordinance and that the offending room, house, building, boat, vessel, vehicle, structure, or place be closed for a period of one year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than $1,000.00 payable to the Tribe, which bond shall be conditioned on the agreement of such person that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of therein in violation of the provisions of this Ordinance and that such person will pay all fines, costs and damages assessed against him/her for any violation of this Ordinance. If any conditions of the bond are violated, the whole amount may be recovered as a penalty for the use of the Tribe. Any action taken under this section shall be in addition to any criminal penalties provided for under this Ordinance or any other applicable provision of the Tribal Law and Order Code.

Section 1–50–030: Abatement of Nuisance

In all cases where any person has been convicted of a violation of this Ordinance, an action may be brought in Tribal Court to abate as a nuisance any real estate or other property involved in the commission of the offense, and in any such action a certified copy of the record of such conviction shall be admissible in evidence and prima facie evidence that the room, house, vessel, boat, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Section 1–60–01–0: Severability

If any application or provision, or any portion of any provisions, of this Ordinance is determined by review of any court of competent jurisdiction to be invalid such adjudication shall not render ineffectual the remaining portions of this Ordinance or render such provisions automatically inapplicable to other persons or circumstances.

Section 1–60–020: Effective Date

This Ordinance shall be effective as a matter of tribal law on October 15, 1996, upon approval by a majority of eligible voters attending the annual General Membership Meeting on October 5, 1996, and effective as a matter of Federal law on November 14, 1997.

Section 1–60–030: Inconsistent Enactments Rescinded

Any and all prior enactments of the Tribal Council which are inconsistent with the provisions of this Ordinance are hereby rescinded to the extent of such inconsistency.

Section 1–60–040: Application of 18 U.S.C. § 1161

All acts and transactions under this Ordinance shall be in conformity with the laws of the State of Arizona to the extent required under 18 U.S.C. § 1161.

Section 1–60–050: Jurisdiction and Sovereign Immunity

Nothing in this Ordinance shall be construed to limit the jurisdiction of the Tribe, the Tribal Court, or Tribal law

enforcement personnel and nothing herein shall limit or constitute a waiver of the sovereign immunity of the Tribe or its officers, instrumentalities and agents or authorize any form of a prospective waiver of such sovereign immunity. Nothing in this Ordinance shall be construed as an admission that any body politic, other than the Tribe, has jurisdiction over any matter arising from or related to the Reservation, except to the extent such jurisdiction is confirmed by Federal law.

Dated: October 29, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–29934 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Redwood Valley Rancheria of Pomo Indians of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed certain lands in Mendocino County, California, as an addition to the reservation of the Redwood Valley Rancheria of Pomo Indians of California on November 3, 1997. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Chief, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: By proclamation issued pursuant to the Act of June 18, 1934, (48 Stat. 986; 25 U.S.C. § 467), the land described in a Grant Deed, numbered 5369, recorded in Book 1502, pages 479, 480 and 481, of the official records of Mendocino County, California, were proclaimed to be an Indian Reservation for the exclusive use of Indians entitled by enrollment or tribal membership to reside at such reservation.

Dated: November 3, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–29912 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[OR–080–082–6230–00; GP8–0024]

Emergency Closure Restriction on Public Lands, Salem District, Oregon

ACTION: Emergency closure restriction on public lands notice, Salem District, Oregon.

SUMMARY: Notice is hereby given that public lands in Clackamas County, Oregon, are temporarily closed to all public use, including vehicle operation, camping, and shooting, from October 16, 1997, until further notice. This order is issued under the authority of 43 CFR 8364.1 and closes additional roads and public lands to public access and use. Notice is hereby given that the following areas are closed to motor vehicle access and use:

1. Approximately 5 acres incorporating two open areas, one east and one west of the Pine Creek; Bridge on the Molalla River, near the intersection of Pine Creek Road and the Molalla Forest; Road in Section 30, T. 6 S., R. 3 E.,Will. Mer., Oreg.;

EXEMPTIONS: The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: BLM employees; state, local, and federal law enforcement and fire protection personnel; holders of BLM road use permits or contracts that include areas within the closure including their employees and subcontractors. Access by additional parties may be allowed but must be approved in advance by the Authorized Officer.

PENALTIES: Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, as well as penalties provided under Oregon State Law.

EFFECTIVE DATE: This emergency closure shall remain in effect until revised, revoked, or amended.

FOR FURTHER INFORMATION CONTACT: Richard Prather, Area Manager, Cascades Resource Area, 1717 Fabry Road SE, Salem, OR 97306, (503) 375–5646.

SUPPLEMENTARY INFORMATION: The purpose of these closures is to protect water quality, soil, vegetation, and sensitive cultural, paleontological, and riparian resources from excessive damage and provide for visitor safety.

Scott S. Abdon,

Acting Area Manager, Cascades Resource Area.

[FR Doc. 97–29941 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1910–00–4573]

Idaho: Filing of Plats of Survey; Idaho

The plat, in two sheets, of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. November 3, 1997.

The plat representing the dependent resurvey of portions of the west and north boundaries, subdivisional lines, and subdivision of sections 8 and 18, T.5 S., R.36 E., Boise Meridian, Idaho, Group 945, was accepted November 3, 1997.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs, Fort Hall Agency.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

Dated: November 3, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–29920 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. November 4, 1997.

The plat representing the dependent resurvey of portions of the subdivisional lines, of the subdivision of section 31, and of Mineral Survey No. 2486, and the corrective dependent resurvey of Mineral Survey No. 2486, Hope lode, T. 2 N., R. 18 E, Boise Meridian, Idaho, Group 461, was accepted November 4, 1997.

This survey was executed to meet certain administrative needs of the

Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: November 4, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–29921 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–5]

Martha Hernandez, M.D.; Reprimand and Continuation of Registrations With Restriction

On January 14, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Martha Hernandez, M.D., (Respondent) of Chicago, Illinois and Gary, Indiana, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificates of Registration, AH2262424 and BH4493475, pursuant to 21 U.S.C. 824(a)(1), and deny any pending applications for renewal of her registrations as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent materially falsified two applications for registration with DEA.

By letter dated February 6, 1997, Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Chicago, Illinois on May 27, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, counsel for both parties submitted proposed findings of fact, conclusions of law and argument. On September 5, 1997, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's registrations not be revoked, but that Respondent be reprimanded and that she be required to submit certain documentation to DEA on an annual basis for three years. On September 25, 1997, the Government filed exceptions to Judge Randall's Opinion and Recommended Ruling, and on October 6, 1997, the record was transmitted to the Acting Deputy Administrator.

On October 15, 1997, Respondent submitted a request to file a response to the Government's exceptions, as well as her response to the exceptions. Respondent argued that ''[t]he Government filed its exceptions on September 25, 1997 and pursuant to regulation the Respondent has 20 days to request leave and file a response.'' In addition, Respondent stated that the Government does not object to Respondent filing a response to the exceptions. The Acting Deputy Administrator finds that Respondent has misread 21 CFR 1316.66, which provides for the filing of exceptions within 20 days of service of the Administrative Law Judge's Opinion and Recommended Ruling. The regulation further provides that the Administrative Law Judge may grant time beyond the twenty days for the filing of a response to any exceptions filed. Nowhere in the regulations is a party given 20 days from the filing of exceptions to submit a response. However, the Acting Deputy Administrator will nonetheless consider Respondent's response to the Government's exceptions since it has been represented that the Government does not object to the consideration of Respondent's response.

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 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 or law.

The Acting Deputy Administrator finds that Respondent is a psychiatrist licensed to practice medicine in the states of Illinois and Indiana, with a DEA Certificate of Registration issued to her in each state. On June 15, 1990, the State of Illinois, Department of Professional Regulation (IDPR) refused to renew Respondent's Illinois medical license because she had defaulted on her student loan payments. On December 2, 1991, Respondent entered into a consent order with IDPR, which reinstated her Illinois medical license, but placed her license on probation until such time as she completes repayment of her student loan. The consent order set forth a schedule for repayment of the loan. However, by Order dated January 10, 1994, the IDPR indefinitely suspended Respondent's Illinois medical license due to her failure to abide by the repayment plan.

On October 1, 1994, Respondent submitted a renewal application for DEA Certificate of Registration AH2262424 issued to her in Illinois. On this renewal application, Respondent indicated that she was currently authorized to handle controlled substances ''in the state in which [she is] operating or propos[ing] to operate'', yet she listed her Indiana state medical license number. Also, Respondent answered ''No'' to the liability question which asked, ''Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?''

DEA personnel telephonically contacted Respondent on January 31, 1995, and again on May 3, 1995. During these conversations, the DEA personnel discussed with Respondent the effect of the IDPR's suspension upon Respondent's DEA registration; the possible voluntary surrender of Respondent's Illinois DEA registration in light of the continued suspension of her Illinois medical license; and the need for Respondent to submit a new application for registration with DEA in the State of Indiana. However, the DEA personnel did not indicate to Respondent during these conversations that her answer to the liability question on the October 1, 1994 renewal application was incorrect or questionable.

On May 5, 1995, Respondent submitted a new application for a DEA registration in the State of Indiana. Again, she answered ''No'' to the liability question which asks, ''Has the applicant ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?'' Subsequently, on July 10, 1995, Respondent was issued DEA Certificate of Registration BH4493475, in the State of Indiana.

On June 16, 1995, Respondent submitted an application to renew her Indiana medical license. On that application, Respondent answered ''No'' to a question which asked, ''In the last two years, has disciplinary action been taken regarding any license, certificate, registration or permit you hold or have held?'' As a result of this application, Respondent's Indiana medical license was renewed on June 30, 1995.

Following her conversations with the DEA personnel, Respondent decided not

to surrender her Illinois DEA registration. Judge Randall found that ''Respondent credibly testified [at the hearing in this matter] that she had declined to surrender her DEA Certificate of Registration because she felt that the choices given on the DEA surrender form pertaining to the reason for the surrender implied failure on her part to comply with Federal law in her handling of controlled substances.'' Judge Randall further found that Respondent ''credibly testified that she had believed such form language did not apply to her, since the suspension of her Illinois medical license was due to her inability to repay her Illinois student loan, not due to her failure to comply with Federal law in her handling of controlled substances.''

Since Respondent declined to voluntarily surrender her Illinois DEA registration, on November 27, 1995, DEA issued an Order to Show Cause to Respondent proposing to revoke her Illinois DEA Certificate of Registration in light of the fact that she was not then authorized to handle controlled substances in the State of Illinois due to the continued suspension of her Illinois medical license. However, on November 29, 1995, the IDPR entered into another consent agreement with Respondent, which reinstated Respondent's Illinois medical license and placed this license on probation subject to Respondent's adhering to a student loan repayment schedule. As a result of the consent agreement, the November 27, 1995 Order to Show Cause was not pursued.

In July 1996, Respondent submitted an application to renew her Illinois medical license. On this application, Respondent answered ''Yes'' to a question which asked, ''Since July 31, 1993, have you been denied a professional license or permit, or privilege of taking an examination, or had a professional license or permit disciplined in any way by any licensing authority in Illinois or elsewhere?'' Respondent testified that she answered the question in the affirmative, after discussing the interpretation of the question with an Illinois official.

On July 8, 1996, the Indiana Medical Licensing Board (Indiana Board) issued a complaint against Respondent. The complaint alleged that Respondent had falsified her application for renewal of her Indiana medical license dated June 16, 1995, by indicating that in the last two years no disciplinary action had been taken against any licenses that she had held or was currently holding, even though the IDPR had indefinitely suspended her Illinois medical license on January 10, 1994. In a letter dated January 13, 1997, Respondent informed the Indiana Board that ''[a]t the time I reapplied for my Indiana license [June 16, 1995] I was not aware of my Illinois license being resuspended.'' On July 14, 1997, the Indiana board issued its Findings of Fact and Order finding that Respondent's conduct constituted ''knowingly engaging in fraud or material deception in order to obtain a license to practice in violation of Ind. Code. * * *'' Accordingly, the Indiana Board ordered that Respondent be reprimanded, fined $200.00 and assessed costs.

At the hearing in this matter, Respondent contradicated her January 13, 1997 letter to the Indiana Board when she agreed that in January and May of 1995, she had had conversations with DEA personnel concerning the suspension of her Illinois medical license in January 1995.

Judge Randall found that ''Respondent credibly testified [at the hearing in this matter] that during 1994 she had experienced unexpected financial difficulties which contributed to her inability to pay her student loans * * * [and] that the suspension of her Illinois medical license in January of 1994 was not a rememberable event to her, since she was primarily practicing medicine in Indiana in 1994, and given the general turmoil of her life at that time.'' Judge Randall further found that ''Respondent credibly testified that she was unaware of a need for a separate DEA Certificate of Registration to reflect her Indiana place of business.'' In addition, Respondent testified that she answered ''No'' to the liability question on the DEA applications because she thought that since she was applying for a Federal registration to handle controlled substances, the question only pertained to actions taken based upon malpractice, criminal activity, or improper prescribing of controlled substances, and not to the suspension of a medical license due to a failure to repay a student loan.

Pursuant to 21 U.S.C. 824(a)(1), ''A registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant—(1) has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter.'' The Government contends that Respondent's DEA Certificates of Registration should be revoked pursuant to 21 U.S.C. 824(a)(1) because she falsified two different DEA applications by indicating that no adverse action had been taken against any of her state professional licenses when in fact such action had been taken against her Illinois medical license. In addition, she improperly answered a similar question on her application for an Indiana medical license. The Government argues that the crucial issues are ''Respondent's credibility and the ability of DEA investigators to ascertain the status of a registrant's or an applicant's past history based upon answers to the applicable liability questions.'' The Government contends that Respondent's testimony regarding her responses to the liability questions was not credible.

Respondent admits that her responses to the liability questions were incorrect. However, Respondent argues that the statements at issue were not ''material'' falsifications. Respondent further contends that revocation would be too harsh a sanction since she had no intent to deceive or mislead DEA; because her underlying misconduct was not related to malpractice in her treatment of patients or the mishandling of controlled substances; and, since once advised by the IDPR of the correct interpretation of the liability questions, she answered the question on her July 1996 state application appropriately.

As Judge Randall notes, ''[a]nswers to the liability question are material, since the DEA relies upon such answers to determine whether an investigation is needed prior to grating the application.'' DEA has previously held that in finding that there has been a material falsification of an application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. See *Bobby Watts, M.D.,* 58 FR 4699 (1993); *Herbert J. Robinson, M.D.,* 59 FR 6304 (1994).

The Acting Deputy Administrator concurs with Judge Randall's conclusion that Respondent materially falsified her October 1, 1994 renewal application for her Illinois DEA Certificate of Registration and her May 5, 1995 application for a DEA registration in Indiana. Respondent indicated on both of these applications that she had not had a state professional license denied or suspended, even through she knew that the renewal of her Illinois medical license had been denied in 1990, and that after being reinstated, was again suspended in 1994. Respondent does not deny that she incorrectly answered the liability question on the applications, but contends that she did not think that the actions of the IDPR due to her failure to repay her student loan was the type of action that needed to be disclosed in response to the question. The Acting Deputy Administrator concurs with Judge Randall's conclusion that, ''[a]lthough the Respondent credibly

testified concerning her misinterpretation of the question, she was not relieved of her responsibility to carefully read the question and to honestly answer all parts of the question.''

Therefore, the Acting Deputy Administrator concludes that based upon Respondent's material falsification of the two applications, ground exist to revoke her DEA Certificates of Registration pursuant to 21 U.S.C. 824(a)(1). The question now becomes whether the Acting Deputy Administrator, in exercising his discretion, believes that revocation is the appropriate sanction in light of the facts and circumstances of this case.

Judge Randall found that ''Respondent's testimony was credible during her explanation of her confusion concerning the DEA registration requirements for her Indiana practice, and her misunderstanding, albeit unjustified, concerning the phrasing of the liability questions in issue.'' Therefore, Judge Randall concluded that Respondent did not intend to deceive DEA, but that her falsification of the applications was due to her carelessness and negligence. As Judge Randall noted, ''lack of intent is irrelevant to the legal test of material falsification.'' However she suggested that ''such a lack of intent should be considered in fitting the remedy to the situation in this case.''

The Government filed exceptions to Judge Randall's conclusion arguing that Respondent intentionally sought to deceive DEA by incorrectly answering the liability question on the applications. The Government argues that Respondent clearly knew that her Illinois medical license had been suspended, yet she indicated on her applications for registration that no adverse action had been taken against her state professional license.

The Acting Deputy Administrator agrees with Judge Randall that a lack of intent to deceive should be considered in determining whether a registration should be revoked. However, the Acting Deputy Administrator further notes that negligence and carelessness in completing an application could be a sufficient reason to revoke a registration. In determining whether revocation is warranted, the Acting Deputy Administrator looks at the totality of the circumstances in each case.

In this case, it is undisputed that Respondent knew that her Illinois medical license had been suspended. But, the Acting Deputy Administrator does not agree with the Government that Respondent intended to deceive DEA in responding to the liability question. Respondent testified at the hearing in this matter that she thought that since she was applying to handle controlled substances, the question on the applications did not apply to her since her Illinois medical license was suspended due to her failure to repay a student loan, and not due to inadequate patient care or mishandling of controlled substances. While this is clearly an incorrect interpretation of the liability question, the Acting Deputy Administrator concurs with Judge Randall's conclusion that this is a credible explanation for the falsification.

Notwithstanding the foregoing, the Acting Deputy Administrator is troubled by Respondent's carelessness in failing to carefully read the question on the applications. However, the Acting Deputy Administrator finds it significant that prior to receiving the Order to Show Cause in this matter alleging that Respondent materially falsified her applications, Respondent answered a similar liability question correctly on her July 1996 Illinois application. Respondent testified that she gave a different response on this application after discussing the matter with an Illinois official.

In considering the appropriate sanction, Judge Randall also found it significant that ''both the Illinois medical board and the Indiana medical board chose to grant [Respondent's] applications, even in light of her past failures to remain current in the payment of her student loan, and more recently, even in light of the Indiana Board's finding that the Respondent's June 1995 renewal application had been prepared in a fraudulent or materially deceptive manner.'' The Government, in its exceptions, argues that the fact that the IDPR has not currently taken action against Respondent's Illinois medical license should not be considered a mitigating factor, since it has taken significant action against her state license in the past. The Acting Deputy Administrator finds that the actions of the state boards are relevant, although not dispositive, in determining the appropriate sanction in this matter. As stated previously, the Acting Deputy Administrator must look at all of the circumstances surrounding a particular case. The Acting Deputy Administrator concludes that while it is true that Respondent's Illinois medical license was not renewed in 1990 and was suspended in 1994 due to her failure to repay a student loan, the IDPR has seen fit to allow Respondent to continue to practice medicine as long as she continues to repay her loan.

The Government further argues in its exceptions that the action of the Indiana Board should not be considered a mitigating factor, because it was not the result of an adjudicatory proceeding, but rather a settlement conference. The Government contends that in *John W. Copeland, M.D.,* 59 FR 46,063 (1994), DEA previously held that a consent decree between the Respondent and the state in no way detracted from the findings and conclusions found in the DEA's final order. In that case the then-Deputy Administrator found egregious violations regarding the handling of controlled substances and that the consent order of the state board did not change those findings. In this case, the Acting Deputy Administrator has not found similar violations. In fact, as the Government points out, in this case the Indiana Board found that Respondent knowingly engaged in fraud or material deception. The Indiana Board nonetheless allowed her to continue to practice medicine with a reprimand and a fine. As stated previously, unlike the Indiana Board, the Acting Deputy Administrator has found that Respondent did not intend to deceive DEA with her answers to the liability question on the applications.

To not consider a state's action simply because it was reached by agreement, rather than following an adjudicatory proceeding, would be unreasonable. Therefore, the Acting Deputy Administrator disagrees with the Government's contention that consent orders should not be considered as mitigating evidence. Accordingly, the Acting Deputy Administrator agrees with Judge Randall in this case, that while not dispositive, the fact that both the Indiana and Illinois medical licensing authorities have allowed Respondent to continue to practice medicine is a mitigating factor when evaluating all of the circumstances of this case to determine the appropriate sanction.

Judge Randall also found it appropriate to consider that Respondent's falsification of her applications stemmed from her failure to repay a student loan, and that there are no allegations that Respondent improperly handled controlled substances. As Judge Randall noted, ''this lack of connection to controlled substances is not dispositive of the matter,'' however, she suggested that, ''it is relevant in determining the appropriate remedy.'' The Government, in its exceptions, argues that the lack of improper handling of controlled substances ''should not be considered in mitigation,'' and that ''DEA's past policy has been not to distinguish between those falsifications that do and do not

have related controlled substance issues.''

The Acting Deputy Administrator agrees with the Government insofar as DEA has in fact revoked registrations in the past based upon the material falsification of an application that was not related to the mishandling of controlled substances. See *Ezzat E. Majd Pour, M.D.*, 55 FR 47,547 (1990). However, the Acting Deputy Administrator concludes that in exercising his discretion in determining the appropriate remedy, he must consider all of the facts and circumstances of a particular case. Here, it is relevant that Respondent credibly testified that she did not think that the liability question applied to her since the suspension of her Illinois license was to due to the improper handling of controlled substances. The Acting Deputy Administrator also finds it relevant that Respondent correctly answered a similar question on a subsequent state application even before she received the Order to Show Cause from DEA alleging that she had materially falsified two of her applications.

Judge Randall concluded that revocation would be too harsh a sanction in this case, ''[h]owever, the Respondent's failure to pay close enough attention to the administrative details necessary to maintain her credentials in good standing warrants some concern about the Respondent's meeting the responsibilities levied against a person provided the authority to prescribe and to dispense controlled substances.'' Therefore, Judge Randall recommended that Respondent be reprimanded for her failure to properly complete here DEA registration applications; and ''that for a period of three years, that Respondent be ordered to file with the appropriate local DEA resident office, on an annual basis, a copy of a document from both the Illinois and the Indiana medical boards certifying that her medical licenses remain in good standing in both States, and that there is no impediment to her handling controlled substances at the State level.''

The Acting Deputy Administrator concludes that there is no question that Respondent materially falsified two of her applications for DEA registration. This is extremely troubling since DEA relies on accurate information being submitted by its applicants. Further, Respondent's actions indicate a careless disregard for attention to detail. This lack of attention to detail is of great concern to the Acting Deputy Administrator since DEA registrants are tasked with keeping meticulous records regarding the handling of controlled substances in order to prevent the diversion of these dangerous substances. However, the Acting Deputy Administrator agrees with Judge Randall that revocation would be too severe a sanction given the facts and circumstances of this case. The Acting Deputy Administrator concurs with Judge Randall's recommendation that Respondent be reprimanded for her failure to properly complete her applications for registration and that she be required for a period of three years to submit to the DEA Chicago Field Division, on an annual basis, documentation from both the Illinois and the Indiana medical licensing authorities certifying that her medical licenses remain in good standing in both states, and that there is no impediment to her handling controlled substances at the state level. The first such documentation should be forwarded to DEA within thirty days of the effective date of this final order.

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 reprimands Martha Hernandez, M.D., for failing to properly complete her DEA registration applications. The Acting Deputy Administrator further orders that DEA Certificates of Registration AH2262424 and BH4493475, issued to Martha Hernandez, M.D., be continued, and any pending applications be granted, subject to the above described restriction. This order is effective December 15, 1997.

Dated: November 4, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–29972 Filed 11–13–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 29, 1997, and published in the **Federal Register** on August 26, 1997, (62 FR 45272), Novartis Pharmaceuticals Corp., 59 Route 10, East Hanover, New Jersey 07936, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724) a basic class of controlled substance listed in Schedule II.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Novartis Pharmaceuticals Corp. to manufacture methylphenidate is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: November 6, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–29973 Filed 11–13–97; 8:45 am]

BILLING CODE 4410–09–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 benefits 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 Determination, 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.

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Volume VII

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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 county.

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, DC, this 7th day of November 1997.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–29891 Filed 11–13–97; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting;

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).

Date and Time: December 8, 1997, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1105.17, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: Panel review of the New Technologies Program 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.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29985 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Stellar Astronomy and Astrophysics Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on December 4 and 5, 1997, (2) and December 9 and 10, 1997 (3). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:30 a.m. to 5:00 p.m. each day.

Contact Person: Dr. Eileen Friel, Program Director, Stellar Astronomy and Astrophysics, Division of Astronomical Sciences, National Science Foundation, Room 1045, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1825.

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. 97–29984 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date and Time: December 4th & 5th, 1997, 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1295, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Fred Stollnitz, Program Director, Research Experiences for Undergraduates, Room 615, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306–1413.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted in response to the Research Experiences for Undergraduates program announcement.

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. 97–29983 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in the Division of Electrical and Communications Systems; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period December 1 through December 31, 1997, the Special Emphasis Panel will be holding panel meetings to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows:

Special Emphasis Panel in the Division of Electrical and Communications Systems

1. *Date:* December 1–2, 1997.

Contact: Radhakishan Baheti, Saifur Rahman, George Lea, and Paul Werbos, Program Directors, Knowledge, Modeling and Computational Intelligence, Division of Electrical and Communications Systems, Room 675, 703–306–1339.

Type of Proposal: Knowledge, Modeling and Computational Intelligence CAREER proposals.

2. *Date:* December 1–2, 1997.

Contact: Rajinder Kholsa, T.P. Lee, Program Directors, Physical Foundation and Enabling Technologies, Division of Electrical and Communications Systems, Room 675, 703–306–1339.

Type of Proposal: Physical Foundation and Enabling Technologies CAREER proposals.

Times: 8:30 to 5:00 p.m. each day.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Directorate 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.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29978 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in 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 in Geosciences (1756).

Date and Time: December 2–3, 1997; 8:30 am–5:00 pm.

Place: Room 725, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Section Head, Division of Ocean Sciences, National Science Foundation, 4201 Wilson Blvd., Room 725, 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 LTER 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.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29979 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resource Development #1199).

Date and Time: December 2 and 3, 1997, 8:30 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA., Rooms 365, 370, 375.

Type of Meeting: Closed.

Contact Person: Lawrence Scadden & Mary Kohlerman, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1636.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Programs for Persons with Disabilities 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.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29981 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; 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 Mathematical and Physical Sciences.

Date and Time: December 4, 1997 8:00 am–5:30 pm; December 5, 1997 8:00 am–2:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Adriaan de Graaf, Executive Officer, MPS, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1800.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations on development of MPS strategic planning mechanisms; provide advice on the appropriateness of current disciplinary boundaries; evaluate the current MPS interfaces with academia and industry; and advise on methods of achieving overall program excellence in MPS.

Agenda

December 4, 1997

AM
- Introductory Remarks
- Discussion on Science and Education Themes for the 21st Century

PM
- Roundtable Discussion—Assessing the Value of Basic Research
- Review of NSF GPRA documents and PHY COV Report

December 5, 1997

AM
- Strategic Planning/Science and Education Themes

PM
- Report on DMS Benchmarking Activity
- Meeting Wrap-up/Future Business

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29982 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

In the Matter of Toledo Edison Company, Centerior Service Company, The Cleveland Electric Illuminating Company (Davis-Besse Nuclear Power Station, Unit 1); Exemption

I

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company (the licensees) are the holders of Facility Operating License No. NPF–3, which authorizes operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit 1 (the facility). The license provides, among other things, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized-water reactor located at the licensees' site in Ottawa County, Ohio.

II

Section 70.24 of Title 10 of the Code of Federal Regulations, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and provides that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to provide the means for identifying quickly any personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for special nuclear material used or to be used in the reactor. Subsection (d) of 10 CFR 70.24 states that any licensee that believes that there is good cause why it should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The special nuclear material that could be assembled into a critical mass at DBNPS is in the form of nuclear fuel. The quantity of special nuclear material other than fuel that is stored onsite in any given location is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at DBNPS and has determined that it is extremely unlikely that such an accident will occur if the licensees meet the following seven criteria:

1. Only one new fuel assembly is allowed out of a shipping cask or storage rack at one time;
2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level, in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water;
3. If optimum moderation occurs at low moderator density, the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level, in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with a moderator at the density corresponding to optimum moderation;
4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level, in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water;
5. The quantity of special nuclear material, other than nuclear fuel, stored onsite in any given area is less than the quantity necessary for a critical mass;
6. Radiation monitors, as required by General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions; and
7. The maximum nominal U–235 enrichment is limited to 5.0 weight percent.

By letter dated January 30, 1997, as supplemented May 28 and October 3, 1997, the licensees requested an exemption from 10 CFR 70.24. In this request, the licensees addressed the seven criteria given above. The Commission's technical staff has reviewed the licensees' submittals and has determined that DBNPS meets the criteria for prevention of inadvertent criticality. Therefore, the staff has determined that it is extremely unlikely an inadvertent criticality will occur in the handling of special nuclear materials or in their storage areas at DBNPS.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur. Furthermore, the licensees have radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensees' adherence to General Design Criterion 63, constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24.

The Commission has determined that pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensees an exemption from the requirements of 10 CFR 70.24 for DBNPS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (62 FR 59908).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of November 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–29977 Filed 11–13–97; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in November 1997. The interest assumptions for performing

multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in December 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the ''applicable percentage'' (described in the statute and the regulation) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

For plan years beginning before July 1, 1997, the applicable percentage of the 30-year Treasury yield was 80 percent. The Retirement Protection Act of 1994 (RPA) amended ERISA section 4006(a)(3)(E)(iii)(II) to provide that the applicable percentage is 85 percent for plan years beginning on or after July 1, 1997, through (at least) plan years beginning before January 1, 2000.

However, under section 774(c) of the RPA, the application of the amendment is deferred for certain regulated public utility (RPU) plans for as long as six months. The applicable percentage for RPU plans will therefore remain 80 percent for plan years beginning before January 1, 1998. (The rules governing the applicable percentages for ''partial'' RPU plans are described in § 4006.5(g) of the premium rates regulation.)

For plans for which the applicable percentage is 85 percent, the assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in November 1997 is 5.38 percent (*i.e.*, 85 percent of the 6.33 percent yield figure for October 1997).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between December 1996 and November 1997. The rates for July through November 1997 in the table reflect an applicable percentage of 85 percent and thus apply only to non-RPU plans. However, the rates for months before July 1997, which reflect an applicable percentage of 80 percent, apply to RPU (and ''partial'' RPU) plans as well as to non-RPU plans.

For premium payment years beginning in:	The assumed interest rate is:
December 1996	5.18
January 1997	5.24
February 1997	5.46
March 1997	5.35
April 1997	5.54
May 1997	5.67
June 1997	5.55
July 1997	5.75
August 1997	5.53
September 1997	5.59
October 1997	5.53
November 1997	5.38

For premium payment years beginning in November 1997, the assumed interest rate to be used in determining variable-rate premiums for RPU plans (determined using an applicable percentage of 80 percent) is 5.06 percent. For ''partial'' RPU plans, the assumed interest rates to be used in determining variable-rate premiums can be computed by applying the rules in § 4006.5(g) of the premium rates regulation. The PBGC's premium payment instruction booklet also describes these rules and provides a worksheet for computing the assumed rate.

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in December 1997 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of November 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–30044 Filed 11–13–97; 8:45 am]

BILLING CODE 7708–01–P

POSTAL SERVICE

United States Postal Service Board of Governors; Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

Date of Meeting: November 3, 1997.

Status: Closed.

Previous Announcement: 62 FR 55436, October 24, 1997.

Change: At its meeting on November 3, 1997, the Board of Governors of the United States Postal Service voted unanimously to add an item to the agenda of its closed meeting held on that date:

Consideration of Amendment to Board Bylaws.

Contact Person for More Information: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–30165 Filed 11–12–97; 3:07 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on November 19, 1997, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Draft Bill—Exemption from Full Rent
(2) Medicare contract fiscal year 1998 budget
(3) Coverage Determination—Transportation Management Services, Inc.
(4) Employee Service—Environmental Contractors with CSX Transportation Company
(5) Regulations—Part 220 (Subpart C, Occupational Disability)
(6) Fiscal Year 1998 Performance Appraisal Plans
(7) Year 2000 Issues
(8) Labor Member Truth in Budgeting Status Report

Portion Closed to the Public

(A) 1997 Performance Appraisals
(B) *Pending Board appeals:*
1. Beverly J. Anderson
2. Martha G. Arnold
3. Sandra B. Banner

4. Gussie Y. Brown
5. Odel Clay
6. James C. Coutee
7. Barbara A. Donofrio
8. Robert C. Hoffman, Sr.
9. Ronald E. Houck
10. John A. Soderman

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: November 10, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–30095 Filed 11–12–97; 9:52 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26776]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 7, 1997.

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 December 1, 1997, 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 Services, Inc. (70–7671)

Central and South West Services, Inc. (''CSWS''), 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75266, a non-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a post-effective amendment under sections 9(a) and 10 of the Act and rule 54 under the Act to an application-declaration filed under sections 9(a) and 10 of the Act.

By orders dated August 10, 1990 (HCAR No. 25132), December 18, 1992 (HCAR No. 25714), and December 28, 1994 (HCAR No. 26206) (''Orders''), CSWS was authorized, among other things, to license and sell to non-associate entities through December 31, 1997 specialized computer programs and to provide support services to licensees and entities that purchased the software. The support services were to include program enhancements and problem resolution and were to be sold to non-associate companies for an amount not less than cost to CSWS.

The Orders also authorized CSWS to make expenditures of up to $1 million per calendar year and to make expenditures of up to $250,000 per project to develop or change software for non-associate entities; to market software and services; and to add up to ten employees to support these activities.

Finally, the Orders authorized CSWS to sell reserve computer capacity and to provide date management services to non-associate entities provided that CSWS would limit computer capacity sales to non-associate entities to 50 percent of its total capacity.

CSWS now requests that the Commission extend the term of the authorizations contained in the Orders through December 31, 2002.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29988 Filed 11–13–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39306; File No. SR–AMEX–97–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Its Designated Options Area

November 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 14, 1997, the American Stock Exchange, Inc. (the ''Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Item I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its policy to include additional physically separate locations on the Exchange's trading floor where options on Amex-listed stocks may trade. The information will be found in an upcoming information circular of the Exchange.

II. Self-Regulatory Organization's

Statement of the Purpose of, and Statutory for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In 1988, the Exchange received Commission approval to trade options on Amex-listed stocks.[1] The approval was based upon the Amex's trading floor for equities and options on those equities being sufficiently separated such that there could be no time and

[1] Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988).

place advantage derived from the physical proximity of the two floors which could be exploited.

Since the 1988 approval was granted, the trading of options on Amex-listed securities has continued to occur on the Exchange at locations that are physically separate from the locations where the trading of Amex-listed stocks occurs. The Exchange contains additional locations that are also physically separate from the locations where Amex-listed stocks trade that have yet to be designated as areas for the trading of options on Amex-listed stocks. The Exchange now proposes to amend its policy to include those additional physically separate locations as areas where the trading of options on Amex-listed stocks may occur (the ''Designated Options Area'').

While the number of options on Amex-listed stocks has increased slowly, to approximately 45 classes since 1988, the overall number of option classes traded on the Exchange has increased over 350% since that time. As a result of this increase in classes of options traded at Amex, the Exchange currently lacks flexibility in moving trading units around its trading floors. Those specialist units currently trading options on Amex-listed stocks are forced to remain in the current Designated Options Area, even though they have outgrown their space, or face giving up those classes to move to larger quarters. Moreover, specialist units that currently do not trade any options on Amex-listed stocks are unable to do so because there is no room left in the current Designated Options Area. The increase in classes of options traded on the Exchange and the Exchange's need for flexibility in moving the various trading units around the Exchange's trading floors has made it necessary for the Exchange to find additional physically separate locations to include in the Designated Options Area.

To address the above concerns, the Exchange proposes to include in its Designated Options Area the mezzanine trading level located above the Exchange's main equity trading floor area (the ''Mezzanine'') and that area of the Exchange consisting of the back row of the west side of the Exchange's main trading floor also referred to as the west side of Exchange Post 12, 13, and 15 (the ''Back Row''). The Commission recognized in 1994 that the Mezzanine is a physically separate trading location when it approved the inclusion of Amex-listed stocks in stock industry index groups provided the index traded separate from the Exchange's Designated Stock Area.[2] Consistent with the Commission's approval of that proposal, the Mezzanine and the Back Row are physically separate from the Designated Stock Area so as to avoid direct sight lines and communication by means of hand signals between either the Mezzanine or the Back Row and the Designated Stock Area.

The proposed rule change will not increase the potential for trading abuse or manipulation as there is no line of sight between the Mezzanine and the Back Row and the Designated Stock Area, thus no time or place advantage results from the proposed rule change. Although the proposed rule change will not increase the potential for trading abuse or manipulation, the Exchange does currently have in place various safeguards to detect and prevent any such abuse or manipulation. These safeguards include Amex Rule 175, which prohibits any specialist from acting as an options specialist or functioning in any capacity involving marketmaking responsibilities in any option as to which the underlying security is a stock in which the specialist is registered as such.

In addition to the safeguards contained in Amex Rules 175, the Exchange prohibits, under Amex Rule 958, any equity specialist, odd-lot dealer or Nasdaq market maker from acting as a registered trader in a class of stock options on a stock in which he is registered in the primary market place. This Rule also prohibits any member, while acting as a Registered Options Trader, if he is also registered as a Registered Equity Trader or Registered Equity Marketmaker, from executing a proprietary Exchange option transaction on an Amex-listed stock if during the preceding 60 minutes, he has been in the Designated Stock Area where the Amex-listed stock is traded.

To insure compliance with the above safeguards, the Exchange has in place various surveillance procedures. The Exchange's surveillance procedures, which are set forth at Section XI, C of the Amex Trading Analysis Options Surveillance Manual Concerning Paired Security Review, including, among other items, the preparation of daily activity reports on Registered Options Trader's (''ROT'') trading activity in Amex-listed stocks and options. These reports are than used to analyzed ROT trading activity to insure compliance with Amex Rule 958.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act[3] in general and furthers the objectives of Section 6(b)(5)[4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filled with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[2] Securities Exchange Act Release No. 34359 (July 12, 1994), 59 FR 36799 (July 19, 1994).

[3] 15 U.S.C. § 78f(b).

[4] 15 U.S.C. § 78f(b)(5).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR–AMEX–97–37 and should be submitted by December 5, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29931 Filed 11–13–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39305; File No. SR–CBOE–97–57]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Extension of the Permissible Maturity of FLEX Equity Options

November 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to change its rules to permit a FLEX equity option to have a term of five years in certain circumstances.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to allow FLEX equity options[3] traded on the Exchange to have a maturity beyond three years and up to five years in certain circumstances. Currently, FLEX equity options, by operation of Rule 24A.4(a)(4)(i), are limited to a maturity of three years.

When the Exchange filed for permission to list and trade FLEX equity options[4] it determined to limit the maturity of these options to three years because, unlike FLEX Index options which were already being traded on the Exchange since February 1993 and which could have a maturity of up to five years, the Exchange was concerned that there would not be sufficient liquidity in many equity option classes to support series with a longer term to expiration. Since it has traded FLEX equity options, however, the Exchange has had numerous requests from broker-dealers to extend the maturity of FLEX equity options to five years. Among the reasons the broker-dealer firms have been interested in seeking an extension in the allowable maturity is that these longer expiration FLEX equity options might be used to hedge a firm's longer term issuances of structured products linked to returns of an individual stock. The Rule would permit the longer term FLEX equity options to be listed when requested by the submitting member if the FLEX Post Official determined that sufficient liquidity existed among Equity FLEX qualified participants. By allowing for the extension of the maturity of FLEX equity options to five years in situations where there is demand for a longer term expiration and where there is sufficient liquidity among Exchange qualified market-makers to support the request, the proposed rule change will better serve the needs of CBOE's customers and the Exchange members who make a market for such customers.

[3] FLEX equity options are flexible exchange-traded options contracts which overlie equity securities. In addition, FLEX equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[4] SR–CBOE–95–43 approved in Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996).

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements

[5] 15 U.S.C. § 78f(b).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–57 and should be submitted by December 5, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29932 Filed 11–13–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39307; File No. SR–CHX–97–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Regarding Suitability of Customer Recommendations

November 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4,[2] notice is hereby given that on September 18, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') file with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Change

The Exchange proposes to add Article VIII, Rule 25 to the Exchange's Rules relating to market-at-the-close orders. The text of the proposed rule change is as follows: new text is italicized.

Article VIII

Business Conduct

Rule 25. (a) In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

(b) Prior to the execution of a transaction recommended to a customer, other than transactions with customers where investments are limited to money market mutual funds, a member shall make reasonable efforts to obtain information concerning:

(i) the customer's financial status;

(ii) the customer's tax status;

(iii) the customer's investment objectives;

(iv) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

Interpretations and Policies

.01 The following is a non-exclusive list of practices that the Exchange deems to violate a member's duty to recommend to a customer only securities suitable for that customer.

(a) Recommending speculative low-priced securities to customers without knowledge of or an attempt to obtain information concerning the customers' other securities holdings, their financial situation and other necessary data.

(b) Excessive activity in a customer's account, often referred to as ''churning' or ''overtrading.'' There are no specific standards to measure excessiveness of trading in customer accounts, because this must be related to the objectives and financial situation of the customer involved.

(c) Trading in mutual fund shares, particularly on a short-term basis. It is clear that normally these securities are not proper trading vehicles and such activity on its face may raise the question of trade violation.

(d) Fraudulent activity, including: establishing fictitious accounts in order to execute transactions which otherwise would be prohibited; executing transactions in discretionary accounts in excess of or without actual authority from customers; causing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon; and unauthorized use or borrowing of customers' funds and securities.

(e) Recommending the purchase of securities or the continuing purchase of securities in amounts that are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

.02 Derivatives and Other New Financial Products. As new financial products are introduced into the marketplace, it is important that members make every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding new financial products. Moreover, members should be careful to always comply with all Exchange requirements regarding the trading of such products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Purposed Rule Change

1. Purpose

The Exchange currently does not have a rule that expressly addresses suitability, churning and related matters for Exchange members. While the Exchange believes that such conduct may currently fall within existing Exchange rules, such as the Exchange's rule relating to ''just and equitable'' activity, the Exchange believes that it is desirable at this time to specifically address this type of conduct. As a result, the purpose of the proposed rule change is to add Rule 25 to Article VIII of the Exchange's rules, requiring that, in recommending to a customer the purchase, sale or exchange of any security, a member must have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

his other security holdings and as to his financial situation and needs.

Specifically, prior to the execution of a transaction recommended to a customer, other than transactions with customers where investments are limited to money market mutual funds, a member would be required to make reasonable efforts to obtain information concerning the customer's financial status, the customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

The rule change would contain a non-exclusive list of practices that the Exchange deems to violate a member's duty to recommend to a customer only securities suitable for that customer. These would be: (1) Recommending speculative low-priced securities to customers without knowledge of or an attempt to obtain information concerning the customers' other securities holdings, their financial situation and other necessary data; (2) excessive activity in a customer's account, often referred to as ''churning'' or ''overtrading''; (3) trading in mutual fund shares, particularly on a short-term basis; (4) fraudulent activity (including establishing fictitious accounts in order to execute transactions which otherwise would be prohibited, executing transactions in discretionary accounts in excess of or without actual authority from customers, causing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon, and unauthorized use or borrowing of customers' funds and securities); and (5) recommending the purchase of securities or the continuing purchase of securities in amounts that are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

In addition, with regard to derivative financial products, the rule change would require that members made every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding new financial products.

2. Statutory Basis

The purposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–97–21 and should be submitted by December 5, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29987 Filed 11–13–97; 8:45 am]

BILLING CODE 8070–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39309; File No. SR–GSCC–97–06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Funds-Only Settlement Payment Procedures

November 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 16, 1997, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') and on September 19, 1997 and on November 4, 1997, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend GSCC's rules to provide netting members with the option of making funds-only settlement payments to GSCC by authorizing banks to accept payment directions directly from GSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B),

[3] 17 CFR 300.30(a)(12).

[1] 15 U.S.C. 78s(b)(1).

and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The main purpose of the proposed rule change is to amend GSCC's rules concerning netting members' funds-only settlement payments to GSCC. Under the proposed rule change, netting members will have the option of satisfying their funds-only settlement obligations with GSCC by way of an automatic debit (''auto debit'') arrangement. GSCC has informed the Commission that other clearing agencies, such as The Options Clearing Corporation, use such agreements to facilitate their funds-only settlement process.

Under GSCC's current rules, a netting member with an obligation to pay a funds-only settlement amount to GSCC on a particular business day instructs a depository institution acceptable to GSCC, currently The Bank of New York, to make such payment to GSCC on its behalf. These payment procedures oblige GSCC each day to monitor continuously its account at the depository institution to determine whether every netting member with a funds-only settlement obligation to GSCC has made its payment in a timely manner.

The proposed auto debit arrangement will supplement the current approach to payment processing. Under the proposed rule change, netting members will have the option to satisfy funds-only settlement obligations pursuant to payment instructions given directly by GSCC to their banks. Each netting member choosing this option will enter into an agreement with GSCC and a bank acceptable to both the member and GSCC.[3] The bank will be required to meet the financial, operational capability, and other requirements set forth in GSCC's rules for eligibility to issue letters of credit on behalf of members for clearing fund purposes. GSCC believes that because the bank will maintain accounts on behalf of both the member and GSCC, it will be able to make and to collect funds-only settlement payments efficiently by posting debit and credit entries to the applicable accounts on its own books.

Pursuant to the auto debit agreement, the bank generally will make payment to GSCC's account by 9:00 a.m.[4] on behalf of netting members owing funds to GSCC. If the bank does not intend to make any payments on behalf of members, it will so inform GSCC by 8:00 a.m. Therefore, GSCC effectively will be guaranteed payment by 8:00 a.m. unless it receives a notice of dishonor from the bank. GSCC believes that the use of the auto debit arrangement will promote the timely receipt of funds payments by GSCC and will reduce the operational duties GSCC encounters in monitoring its current funds-only settlement payment process.

In connection with the auto debit arrangement, GSCC has proposed changes to certain of its other procedures. First, GSCC will begin requiring all netting members to make funds-only settlement payments to GSCC by 9:00 a.m. and will enforce this deadline with the assistance of its new fine schedule described in File No. SR–GSCC–97–04 as of January 2, 1998. In December of this year, the earlier opening of the cash FedWire at 12:30 a.m. is scheduled to take effect. GSCC previously received authorization from the Commission to require netting members to make funds-only settlement payments to GSCC by 9:00 a.m.[5] However, because of its concern that members would not be able to meet this deadline on a consistent basis, GSCC has kept the deadline at 10:00 a.m.

Second, the proposed rule change will eliminate the extra hour for the payment to GSCC of funds-only settlement amounts currently in effect for netting members whose offices are located outside of the New York City time zone. GSCC believes that this extra hour is no longer necessary because of members' increased ability to make efficient and timely payments due to the earlier opening of the cash FedWire and the availability of the auto debit arrangement.

Finally, under the proposed rule change, GSCC will move the deadline for it to pay a netting member any funds-only settlement payment it owes from 11:00 a.m. to 10:00 a.m. GSCC believes that it is equitable for netting members also to benefit from the availability of the earlier opening of the cash FedWire and the efficiencies of the auto debit arrangement.

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[6] because it will increase settlement efficiency and reduce payment related risks to GSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an important notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with this obligation because the auto debit arrangement will allow GSCC to increase its control over the payment of funds-only settlement payments. As a result, the amount of time and energy GSCC currently spends monitoring netting members' payments of their funds-only settlement obligations should be reduced and the risk of nonpayment or late payment of such obligations should be reduced.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of filing. Approving prior to the thirtieth day after publication of notice will allow GSCC to immediately begin implementing the auto debit arrangement which should result in increased efficiency in the clearance and settlement process for GSCC's netting members that use the arrangement. The Commission also notes that use of the auto debit arrangement will not be mandated by GSCC.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] GSCC submitted a draft form of the agreement as Exhibit A to its filing, which is available for review and copying at the Commission's Public Reference Room and through GSCC.

[4] All times cited herein are New York time.

[5] Securities Exchange Act Release No. 33237 (November 22, 1993), 58 FR 63414 [File No. SR–GSCC–91–04].

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–97–06 and should be submitted by December 5, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–GSCC–97–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29930 Filed 11–13–97; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39311; File No. SR–PCX–97–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Fee Change for ASAP Members

November 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to modify its Schedule of Rates for Exchange Services by changing its annual fee for Automatic System Access Privilege (''ASAP'') Members.[3] The text of the proposed rule is available at the Office of the Secretary, the PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Exchange's current Schedule of Rates, an ASAP Member is required to pay the Exchange an annual fee equal to 20% of the average price of Exchange membership sales in the three months immediately preceding the Member's activation or renewal of membership.[4] The minimum ASAP fee is $4,000 (and it is non-refundable).

The Exchange is now proposing to modify this fee, making it $4,000 per year (non-refundable).

The Exchange is reducing its fee for ASAP memberships in order to make its rates applicable to electronic trading more competitive. The proposal is also intended to reduce the significant increase in fees for ASAP memberships that has accompanied the recent rise in Exchange seat prices.[5]

[3] ASAP Memberships are governed by PCX Rule 1.14.

[4] See Exchange Act Release No. 37913 (November 1, 1996) 61 FR 57936 (November 8, 1996) (PCX–96–33). In that filing, the Exchange had changed its fee from $4,000 a year to the current schedule as described in the text.

[5] A PCX seat was sold for $380,000 recently; about the same time last year, a seat was sold for $145,000. Telephone conversation between Michael D. Pierson, Senior Attorney, PCX, and Vicky Berberi-Doumar, Special Counsel, Division of Market Regulation, Commission, on November 4, 1997.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4),[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and Rule 19b–4(e) under the Act.[8] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(e).

available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–40 and should be submitted by December 5, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29933 Filed 11–13–97; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Submissions for OMB Review

This notice lists information collection packages that have been sent to the Office of Management and Budget (OMB) for clearance, in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

1. *Electronic Request for Replacement SSA–1099/SSA–1042S—0960–New.* The information requested will be used by the Social Security Administration (SSA) to provide replacement copies of Forms SSA–1099/SSA–1042S needed to prepare Federal tax returns. Over 700,000 requests are received annually for replacement forms from Social Security beneficiaries by SSA field offices and teleservice centers. SSA intends to offer the public the option to use the Internet to request that the Agency mail to them a replacement SSA–1099/SSA–1042S, eliminating the need for a phone call to a teleservice center or a visit to a field office. The respondents are Title II Social Security beneficiaries.

Number of Respondents: 7,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 583 hours.

2. *Discrimination Complaint Form—0960–New.* The information collected on form SSA–437 will be used by SSA to investigate and informally resolve complaints of discrimination based on race, color, national origin, sex, age, religion and retaliation in any program or activity conducted by SSA. A person who believes that he or she has been discriminated against on any of the above basis may file a written complaint of discrimination. The information will be used to identify the complainant; identify the alleged discriminatory act; ascertain the date of the alleged act; obtain the identity of the individual(s)/facility/component that allegedly discriminated; and ascertain other relevant information that would assist in the investigation and resolution of the complaints. The respondents are individuals who allege discrimination on the grounds described above.

Number of Respondents: 250.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 250 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA)

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: November 7, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–29993 Filed 11–13–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2627]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea and Associated Bodies Working Group on Stability and Load Lines and on Fishing Vessels Safety; Meeting Notice

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9 a.m. on Thursday, December 4, 1997, in Room 1103, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This meeting will discuss the upcoming 41st Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on January 26–30, 1998, at the IMO Headquarters in London, England.

Items of discussion will include the following:

a. Harmonization of damage stability provisions in the IMO;

b. Progress of the Intercessional Correspondence Group on Load Lines issues;

c. Technical revisions to the Code on Intact Stability;

d. High Speed Craft Code revision;

e. Role of the human element, including shipboard loading and stability software; and

f. Safety aspects of ships engaged in a ballast water exchange.

Members of the public may attend this meeting up to the seating capacity of the room.

Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G–MSE–2), Room 1308, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: November 5, 1997.

Russel A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–29923 Filed 11–13–97; 8:45 am]

BILLING CODE 4710–07–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.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Information Collection Request (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 this collection was published on August 26, 1997 [62 FR 45287]. Three comments were received, two from gas pipeline operators and one from a pipeline engineering consultant. The two gas operators concurred with the need for NPMS. One commentor, a pipeline engineering consultant, disagreed with

the need for a national mapping program and had several concerns with the August 26, 1997 notice. One operator agreed with RSPA's estimate for the burden hours per company. The other commentors stated that the burden hours were underestimated. One commentor did not provide numbers on the degree of the underestimate, while the other suggested two days per operator. RSPA's burden hour estimate was from an actual pre-pilot test of the mapping program. Because RSPA has actually pre-tested this program on operators some of whom had electronic maps and some who had only paper maps, RSPA stands by its burden hour estimates. The one dissenting commentor also raised issues concerning the need and value of NPMS, the accuracy of the maps required under the pilot program, the costs of the regional repositories, and the costs and benefits of a truly national mapping program.

RSPA believes that access to a complete and accurate NPMS is necessary to ensure that RSPA has the best information for its emergency response, compliance and enforcement responsibilities. RSPA further believes that it is important that its state partners also have this same information. It is important to note that this mapping program is a joint effort of the Federal government, state agencies, and the three major trade organizations representing the natural gas and hazardous liquid industries, the American Petroleum Institute (API), the American Gas Association (AGA), and the Interstate Natural Gas Association Of America (INGAA). The accuracy of the information required of these maps is to within 500 feet and the maps must have a quality code describing the quality of the data provided. The Federal Government has provided $2.4 million for the NPMS system prior to 1997. It has budgeted $500,000.00 for 1997 with an estimated $400,000.00 needed annually thereafter to maintain this repository system. While RSPA does not have an estimate of the potential costs and benefits of a national mapping network it is hoping that information provided by this pilot program will help RSPA estimate the net benefits of a national mapping system in the future if that is required. The question for now is to test a volunteer mapping pilot program.

DATES: Comments on this notice must be received on or before December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin Fell, (202) 366–6205 or write by E-mail to Fellm@rspa.dot.gov., Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Research and Special Programs Administration (RSPA)

Title: Mapping Pilot Program.

OMB Control Number: 2137–NEW.

Type of Request: New Collection.

Affected Public: Gas transmission and hazardous liquid operators.

Abstract: The Department of Transportation (DOT) along with other Federal and state agencies have been working side by side with natural gas and hazardous liquid operators to develop a national pipeline mapping system (NPMS). This system, when complete, will depict and provide data on the natural gas transmission and larger liquid pipelines operating in the United States. The DOT is beginning a volunteer pilot program consisting of 36 pipeline operators (three from each of 12 states participating in the program). These 36 pipeline operators will provide electronic maps of 10–20 miles of their pipeline to one state as well as to one of six regional repositories for their startup and operating costs.

Estimated Annual Burden Hours: 144 hours.

Number of Respondents: 48.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT 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.

Issued in Washington, DC on November 5, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–30024 Filed 11–13–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Trumbull, Monroe and Newtown, CT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this Notice to advise the public that an Environmental Impact Statement will not be prepared for a proposed highway project in Trumbull, Monroe, and Newtown, Connecticut. A notice of Intent to prepare an EIS was published in the **Federal Register** on July 25, 1985. Instead, an Environmental Assessment will be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. West, Division Administrator, Federal Highway Administration, 628–2 Hebron Ave., Suite 303, Glastonbury, CT 06033–5007, Telephone: (860) 659–6703 extension 3009; Mr. Edgar Hurle, Director of Environmental Planning, Bureau of Policy and Planning, 3800 Berlin Turnpike, P.O. Box 317546, Newington, CT 06131–7546, Telephone: (860) 594–2920.

SUPPLEMENTARY INFORMATION: Existing State Route 25 is a major arterial from Interstate 95 in Bridgeport, Connecticut to U.S. Route 7 in Brookfield, Connecticut. The corridor under study involves the section from State Route 111 in Trumbull to Interstate 84 in Newtown. Following the Notice of Intent for the preparation of a Draft EIS, project scoping and preparation of the document began. Multiple expressway alternatives on new alignment were studied, as well as a widening of existing Route 25 with a 100 foot right of way for a length of approximately 11 miles. A minimal widening of the existing road with a 75 foot right of way and approximate length of 10 miles was also studied. In 1992, a strategic financial plan was developed by the Connecticut Department of Transportation (ConnDOT). This plan reevaluated major transportation project in light of transportation needs and financial constraints. Based on this plan, as well as severe environmental concerns of the expressway alternatives, the ConnDOT decided to narrow the scope of the project to only the widening alternative which has the least environmental and socio-economic impacts of all previously studied alternatives. No significant impacts are foreseen from the limited widening.

In light of the change of scope of the project, the FHWA and the ConnDOT agree that the foreseen impacts of this

project no longer warrant an EIS. An Environmental Assessment will be prepared and processed to fully analyze the proposal.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: October 31, 1997.

Donald J. West,

Division Administrator, Glastonbury, Connecticut.

[FR Doc. 97–29924 Filed 11–13–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of safety advisory amendment.

SUMMARY: FRA is amending Safety Advisory 97–1, which addresses safety practices to reduce the risk of casualties from train derailments caused by damage to tracks, roadbed, and bridges resulting from uncontrolled flows of water and similar weather-related phenomena, by revising the recommendation concerning the transmission of flash flood warnings to train dispatchers or other employees controlling the movement of trains.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, P.E., Bridge Engineer, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., RRS–15, Mail Stop 25, Washington, D.C. 20590 (telephone 202–632–3340) or Daniel L. Alpert, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., RCC–12, Mail Stop 10, Washington, D.C. 20590 (telephone 202–632–3186).

SUPPLEMENTARY INFORMATION: On September 4, 1997, FRA issued Safety Advisory 97–1 (SA 97–1) (62 FR 46793), recommending that railroads take certain actions to reduce the risk of train derailments which could result from severe weather conditions, particularly undetected flash floods. The first recommendation of SA 97–1 reads as follows:

1. The railroad should have in place a procedure that will assure that all notifications issued by the National Weather Service (NWS) of flash flood warnings will be received within 15 minutes of issuance from the NWS, directly or through a contract weather forecasting service, by the train dispatchers or other employees controlling the movement of trains on all track of Class 4 or higher or upon which passenger trains operate in commuter or intercity service, within the warning area. In the case of such track located outside of the warning area but subject to damage from water resulting from the storm, the information should be obtained in time to permit timely response by the railroad.

The intent of the recommendation is for all flash flood warnings issued by the NWS for the area in which an affected railroad operates to be received by the personnel who control train operations in the area of the warning. It is not necessary that the warning come directly from the NWS, but it should be received intact and in a timely manner.

Since SA 97–1 was issued, FRA has become aware of several circumstances in which large railroads with centralized dispatching operations have contracted with specialized weather services for weather information tailored to the situation and requirements of the railroad. Several of those contract services do not pass on all NWS warnings, but instead analyze the warnings in the light of other weather data available to them and their knowledge of the specific situation and requirements of their clients in order to provide only the weather information that affects the client and to filter out irrelevant information. This process reduces the amount of information that the client is required to consider and evaluate, and allows the client to focus on information that, in the view of the contract weather service, might actually affect the client's property and operations.

FRA now believes that this procedure offered by contract weather services might meet the requirements of some railroads better than if all NWS warnings are passed on by the contract weather service en masse, regardless of their relevance to the individual railroad. Therefore, Safety Advisory 97–1 is amended in part by revising Recommendation 1 to read as follows:

1. The railroad should have in place a procedure that will assure that the train dispatchers or other employees controlling the movement of trains on all track of Class 4 or higher or upon which passenger trains operate in commuter or intercity service will receive timely warnings of any flash flood that might damage that track or its supporting structures. In the case of such track located outside of the warning area but subject to damage from water resulting from the storm, the information should be obtained in time to permit timely response by the railroad. The warning procedure should incorporate either:

a. The means to receive within 15 minutes of issuance by the National Weather Service (NWS) all NWS flood warnings for the area in which the track is located; or

b. An arrangement with a competent commercial weather service which receives and reviews warnings and weather data from the NWS as part of its warning procedures, and from which the railroad receives warnings and weather information that is specific to the situation and requirements of the railroad.

Issued in Washington, DC, on November 10, 1997.

George A. Gavalla,

Acting Associate Administrator for Safety.

[FR Doc. 97–30032 Filed 11–13–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to report on the results of the fourteenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) and to discuss the work program for U.S. participation in future meetings of the UN Sub-Committee of Experts on the Transport of Dangerous Goods during the 1997–1998 biennium.

DATES: January 6, 1998 at 9:30 a.m.

ADDRESSES: Room 8236–8240 Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to (1) review the outcome of the fourteenth session of the UNSCOE held from December 8–18, 1997 in Geneva Switzerland and to begin preparation for U.S. participation in the fifteenth session of the UNSCOE. Topics to be covered during the public meeting include matters related to reformatting the UN Recommendations on the Transport of Dangerous Goods into a model rule, criteria for environmentally hazardous substances, review of

intermodal portable tank requirements, review of the requirements applicable to small quantities of hazardous materials in transport (limited quantities), classification of individual substances, requirements for bulk and non-bulk packagings used to transport hazardous material, requirements for inhalation toxicity materials, requirements and international harmonization of classification criteria and labeling.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the fourteenth session of the UNSCOE may be obtained from RSPA or may be downloaded from the Internet at http://www.itu.int/itudoc/un/editrans/dgdb/dgscomm/scdocsnw,html.

Issued in Washington, DC, on November 7, 1997.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–30025 Filed 11–13–97; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33471]

Coach USA, Inc.—Control Exemption—Air Travel Transportation, Inc.; Airlines Acquisition Co., Inc.; and Transportation Management Services, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of petition for exemption.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier in control of 28 motor passenger carriers at the time it filed its petition,[1] seeks to be exempted, under 49 U.S.C. 13541, from the prior approval requirements of 49 U.S.C. 14303(a)(5), to acquire control of Air Travel Transportation, Inc.; Airlines Acquisition Co., Inc., and Transportation Management Services, Inc., motor carriers of passengers.

DATES: Comments must be filed by December 15, 1997. Petitioner may file a reply by December 24, 1997.

ADDRESSES: Send an original and 10 copies of comments referring to STB Finance Docket No. 33471 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, D.C. 20423–0001. In addition, send one copy of comments to Petitioners' representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 [TDD for the hearing impaired: (202) 565–1695].

SUPPLEMENTARY INFORMATION: Coach, a noncarrier, seeks an exemption to acquire control of three motor carriers of passengers: (1) Air Travel Transportation, Inc., d/b/a Atlanta Airport Shuttle (MC–166420), a Georgia-based carrier that primarily operates airport shuttle service to and from Atlanta's Hartsfield International Airport; (2) Airlines Acquisition Co., Inc., d/b/a Airlines Transportation Company (MC–223575), a Pennsylvania-based carrier that primarily operates airport shuttle service to and from Greater Pittsburgh Airport and Allegheny County Airport; (3) Transportation Management Services, Inc., d/b/a Lenzner Coach Lines (MC–237433), a Pennsylvania-based carrier, which is affiliated with Airlines Transportation Company and which operates charter motorcoach service, contract service, sightseeing service and tour service.

Coach reported, at the time it filed this petition for exemption, that it controlled twenty-eight motor carriers of passengers. Coach states that its acquisition of control of the three motor carriers through the acquisition of their stock will not inhibit competition or reduce transportation options available to the public. Coach states that the three carriers do not compete with any Coach-owned carrier.

Petitioner also claims that the acquisition of control of the three carriers will allow each carrier to offer improved service at lower costs made possible by the coordination of functions, centralized management, financial support, rationalization of resources, and economies of scale that are anticipated from the common control. Coach also states that all collective bargaining agreements will be honored, that employee benefits will improve, and that no change in management personnel is planned. Additional information may be obtained from Petitioners' representatives.

A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street and Pennsylvania Avenue, N.W. Washington, D.C. 20530.

Decided: November 3, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–29997 Filed 11–13–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Coach currently controls the nation's second largest group of motor passenger carriers. *See Coach USA, Inc.—Control Exemption—America Charters, Ltd.,* STB Finance Docket No. 33393 (STB served Oct. 3, 1997), slip op. at 1. In addition to the instant petition, Coach has three other pending petitions: Coach USA, Inc. and K-T Contract Services, Inc.—Control and Merger Exemption—Gray Line Tours of Southern Nevada, STB Finance Docket No. 33431 (STB served Aug. 22, 1997), in which it seeks an exemption to acquire control of one additional motor passenger carrier, *Coach USA, Inc., and Leisure Time Tours—Control and Merger Exemption—Van Nortwick Bros., Inc., The Arrow Line, Inc., and Trentway-Wagar, Inc.,* STB Finance Docket No. 33428 (STB served Aug. 12, 1997), in which it seeks to acquire control of three additional motor passenger carriers, and *Coach USA, Inc.—Control Exemption—Browder Tours, Inc. and El Expresso, Inc.,* STB Finance Docket No. 33506 (STB filed Oct. 31, 1997), in which it seeks to acquire control of two additional motor passenger carriers.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–94]

Recordation of Trade Name: ''IBBI''

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of recordation.

SUMMARY: On July 22, 1997, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name ''IBBI,'' was published in the **Federal Register** (62 FR 39302). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received no later than September 22, 1997. No responses were received in opposition to the notice. Accordingly, as provided in section 133.14, Customs Regulations (19 CFR 133.14), the name ''IBBI,'' is recorded as the trade name used by International Business to Business, Inc., a corporation organized under the laws of Colorado, located at 566 #D Nucla Way, Aurora, Colorado 80011. The trade name is used in connection with an item known as a key safe or lock and lockbox which has a compartment in which keys are locked and a shackle to attach to a door or doorknob.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Gina D'Onofrio, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, N.W. (Ronald Reagan Building), Washington, D.C. 20229, (202) 927–2330.

Dated: November 6, 1997.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 97–29922 Filed 11–13–97; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Elementary-Level Teacher Education in Armenia

ACTION: Request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop an approximately two-year program to train a group of Armenian educators of elementary level teachers, to develop a manual for elementary teacher education for use in Armenia, and to assist the Armenian educators to pilot-test the manual in Armenia.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

The funding authority for the program cited above is provided through the Freedom Support Act (FSA).

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/AS–98–02.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, January 16, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. It is anticipated that program activities will begin approximately in March, 1998.

FOR FURTHER INFORMATION CONTACT: The Advising, Teaching, and Specialized Programs Division, Room 349, Office of Academic Programs, U.S. Information Agency, 302 4th Street, S.W., Washington, D.C. 20547; or 202–619–6038 (telephone), 202–619–6790 (telefax), or sukux@usia.gov (Internet) to request a Solicitation Package containing more detailed information and instructions. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Sally Kux on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AS–98–02, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense to encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The objective of this project is to work in partnership with the Armenian Ministry of Education to update Armenian in-service and pre-service training for elementary-level teachers (grades 1–4) by training a core team of Armenian teacher educators and by assisting them to develop a handbook on elementary education. The project will comprise three phases which are describe in detail in the Project Objectives, Goals, and Implementation (POGI).

Participants

The Armenian team will consist of approximately 6 educators representing the general content areas of elementary education in Armenia. These areas are mathematics, language (Armenian, Russian, and English) natural science, arts, and physical education. Armenian participants will be proficient in English.

Guidelines

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details.

Proposed Budget

Applicants must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. The award will not exceed $300,000. Administrative costs may not exceed 25% of the total USIA-funded expenses.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and USIS Erevan. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Idea

Proposals should exhibit originality, substance, precision, relevance to Agency mission, and responsiveness to the objectives and guidelines stated in this solicitation. Proposals should demonstrate substantive expertise.

2. Program Planning and Evaluation

Detailed agenda and work plan should demonstrate substantive undertakings and logistical capacity and should adhere to the program overview and guidelines stated above. Proposals should include a plan for continuous and summative evaluations.

3. Ability To Achieve Program Objectives

Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program objectives and how continuous evaluation will be used to adjust program plans as needed.

4. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals.

7. Institution's Record/Ability

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) to ensure ongoing communication and involvement with Armenian teacher education projects.

9. Cost-Effectiveness and Cost-Sharing

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this REP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: November 6, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–29913 Filed 11–13–97; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 62, No. 220

Friday, November 14, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB-97-15]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

Correction

In notice document 97–29314 appearing on page 59846, in the issue of Wednesday, November 5, 1997, make the following correction:

On page 59846, in the first column, in the **DATES** section, in the second line, ''January 5, 1997'' should read ''January 5, 1998''.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1877-97; AG Order No. 2125-97]

RIN 1115-AE26

Designation of Sierra Leone Under Temporary Protected Status

Correction

In notice document 97–29078 beginning on page 59736, in the issue of Tuesday, November 4, 1997, make the following correction:

On page 59737, in the first column, in the paragraph designated (3), in the last line, ''November 13, 1998'' should read ''November 3, 1998''.

BILLING CODE 1505-01-D

federal register

Friday
November 14, 1997

Part II

Environmental Protection Agency

40 CFR Parts 123, 233, and 271

Approval of Modifications to Michigan's Approved Program To Administer the National Pollutant Discharge Elimination System Permitting Program Resulting From the Reorganization of the Michigan Environmental Agencies; Final Rule

Approval of Modifications to Michigan's Assumed Program To Administer the Section 404 Permitting Program Resulting From the Reorganization of the Michigan Environmental Agencies; Final Rule

Michigan: Final Authorization of Revisions to State Hazardous Waste Management Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[FRL–5918–6]

Approval of Modifications to Michigan's Approved Program To Administer the National Pollutant Discharge Elimination System Permitting Program Resulting From the Reorganization of the Michigan Environmental Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) approves of the modifications of Michigan's approved National Pollutant Discharge Elimination System (NPDES) permitting program which resulted from certain Michigan Executive Orders which reorganized Michigan's environmental agencies.

EFFECTIVE DATE: Consistent with 40 CFR 123.62(b)(4), this action is effective November 14, 1997. In accordance with 40 CFR 23.2, EPA explicitly provides that this action shall be considered issued for the purposes of judicial review November 14, 1997, at 1 p.m. eastern daylight time. Under section 509(b)(1) of the Clean Water Act, judicial review of this action can be obtained only by filing a petition for review in the United States Court of Appeals within 120 days after it is considered issued for the purposes of judicial review.

FOR FURTHER INFORMATION CONTACT: Eugene Chaiken, Chief, NPDES Support and Technical Assistance Branch, Water Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604 (312) 886–0120.

SUPPLEMENTARY INFORMATION:

Note: This action is one of four **Federal Register** actions related to reorganization of state environmental agencies in Michigan. All these actions are published together in this **Federal Register**, with the exception of a Clean Air Act State Implementation Plan published on November 6, 1997 at 62 FR 59995.

I. Background

On October 17, 1973, EPA approved the NPDES permitting program submitted by the State of Michigan pursuant to section 402 of the Clean Water Act. Procedures for revision of State programs at 40 CFR 123.62 provide for EPA review of any revisions to federally authorized State NPDES programs to determine whether or not such revisions are substantial and to approve or disapprove any such revisions.

The Michigan Water Resources Commission (MWRC) was the name of the agency authorized to administer the NPDES program in Michigan on October 17, 1973. On November 8, 1991, the Governor of Michigan issued Executive Order 1991–31, which reorganized and consolidated Michigan's environmental agencies. Though initially stayed in the Michigan court system, the Michigan Supreme Court ultimately upheld the validity of Executive Order 1991–31 on September 2, 1993. *Dodak* v. *Engler,* 443 Mich. 560, 506 N.W.2d 190 (1993).

Pursuant to Executive Order 1991–31, all of MWRC's authority, powers, duties, functions and responsibilities pertaining to Michigan's NPDES program were transferred to the Director of the Michigan Department of Natural Resources (MDNR), except that adjudicatory authority and authority to conduct contested case hearings were transferred to the Michigan Natural Resources Commission (MNRC). Executive Order 1995–4 then transferred all MNRC authority to make decisions regarding administrative appeals of surface water permit applications to the MDNR Office of Administrative Hearings. The Attorney General of the State of Michigan, in a statement dated August 2, 1995, certified to the following:

> Executive Order Nos. 1991–31 and 1995–4 and the Governor and Director's letter dated February 3, 1995 do not change the State's statutes or rules which provide adequate authority to the State of Michigan to carry out the program set forth in Governor William G. Milliken's ''Program Description'' dated July 17, 1973. In fact, State statutes and rules are essentially unaffected by these Executive Orders and letter. The only way in which the statutes and rules are affected is by changing the person or entity responsible for carrying out the various functions set forth within these statutes and rules. This type of reorganization of functions is consistent with the Constitution of Michigan of 1963, Article V, Section II.
>
> No authority, power, duties and functions contained within Michigan's statutes or rules applicable to the NPDES program have been eliminated or changed except for the party responsible for carrying out such authority, powers, duties and functions. Accordingly, in my opinion, the laws of the State of Michigan continue to provide adequate authority to carry out the program set forth in the ''Program Description'' submitted by Governor William G. Milliken on July 17, 1973. The adequacy of this legal authority is unaffected by Executive Order Nos. 1991–31, 1995–4 and the Governor and Director's letter dated February 3, 1995.

On July 31, 1995, Michigan's Governor John Engler signed Executive Order 1995–18, which *inter alia,* elevated the former Environmental Protection Bureau of the MDNR to full independent departmental status called the Michigan Department of Environmental Quality (MDEQ). The MDEQ retained all of its responsibilities and virtually all of its personnel assigned to it as a bureau in the MDNR. The Attorney General of the State of Michigan, in a statement dated June 13, 1996, certified to the following:

> It is my opinion that E.O. 1995–18 did not substantively change the State's statutes or rules relating to the administration of federally delegated programs nor was any authority, power, duty or function contained within Michigan's statutes or rules applicable to federally delegated programs diminished by the execution of E.O. 1995–18. Specifically, E.O. 1995–18 did not affect program jurisdiction, the scope of activities regulated, criteria for the review of permits, public participation, enforcement capabilities or the adequacy of Michigan's legal authority to carry out its federally delegated programs.

Based upon a review of this information, as well as a review of the NPDES program documents submitted in support of Michigan's original (1973) request for EPA approval, EPA preliminarily concluded on March 28, 1997, that the Executive Orders did not substantially revise the State of Michigan's Section 402 NPDES permitting program and that any revisions resulting from the executive orders should be approved. This conclusion was based on two factors.

First, none of the statutes or rules upon which EPA authorized Michigan's NPDES permitting program changed as a result of the Executive Orders. Instead, the Executive Orders simply changed the people or entities responsible for carrying out the various functions set forth within these statutes and rules.

Second, as described in the October 24, 1996, letter from MDEQ to EPA, the Director of MDEQ has ''directed that any MDEQ staff not in compliance with the federal requirements [governing conflict of interest set forth at 40 CFR 123.45(c)] are not permitted to approve permits, nor any portion of permits.'' Moreover, this directive will be incorporated into MDEQ's internal delegation letters and department policies. Finally, the Director of MDEQ will require all individuals that he appoints to decide administrative appeals of NPDES permits to certify that they comply with the CWA conflict of interest requirements. Consequently, Michigan's NPDES program assures compliance with conflict of interest requirements for NPDES state programs.

While not required to do so according to the State NPDES program regulations,

EPA chose to invite public comment concerning the Agency's preliminary determinations. Consequently, on March 28, 1997, EPA published a notice in the **Federal Register** of its preliminary determinations that the Executive Orders caused no substantial revisions to Michigan's NPDES program and that any revisions to Michigan's NPDES program that resulted from the Executive Orders should be approved. Additionally, EPA requested specific comment on the impact, if any, the Executive Orders have on EPA approval of the modification to the Michigan NPDES program recognizing the State's authority to issue general permits. EPA also indicated that it could conduct a public hearing, if there was significant public interest based on requests received. Finally, EPA stated that its preliminary decision only addressed, and EPA was only seeking comment on, the impact of the Executive Orders on Michigan's NPDES program.

II. Comments

In response to the March 28, 1997, notice, EPA received comments from the Scio Residents for Safe Water and the Gelman Sciences Site Citizens Review Committee (''Scio Residents''). The Scio Residents allege that the individuals at MDEQ who are now responsible for making permitting decisions have ''compromised independence,'' a ''pro business agenda,'' and are attempting to ''implement[] blatantly anti-environmental policies without substantive public involvement or notice.'' However, as noted above, none of the statutes or rules upon which EPA authorized Michigan's NPDES permitting program changed as a result of the Executive Orders and so Michigan continues to have the legal authority and obligation to issue NPDES permits which are consistent with the Clean Water Act. The fact that there may be different people—with allegedly ''compromised independence'' or different ''agendas'' or ''policies''—who are responsible for exercising that authority and fulfilling that obligation as a result of the Executive Orders is not a basis for disapproving of any revisions resulting from those Executive Orders. Of course, EPA would have the authority to withdraw program approval pursuant to 40 CFR 123.63 if, as a result of any changes caused by the Executive Orders, Michigan repeatedly issues NPDES permits which do not conform with the requirements of the Clean Water Act. However, that is not at issue in this matter.

In addition to the comments from the Scio Residents, EPA also received comments which were jointly submitted by the National Wildlife Federation and the Michigan United Conservation Clubs (NWF and MUCC). NWF and MUCC argue that ''EPA's 1993 approval of Michigan's General Permit Program was illegal'' because, prior to approving of Michigan's General Permit Program, EPA allegedly violated its own regulations and past practices ''(1) by failing to have a complete State program submission before approving Michigan's General Permit Program; (2) by failing to provide public notice of and comment on the proposed approval; and (3) by failing to hold a public hearing.''

EPA believes that allegations about the unlawfulness of previous agency actions are not relevant to a pending agency matter, except to the extent that EPA proposes to take allegedly unlawful actions in the pending agency matter. In response to the first allegation of unlawful action, EPA continues to believe that neither the CWA nor NPDES State program regulations require comprehensive review and ''reapproval'' of the entire underlying NPDES program each time the Agency approves a modification to such a program. EPA regulations establish procedures for identification (both by EPA and interested persons) and review of any allegation of failure by a State to comply with NPDES State program requirements. *See* 40 CFR 123.64(b)(1). In the specific matter currently before the Agency, namely, the effect of the Executive Orders on the Michigan's program, the Agency believes that comprehensive review and ''reapproval'' is unnecessary. *See National Wildlife Federation* v. *Adamkus,* 936 F.Supp. 435, 440–41, 444 (W.D. Mich. 1996) (upholding EPA's decision, in interpreting comparable statutory and regulatory provisions pertaining to EPA's review of revisions to State Section 404 wetland permitting programs, that EPA need not perform a comprehensive review of an entire underlying State program when approving a modification to such program). Instead, as was made clear in the March 28, 1997, notice, the issues in the present matter are: (1) Whether the Executive Orders caused substantial revisions to Michigan's NPDES program; (2) whether any revisions to Michigan's NPDES program that resulted from the Executive Orders should be approved; and (3) whether the Executive Orders have had any impact on EPA approval of the modification to the Michigan NPDES program recognizing the State's authority to issue general permits.

On the other two issues identified by the commentors, the opportunity for public comment and the opportunity for a public hearing, EPA did provide an opportunity for public comment in this matter (and this notice responds to those comments) and an opportunity for the public to request a public hearing (although MWF and MUCC did not specifically request a public hearing in this matter). As described below, EPA does not believe that a public hearing is necessary based upon the comments received.

NWF and MUCC also raised a number of comments in which they claim that EPA has not fulfilled certain commitments it allegedly made in its August 16, 1994 ''Unopposed Motion to Stay Briefing'' and in subsequent status reports filed in *National Wildlife Federation et al.* v. *Browner, et al.,* No. 94–3309, a case which is currently pending in the United States Court of Appeals for the 6th Circuit. NWF and MUCC argue that, because the Agency notified the 6th Circuit that today's notice and comment proceedings might resolve NWF's and MUCC's concerns, and because NWF and MUCC believe the proceedings do not address their concerns, EPA has failed to fulfill a commitment it made to the court. EPA disagrees that it has failed to fulfill its commitment to the 6th Circuit. EPA explained to the court that these proceedings might resolve NWF's and MUCC's concerns. EPA's inability to satisfy NWF's and MUCC's concerns is not ''failure'' of the Agency, but merely continuing disagreement between EPA and the two groups. Based on comprehensive review of Michigan's public participation procedures (a copy of which is included in the administrative record for today's action), as well as review of the conflict of interest provisions applicable to States authorized to administer the NPDES program, the Agency believes that the Michigan program satisfies the applicable public participation and conflict of interest requirements.

NWF's and MUCC's final comment was that EPA should not approve of the revisions resulting from the Executive Orders because ''the primary decision maker in contested case proceedings, the Director of the [MDEQ], has engaged in illegal ex parte communications about a contested case currently pending a decision,'' allegedly in violation of 40 CFR 124.78(b)(1). NWF and MUCC also argue that the Michigan Attorney General had an obligation to certify that the laws of Michigan are adequate to prohibit such *ex parte* communications. However, the prohibition on *ex parte* communications at 40 CFR 124.78(b)(1) applies only to EPA and to proceedings before EPA. Nothing in EPA's NPDES State program

regulations at 40 CFR part 123 requires that States authorized to administer the NPDES program prohibit such *ex parte* communications. Consequently, the allegation that the Director of MDEQ might be engaging in *ex parte* communications about a contested case, or the concern that the Michigan Attorney General has not certified that the laws of Michigan adequately prohibit such *ex parte* communications, are not sufficient bases for disapproving of any revisions to Michigan's NPDES program resulting from the Executive Orders.

The Scio Residents requested that EPA provide a public hearing on this matter. NWF and MUCC did not specifically request a public hearing in this matter (although, as noted above, NWF and MUCC did criticize EPA for not holding a public hearing in 1993 prior to approving of Michigan's General Permit Program). EPA is required to hold a public hearing under 40 CFR 123.62(b)(2) if a proposed revision is substantial and if there is significant public interest in holding a hearing based upon requests for a hearing received by EPA.

As noted above, EPA has determined that none of the statutes or rules upon which EPA authorized Michigan's NPDES permitting program changed as a result of the Executive Orders. Instead, the Executive Orders simply changed the people or entities responsible for carrying out the various functions set forth within these statutes and rules. Consequently, EPA does not believe that the revisions to Michigan's NPDES program resulting from the Executive Orders are substantial. Moreover, EPA only received two sets of comments: one set from the Scio Residents and a second set that was jointly submitted by NWF and MUCC; and only the Scio Residents specifically requested a hearing. Thus, EPA does not believe that there is sufficient public interest in this matter to hold a public hearing. Finally, neither set of comments explained why a public hearing was necessary or would be helpful in resolving the question of whether EPA should approve of any revisions to Michigan's NPDES program resulting from the Executive Orders. Consequently, EPA is not providing for a public hearing.

Finally, EPA notes that the Michigan Environmental Council (MEC), in a letter to EPA dated June 14, 1996, raised questions regarding the impact of Michigan Public Act 132 of 1996 on Michigan's NPDES program. EPA is addressing those questions separately and EPA's approval of the modifications resulting from the Executive Orders in this proceeding does not express any viewpoint on those questions.

III. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(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 loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget (OMB) has waived review of EPA action on State NPDES programs .

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of 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.

EPA's approval of any revisions to Michigan's NPDES program resulting from the Executive Orders contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Instead, EPA's determination merely recognizes an internal reorganization of an existing approved NPDES State program; and this determination does not contain any Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this determination is not subject to the requirements of section 202 of the UMRA.

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. Because EPA's determination to approve of any revisions to Michigan's NPDES program resulting from the Executive Orders merely recognizes an internal reorganization of an existing approved NPDES State program, EPA's determination contains no regulatory requirements that might significantly or uniquely affect small governments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604 & 605. The Regional Administrator today certifies, pursuant to section 605(b) of the RFA, that approval of any revisions to Michigan's NPDES program resulting from the Executive Orders will not have a significant impact on a substantial number of small entities.

The basis for the certification is that EPA's approval simply results in an administrative change in the structure of the approved NPDES program, rather than a change in the substantive requirements imposed on any small entity in the State of Michigan. This approval will not affect the substantive regulatory requirements under existing State law to which small entities are already subject. Additionally, approval of the NPDES program modification will not impose any new burdens on small entities.

D. Paperwork Reduction Act

This approval contains no requests for information and consequently is not

subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

IV. EPA's Final Determination

EPA, after review and consideration of all the information submitted by Michigan and the comments received, has determined that the revisions to Michigan's NPDES program resulting from the Executive Orders should be approved. Moreover, EPA has determined that the revisions are not substantial.

Dated: October 1, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–29622 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 233

[FRL–5918–7]

Approval of Modifications to Michigan's Assumed Program To Administer the Section 404 Permitting Program Resulting From the Reorganization of the Michigan Environmental Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (EPA) approves of the modifications of Michigan's assumed Clean Water Act Section 404 (Section 404) permitting program which resulted from Michigan Executive Order 1995–18 which reorganized Michigan's environmental agencies.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Kevin Pierard, Chief, Watersheds and Non-Point Source Programs Branch, Water Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–4448.

SUPPLEMENTARY INFORMATION:

Note: This action is one of four **Federal Register** actions related to reorganization of state environmental agencies in Michigan. All these actions are published together in the **Federal Register**, with the exception of a Clean Air Act State Implementation Plan published on November 6, 1997 at 62 FR 59995.

I. Background

The State of Michigan assumed Federal Clean Water Act Section 404 permitting authority on October 16, 1984. Procedures for revision of State programs at 40 CFR 233.16 require that EPA review any revisions to state assumed Section 404 programs, determine whether such revisions are substantial, and approve or disapprove the revisions.

On November 25, 1994, EPA approved of revisions to Michigan's Section 404 program resulting from Executive Order 1991–31, which transferred the responsibilities and authorities of the Michigan Department of Natural Resources (MDNR) to the Director of a new MDNR. On July 3, 1995, Michigan Governor John Engler signed Executive Order 1995–18 (Executive Order), which elevated the former Environmental Protection Bureau of MDNR to full departmental status as the Michigan Department of Environmental Quality (MDEQ), effective October 1, 1995. MDEQ retained all of its environmental duties, functions and responsibilities and virtually all of the personnel formerly assigned to it as a bureau in the MDNR. In addition, certain other environmental duties, functions and responsibilities of the Law, Geographical Survey and Land and Water Management Divisions were transferred to MDEQ, as was the authority to make decisions regarding administrative appeals in those matters under its purview.

The Attorney General, in a statement dated June 13, 1996, statement, certified to the following:

> It is my opinion that E.O. 1995–18 did not substantively change the state's statutes or rules relating to the administration of federally delegated programs nor was any authority, power, duty or function contained within Michigan's statutes or rules applicable to federally delegated programs diminished by the execution of E.O. 1995–18. Specifically, E.O. 1995–18 did not affect program jurisdiction, the scope of activities regulated, criteria for the review of permits, public participation, enforcement capabilities or the adequacy of Michigan's legal authority to carry out its federally delegated programs.

Based upon a review of this information, as well as a review of the Section 404 program documents submitted in support of Michigan's original (1983) request for EPA approval and the materials submitted by Michigan and considered by EPA in approving of revisions to Michigan's Section 404 program on November 25, 1994, EPA preliminarily concluded that the Executive Order did not substantially revise the State of Michigan's Section 404 program and that any revisions resulting from the Executive Order should be approved. This preliminary determination was based upon the fact that none of the statutes or rules which comprise Michigan's Section 404 program changed as a result of the Executive Order and MDEQ retained virtually all of the personnel formerly assigned to it as a bureau in MDNR.

Although none of the statutes or regulations which comprise Michigan's program changed, there was one additional matter that EPA considered before making its preliminary determination. Specifically, the Executive Order provides that the Director of MDEQ now decides administrative appeals of wetland permitting decisions, rather than the Michigan Natural Resources Commission. However, this change does not affect the Michigan Section 404 program's ''area of jurisdiction, scope of activities regulated, criteria for review of permits, public participation, or enforcement capability.'' 40 CFR 233.16(d)(3). Consequently, EPA did not view this change to be a substantial revision. Moreover, EPA preliminarily concluded that this revision should be approved because it is not inconsistent with anything in the Clean Water Act or its implementing regulations.

While not required to do so according to the State Section 404 program regulations, EPA chose to invite public comment concerning the Agency's preliminary determinations. Consequently, on March 28, 1997, EPA published a notice in the **Federal Register** of its preliminary determinations that the Executive Order caused no substantial revisions to Michigan's Section 404 program and that any revisions to Michigan's Section 404 program that resulted from the Executive Order should be approved. EPA also indicated that it might conduct a public hearing, if there was significant public interest based on requests received. Finally, EPA stated that its preliminary decision only addressed, and EPA was only seeking comment on, the impact of the Executive Order on Michigan's Section 404 program.

II. Comments

In response to the March 28, 1997, notice, EPA received comments from three commenters: the Tip of the Mitt Watershed Council, the East Michigan Environmental Action Council, and the Michigan Environmental Council. The commenters all raised the same two issues. First, the commenters noted that the Executive Order transferred authority to hold hearings and make findings of fact and render decisions on contested Section 404 permits from the Natural Resources Commission, a public body that was subject to Michigan's Open Meetings Act, to the Director of

the MDEQ, who in turn delegated that authority to the MDEQ Office of Administrative Hearings, an entity that is not a public body and therefore is not subject to Michigan's Open Meetings Act.

The public participation requirements for state Section 404 programs are set forth at 40 CFR 233.32–34. The only ''Open Meetings Act'' type requirements in those regulations is at 40 CFR 233.33, which requires that state Section 404 programs provide an opportunity for public hearings at which the public must be allowed an opportunity to submit oral and written statements or data concerning a permit application or draft general permit. Michigan clearly continues to comply with this requirement. *See* Section 281.708 of the Michigan Compiled Laws. Nothing in the state Section 404 wetland program regulations requires that adjudicatory hearings on contested permits be open to the public. Consequently, the fact that these types of hearings may not necessarily be open to the general public in Michigan is not a basis for disapproving of the revisions resulting from the Executive Order.

We further note that Michigan did not represent in its original 1983 program submission, and EPA in reviewing and approving of that original program submission did not find, that Michigan was relying on the Michigan Open Meetings Act to demonstrate that it had authority to comply with the federal public participation requirements. Rather, Michigan cited to Sections 8 and 10 of its Wetlands Protection Act, Section 5 of its Water Resources Act, Section 6 of its Inland Lakes and Streams Act, and Sections 41–42 of its Administrative Procedures Act, to demonstrate that it had such authority. None of these statutory provisions were affected by the Executive Order. Consequently, any changes resulting from the Executive Order pertaining to the applicability or inapplicability of the Michigan Open Meetings Act do not in any way constitute changes in Michigan's approved Section 404 program.

The second issue raised by the commenters is that, under the Executive Order, the Chief Administrative Law Judge for the Office of Administrative Hearings who decides certain contested Section 404 permits is appointed by the Director of the MDEQ and so allegedly will not be capable of exercising decisionmaking authority independent of the Director of the MDEQ. However, there is nothing in the state Section 404 program regulations pertaining to administrative appeals of permit decisions. Consequently, the possibility that the Chief Administrative Law Judge may not be entirely independent of the Director of the MDEQ is not a basis for disapproving of the revisions resulting from the Executive Order.

Of course, if as a result of the changes to the administrative appeals process resulting from the Executive Order, Michigan repeatedly issues Section 404 permits which do not conform with the requirements of the Clean Water Act, this might serve as a basis for withdrawal of Michigan's Section 404 program under 40 CFR 233.53. EPA notes that it currently has pending before it a February 4, 1997, petition to withdraw Michigan's Section 404 program that was filed by the Michigan Environmental Council (MEC) which alleges, among other things, that Michigan is in fact repeatedly issuing such permits in part because of the changes to the administrative appeals process. EPA is separately investigating the allegations in that petition to determine whether cause exists to commence withdrawal proceedings. EPA, in approving of the revisions to Michigan's Section 404 program resulting from the Executive Order, is in no way expressing any opinion on the question of whether withdrawal proceedings should commence in light of the allegations in the MEC petition. Moreover, EPA is not expressing any opinion on questions which MEC separately raised in a letter dated June 14, 1996, regarding the impact of Michigan's Public Act 132 of 1996 on Michigan's Section 404 program. Instead, EPA is addressing those questions separately.

In a related comment, one commenter argued that, under the Executive Order, the Director may ''appoint an individual within or outside the [MDEQ]'' to decide certain administrative appeals in which the Director has been involved. The commenter also noted that there is no statutory definition of the individuals eligible for service in this role and so ''it is conceivable that an individual with a personal or financial interest in the project at issue could be appointed to decide an appeal.'' However, in contrast to 40 CFR 123.25(c), there is nothing in either the Clean Water Act or in EPA's implementing regulations governing conflicts of interest in state Section 404 programs. Consequently, the possibility that such a conflict could arise is not a sufficient basis to disapprove of the revisions to Michigan's Section 404 program resulting from the Executive Order. Moreover, although not necessary to our decision, we note that Michigan has represented to EPA that all decisionmakers appointed by the Director will be required to sign a ''Conflict of Interest Certification'' certifying that they ''do not now receive, nor have ever received, any income directly or indirectly from any person who holds a permit, has applied for a permit, or who is subject to an enforcement order issued pursuant to or under the authority of [the Clean Water Act].'' Consequently, the possibility that an appointed decisionmaker might have a financial conflict of interest is extremely remote.

Finally, all three commenters stated that they believed that the revisions resulting from the Executive Order were substantial and so requested a public hearing. EPA is required to provide an opportunity for a public hearing under 40 CFR 233.16(d)(3) if a proposed revision is substantial. 40 CFR 233.16(d)(3) provides that ''substantial revisions include, but are not limited to, revisions that affect the area of jurisdiction, scope of activities regulated, criteria for review of permits, public participation, or enforcement capability.'' As described above, none of the statutes or rules upon which EPA authorized Michigan's Section 404 program changed as a result of the Executive Order. Instead, the Executive Order simply changed the people or entities responsible for carrying out the various functions set forth within these statutes and rules. Consequently, EPA does not believe that the revisions to Michigan's Section 404 program resulting from the Executive Order are substantial.

Moreover, in light of the fact that EPA only received three sets of comments which addressed virtually identical issues, EPA does not believe that there is sufficient public interest in this matter to hold a public hearing. Finally, none of the comments explained why a public hearing was necessary or would be helpful in resolving the question of whether EPA should approve of any revisions to Michigan's Section 404 program. Consequently, EPA is not providing for a public hearing.

III. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(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 loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget (OMB) has exempted EPA action on State Section 404 programs from OMB review.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of 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.

EPA's approval of any revisions to Michigan's Section 404 program resulting from the Executive Order contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Instead, EPA's determination merely recognizes an internal reorganization of an existing approved Section 404 State program; and this determination does not contain any Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this determination is not subject to the requirements of section 202 of the UMRA.

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. Because EPA's determination to approve of any revisions to Michigan's Section 404 program resulting from the Executive Order merely recognizes an internal reorganization of an existing assumed State Section 404 program, EPA's determination contains no regulatory requirements that might significantly or uniquely affect small governments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604 & 605. The Regional Administrator today certifies, pursuant to section 605(b) of the RFA, that approval of any revisions to Michigan's Section 404 program resulting from the Executive Order will not have a significant impact on a substantial number of small entities.

The basis for the certification is that EPA's approval simply results in an administrative change in the structure of the assumed Section 404 program, rather than a change in the substantive requirements imposed on any small entity in the State of Michigan. This approval will not affect the substantive regulatory requirements under existing State law to which small entities are already subject. Additionally, approval of the Section 404 program modification will not impose any new burdens on small entities.

D. Paperwork Reduction Act

This approval contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

IV. EPA's Final Determination

EPA, after review and consideration of all the information submitted by Michigan and the comments received, has determined that the revisions to Michigan's Section 404 program resulting from the Executive Order should be approved. Moreover, EPA has determined that the revisions are not substantial.

Dated: October 1, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–29623 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5918–8]

Michigan: Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of Michigan for final authorization.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (U.S. EPA) approves the revisions to the State of Michigan's authorized hazardous waste management program resulting from Michigan Executive Order 1995–18.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy O'Malley, U.S. EPA, State Programs and Authorization Section, Waste Pesticides and Toxics Division, 77 W. Jackson Blvd. (DR–7J), Chicago, Illinois 60604, or telephone (312) 886–6085.

SUPPLEMENTARY INFORMATION:

Note: This action is one of four **Federal Register** actions related to reorganization of state environmental agencies in Michigan. All these actions are published together in this **Federal Register**, with the exception of a Clean Air Act State Implementation Plan published on November 6, 1997 at 62 FR 59995.

A. Background

On March 28, 1997, EPA published in the **Federal Register** a notice announcing the preliminary determination to approve the State of Michigan's hazardous waste management program, as revised, pursuant to Section 3006(b) of the Resource Conservation and Recovery Act (RCRA) and 40 CFR 271.21(b)(4).

States with final authorization under Section 3006(b) of RCRA, 42 U.S.C. 6929(b) have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste management program. When either EPA's or a State program's controlling statutory or regulatory authority is modified or supplemented,

or when certain other changes occur, revisions to State hazardous waste management programs may be necessary. The procedures that States and EPA must follow for revision of State programs are found at 40 CFR 271.21(b).

The State of Michigan initially received final authorization for its hazardous waste management program effective on October 30, 1986 (51 FR 36804–36805, October 16, 1986). Subsequently, Michigan received authorization for revisions to its program, effective on January 23, 1990 (54 FR 225, November 24, 1989); June 24, 1991 (56 FR 18517, April 23, 1991); November 30, 1993 (58 FR 51244, October 1, 1993); January 13, 1995 (60 FR 3095, January 13, 1995); and April 8, 1996 (61 FR 4742, February 8, 1996). Michigan's Program Description dated June 30, 1984, and addenda thereto dated June 30, 1986; September 12, 1988; July 31, 1990; August 10, 1992; August 18, 1994; and September 6, 1995, which were a component of the State's original final authorization and subsequent revision applications, specified that the Michigan Department of Natural Resources (MDNR) was the agency responsible for implementing Michigan's hazardous waste management program. The Program Description also indicated that the Site Review Board (SRB) had authority to approve or deny construction permit applications. The SRB was subsequently made a consultative body and the SRB's powers were transferred to the Director of the MDNR by Executive Order 1991–31, which took effect on September 2, 1993.

On July 31, 1995, the Governor of Michigan issued Executive Order 1995–18 (EO 1995–18), which became effective on October 1, 1995. On January 19, 1996, Michigan submitted materials for EPA to determine the impact of EO 1995–18 upon the authorized State hazardous waste management program. The materials consisted of a letter from the Michigan Attorney General's office setting forth the State of Michigan's analysis as to why the establishment of the new Michigan DEQ does not represent a transfer to a ''new agency'' pursuant to 40 CFR 271.21(c), a copy of EO 1995–18, updated letters of delegation and procedures regarding avoidance of conflict of interest in contested case proceedings. On June 13, 1996, Michigan submitted a supplemental statement of the Michigan Attorney General regarding the appraisal of the Attorney General of the impact of EO 1995–18 on Michigan's delegated environmental programs. In the supplemental statement, the Attorney General explained that the effect of EO 1995–18 was to elevate the former Environmental Protection Bureau of the Department of Natural Resources to full independent departmental status as the Department of Environmental Quality (DEQ). According to the Michigan Attorney General, ''the DEQ retained all of its environmental responsibilities and virtually all of the personnel formerly assigned to it as a bureau of the DNR.'' The Attorney General further stated that ''E.O. 1995–18 did not substantively change the State's statutes or rules relating to the administration of Federally delegated programs nor was any authority, power, duty or function contained within Michigan's statutes or rules applicable to Federally delegated programs diminished by the execution of E.O. 1995–18. Specifically, E.O. 1995–18 did not affect program jurisdiction, the scope of activities regulated, criteria for the review of permits, public participation, enforcement capabilities or the adequacy of Michigan's legal authority to carry out its Federally delegated programs.''

Based on the information available, EPA determined that the reorganization of the State's hazardous waste management program resulting from EO 1995–18 constitutes a program revision requiring appropriate EPA review and approval under RCRA. EPA also determined that the EO 1995–18 did not result in significant modification of Michigan's hazardous waste program, nor did the Order transfer any part of the program from the approved State agency to any other State agency. Therefore, EPA does not view the reorganization as a transfer within the purview of 40 CFR 271.21(c).

Based upon review of the documents submitted by Michigan, EPA made a preliminary determination to approve Michigan's hazardous waste management program, as revised, pursuant to 40 CFR 271.21(b). On March 28, 1997, EPA published a notice in the **Federal Register** announcing EPA's proposed decision. The notice also stated that the proposed decision would be subject to public review and comment, and announced the availability of Michigan's application for public inspection at three locations in Michigan as well as the EPA regional office in Chicago.

As was noted in the March 28, 1997, **Federal Register** notice, the EPA has pending before it a request, submitted in a letter dated June 14, 1996, by the Michigan Environmental Council (MEC), to revoke Michigan's National Pollution discharge Elimination System (NPDES) and Prevention of Significant Deterioration (PSD) program approvals, not grant additional program delegations and not grant program approval for Boiler and Industrial Furnace revisions under RCRA. This request is based upon Michigan's recent enactment of Public Act 132 of 1996, which establishes certain environmental audit privilege and immunity provisions in the State's natural resources and environmental protection code. EO 1995–18 predated passage of Act 132. EPA's March 28, 1997, proposed action only addressed and sought comment on the impact of EO 1995–18 noted above on Michigan's RCRA program. Accordingly, today's decision to preliminarily approve of revisions to Michigan's RCRA program arising out of EO 1995–18 does not express any viewpoint on the question of whether there are legal deficiencies in Michigan's RCRA program resulting from Public Act 132 of 1996, which was enacted after this Executive Order was issued. EPA is addressing the issues raised by MEC regarding Public Act 132 of 1996 separately.

B. Comments

No adverse comments were received by EPA during the public comment period.

C. Decision

I conclude that Michigan's application for final authorization of revisions resulting from EO 1995–18 meets the necessary requirements under RCRA. Accordingly, Michigan is granted final authorization to operate its hazardous waste program as revised by EO 1995–18. Michigan has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Michigan also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

D. Incorporation by Reference

EPA incorporates by reference authorized State programs in 40 CFR part 272 to provide notice to the public of the scope of the authorized program in each State. Incorporation by reference of these revisions to the Michigan program will be completed at a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

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, the 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 the 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 the 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 the 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 the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program, except in certain cases where a ''Federal intergovernmental mandate'' affects an annual Federal entitlement program of $500 million or more that are not applicable here. The Michigan request for approval of revisions to its authorized hazardous waste program is voluntary and imposes no Federal mandate within the meaning of the Act. Rather, by having its hazardous waste program approved, the State will gain the authority to implement the program within its jurisdiction, in lieu of the EPA, thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to the EPA. In any event, the EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of the Michigan hazardous waste program referenced in today's notice will result in annual costs of $100 million or more. The EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may now administer the program in lieu of the EPA and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of section 202 and 205 of the UMRA.

The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved State hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once the EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs under the approved State program, in lieu of the Federal program.

Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. The EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved State hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270, this authorization does not impose any additional burdens on these small entities. This is because the EPA's authorization would result in an administrative change (i.e., whether the EPA or the State administers the RCRA Subtitle C program in that State), rather than result in a change in the substantive requirements imposed on small entities. Once the EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved State program, in lieu of the Federal program. Moreover, this authorization, in approving a State program to operate in lieu of the Federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular State.

Therefore, the EPA provides the following certification under the regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively approves the Michigan program to operate in lieu of the Federal program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

The proposal contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 1, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–29624 Filed 11–13–97; 8:45 am]

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federal register

Friday
November 14, 1997

Part III

Department of Education

Bilingual Education: Program Development and Implementation Project; Notice Inviting Applications for New Awards for Fiscal Year (FY 1998); Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.288S]

Bilingual Education: Program Development and Implementation Project; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program: The purpose of this program is to provide grants to develop and implement new comprehensive, coherent, and successful bilingual education or special alternative instructional programs for limited English proficient (LEP) students, including programs of early childhood education, kindergarten through twelfth grade education, gifted and talented education, and vocational and applied technology education.

Eligible Applicants: (1) One or more local educational agencies (LEAs); (2) one or more LEAs in collaboration with an institution of higher education (IHE), community-based organization (CBO), other LEAs, or a State educational agency (SEA); or (3) a CBO or an IHE that has an application approved by the LEA to develop and implement early childhood education or family education programs or to conduct an instructional program that supplements the educational services provided by an LEA.

Deadline for Transmittal of Applications: January 20, 1998.

Deadline for Intergovernmental Review: March 23, 1998.

Available Funds: $6,000,000.

Note: The Congress has not yet enacted an FY 1998 appropriation for the Department of Education. The actual level of funding for this program is contingent upon final congressional action.

Estimated Range of Awards: $100,000–$175,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 40.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR Part 299, General Provisions, Elementary and Secondary Education Act, published on May 22, 1997, in the **Federal Register** (62 FR 28247).

Description of Program

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7112 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7422 and 7426)).

The grants awarded under this section are to be used to improve the education of limited English proficient students and their families. Specifically, grantees are required to serve limited English proficient students by: (a) developing and implementing comprehensive preschool, elementary, or secondary bilingual education or special alternative instructional programs that are coordinated with other relevant programs and services; and (b) providing inservice training to classroom teachers, administrators, and other school or community-based organizational personnel. Grantees may also implement family education programs, improve the instructional program, compensate personnel, and provide tutorials.

Priorities

Competitive Priority: The Secretary gives preference to applications that meet the following competitive priority (34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b)). The Secretary awards 3 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program.

Projects that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided in the appendix to this notice.

Invitational Priorities: The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority 1—Reading

Projects that focus on assisting limited English proficient students to read independently and well by the end of third grade.

Invitational Priority 2—Mathematics

Projects that focus on assisting limited English proficient students to master challenging mathematics, including the foundations of algebra and geometry, by the end of eighth grade.

Invitational Priority 3—Preparation for Postsecondary Education

Projects that focus on motivating and academically preparing limited English proficient students for successful participation in college and other postsecondary education.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition (34 CFR 75.209, 75.210, and 20 U.S.C. 7116(i)(1)).

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Extent of need for the project.* (20 points) (i) The Secretary considers the needs for the proposed project.

(ii) In determining the need for the proposed project, the Secretary considers the following factors:

(A) The magnitude or severity of the problem to be addressed by the proposed project.

(B) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(Authority: 34 CFR 75.210(a)(1), (2)(i) and (iii))

(2) *Quality of the project design.* (25 points) (i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the design of the proposed project is appropriate to,

and will successfully address, the needs of the target population or other identified needs.

(C) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(D) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(E) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(F) The extent to which the proposed project encourages parental involvement.

(Authority: 34 CFR 75.210(c)(1), (2)(i), (ii), (xii), (xvi), (xviii) and (xix))

(3) *Quality of project services.* (15 points) (i) The Secretary considers the quality of the services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(C) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(Authority: 34 CFR 75.210(d)(1), (2), (3), (i), (v), and (vii))

(4) *Quality of project personnel.* (7 points) (i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of the project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience of the project director and principal investigator;

(B) The qualifications, including relevant training and experience, of key project personnel.

(C) The qualifications, including the relevant training and experience, of the project consultants or subcontractors.

(Authority: 34 CFR 75.210(e)(1)–(3)(i)–(iii))

(5) *Adequacy of resources.* (3 points) (i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The extent to which the budget is adequate to support the proposed project.

(B) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(C) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(D) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(Authority: 34 CFR 75.210(f)(1), (2)(iii)(iv)(v)(vi))

(6) *Quality of the management plan.* (15 points) (i) The Secretary considers the quality of the management plan for the proposed project.

(ii) In determining the quality of the management plan for the proposed project, the Secretary considers one or more of the following factors:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(B) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(C) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(Authority: 34 CFR 75.210(g)(1), (2)(i) and (iv)–(v))

(7) *Quality of project evaluation.* (10 points) (i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the evaluation, the Secretary considers the following factors:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(B) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(C) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(D) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(E) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(Authority: 34 CFR 75.210(h)(1), (2)(i)–(iv) and (vi))

(8) *Proficiency in English and another language.* (5 points) The Secretary reviews each application to determine how well the proposed project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(1))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more

than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on October 7, 1997 (62 FR 52448 through 52450).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.288S, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application.

Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.288S), Washington, D.C. 20202–4725

or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.288S), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, a checklist for applicants, various assurances, certifications, and required documentation:

a. Instructions for Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden.

d. Notice to All Applicants.

e. Checklist for Applicants.

f. Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

g. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

h. Group Application Certification.

i. Student Data.

j. Project Documentation.

k. Program Assurances.

l. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

m. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 6/90) and instructions.

n. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

o. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certification must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as ''original'' or ''copy.'' No grant may be awarded unless a completed application has been received.

For Further Information Contact: Ana Garcia (202) 205–8077, Rik Lanzendorfer (202) 205–8840, Socorro Lara (202) 205–9730, Darlene Miles (202) 205–8259, Terence Sullivan (202) 205–9752, Itzeht Testa-Salcedo (202) 205–8726 or Edia Velez (202) 205–9715, U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate formate (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the

preceding sites. If your have questions about using the pdf, call the U.S. Government Printing Office toll-free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll-free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7422.

Dated: November 7, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Appendix

Estimated Public Reporting Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collections of information is 1885–0528. Expiration date: 4/30/98. The time required to complete this collection of information is estimated to average 80 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. *If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., Room 5094, MES Building, Washington, D.C. 20202–6510.

Instructions for Application Narrative

Mandatory Page Limit for the Application Narrative. The narrative portion of the application must not exceed 35 pages. These pages must be double-spaced and printed on one side only. A legible font size and adequate margins should be used. The narrative section must be paginated and should include a one page abstract. The 35 page limit applies to the abstract, proposal narrative, charts, graphs, tables, graphics, position descriptions (and resumes, if included), and any appendices. The page limit does not apply to application forms, attachments to those forms, assurances, certifications, and the table of contents. The page limit applies only to items 14 and not to the other items in the Checklist for Applicants. *Applications with a narrative section that exceeds the page limit will not be considered for funding.*

Abstract. The narrative section should begin with an abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria. The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumés or curriculum vitae for project personnel; provide position descriptions instead.

Empowerment Zone/Enterprise Community Priority. Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the applicable Zone or Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Zone or Community and be an integral part of the Zone's or Community's comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided in this appendix.

Additional Guidance

Table of Contents. The application should include a table of contents listing the sections in the order required.

Budget. Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation. Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Submission of Application to State Educational Agency. Section 7116(a)(2) of the authorizing statute (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7426(a)(2)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package.

Applicants that do not submit a copy of their application to their SEA will not be considered for funding.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *All applicants for new awards must include information in their applications to address this new provision in order to receive funding under this program.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin,, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirements of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the

materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Empowerment Zones and Enterprise Communities

Empowerment Zones (Listed Alphabetically by State)

California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kansas: Kansas City
Kentucky: Kentucky Highlands Area (Clinton, Jackson, and Wayne Counties)
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid-Delta Area (Bolivar, Holmes, Humphreys, and LeFlore Counties)
Missouri: Kansas City
New Jersey: Camden
New York: Harlem, Bronx
Pennsylvania: Philadelphia
Texas: Houston, Rio Grande Valley Area (Cameron, Hidalgo, Starr, and Willacy Counties)

Supplemental Empowerment Zones (Listed Alphabetically by State)

California: Los Angeles
Ohio: Cleveland

Enterprise Communities (Listed Alphabetically by State)

Alabama: Birmingham, Chambers County, Greene County, Sumter County
Arizona: Arizona Border Area, (Cochise, Santa Cruz and Yuma Counties), Phoenix
Arkansas: East Central Area (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County, Pulaski County
California: Imperial County, Los Angeles (Huntington Park), San Diego, San Francisco (Hayview, Hunter's Pointer), Watsonville
Colorado: Denver
Connecticut: Bridgeport, New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County
Georgia: Central Savannah River Area (Burke, Hancock, Jefferson, McDuffie, Tallaferro, and Warrent Counties), Crisp County, Dooley County
Illinois: East St. Louis, Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville, McCreary County
Louisiana: Macon Ridge Area (Catahouis, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Delta Area (Madison Parish), Quachita Parish
Massachusetts: Lowell, Springfield
Michigan: Five Cap, Flint, Muskegon
Minnesota: Minneapolis, St. Paul
Mississippi: Jackson, North Delta Area (Panola, Quitman, and Tallahatchie Counties)
Missouri: East Prairie, St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque, Moro County, Rio Arriba County, Taos County
New York: Albany, Buffalo, Kingston, Newburgh, Rochester, Schenectady, Troy
North Carolina: Charlotte, Edgecombe County, Halifax County, Robeson County, Wilson County
Ohio: Akron, Columbus, Greater Portsmouth Area (Scioto County)
Oklahoma: Choctaw County, McCurtain County, Oklahoma City
Pennsylvania: Harrisburg, Lock Haven, Pittsburgh
Rhode Island: Providence
South Carolina: Charleston, Williamsburg County
South Dakota: Beadle County, Spink County
Tennessee: Fayette County, Haywood County, Memphis Nashville, Scott County
Texas: Dallas, El Paso, San Antonio, Waco
Utah: Ogden
Vermont: Accomack County, Norfolk
Washington: Lower Yakima County, Seattle, Tacoma
West Virginia: Huntington, McDowell County, West Central Areas (Braxton, Clay, Fayette, Nichols, and Roane Counties)
Wisconsin: Milwaukee

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

☐ 1. Application for Federal Assistance (SF 424).
☐ 2. Group Application Certification (if applicable).
☐ 3. Budget Information (ED Form No. 524).
☐ 4. Itemized Budget for each year.
☐ 5. Student Data.
☐ 6. Project Documentation, including—
Transmittal Letter to SEA;
Documentation of Consultation with nonprofit private school officials;
Appropriate box checked in Section C.
☐ 7. Program Assurances Form.
☐ 8. Empowerment Zone or Enterprise Community Identification (if applicable).
☐ 9. Assurances—Non-Construction Programs (SF 424B).
☐ 10. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).
☐ 11. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions (ED 80–0014), if applicable.
☐ 12. Disclosure of Lobbying Activities (SF–LLL).
☐ 13. Information that addresses section 427 of the General Education Provisions Act. (See the section entitled ''NOTICE TO ALL APPLICANTS'' (OMB No. 1801–0004))
☐ 14. Table of Contents.
☐ 15. Application Narrative, including abstract (not to exceed 35 pages).
☐ 16. One original and two copies of the application for transmittal to the Department's Application Control Center.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 8 8S

TITLE: Bilingual Education: Program Development and Implementation Grant

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

STUDENT DATA

Name of Local Educational Agency

SECTION A

1. Total number of limited English proficient (LEP) students in the school district	
2. Total number of students in the school district	
3. Percentage of LEP students (line 1 divided by line 2)	%

SECTION B

Name of project school	Language group(s) to be served	Grade(s) to be served	Number of students to be served		
			LEP	Non-LEP	Total
Total number of students to be served					

PROJECT DOCUMENTATION

NOTE: Submit the appropriate documents and information as specified below for the following programs:

PROGRAM DEVELOPMENT AND IMPLEMENTATION GRANT

SECTION A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158. If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372. (In addition to the requirement in §75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§75.156 When an applicant under §75.155 must submit its application to the State: proof of submission.
(a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.
(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

SECTION B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

Sec. 7116. Applications. "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

§75.119 Information needed if private schools participate. If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)
(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

PROJECT DOCUMENTATION

(continued)

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

SECTION C

Check the appropriate box below:

- **There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project.** ☐
- **One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form.** ☐
- **There are no eligible nonprofit private schools in the proposed service delivery area.** ☐

SECTION D

If applicable, identify on the line at the right the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve. (See the competitive priority and the list of designated Empowerment Zones and Enterprise Communities in previous sections of this application package.) _____

PROGRAM ASSURANCES

NOTE: The authorizing statute requires applicants under certain programs to provide assurances. This form must be completed for applications under the following programs:

PROGRAM DEVELOPMENT AND IMPLEMENTATION

As the duly authorized representative of the applicant, I certify that the applicant:

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under the program.
- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.
- Will integrate the proposed project with the applicant's overall educational program.
- Has developed this application in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in the proposed project.

(Authority: 20 U.S.C. 7426(g))

Authorized Representative		Applicant Organization
Signature	Title	
Typed Name	Date Signed	

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:**
   a. contract
   b. grant
   c. cooperative agreement
   d. loan
   e. loan guarantee
   f. loan insurance

2. **Status of Federal Action:**
   a. bid/offer/application
   b. initial award
   c. post-award

3. **Report Type:**
   a. initial filing
   b. material change

   For Material Change Only:
   year _____ quarter ____
   date of last report ____

4. **Name and Address of Reporting Entity:**
   ☐ Prime ☐ Subawardee
   Tier _____, *if known:*

   Congressional District, *if known:*

5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:**

   Congressional District, *if known:*

6. **Federal Department/Agency:**

7. **Federal Program Name/Description:**

   CFDA Number, *if applicable*:

8. **Federal Action Number,** *if known:*

9. **Award Amount,** *if known:*

   $

10. a. **Name and Address of Lobbying ~~Entity~~ Registrant** *(if individual, last name, first name, MI):*

    b. **Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*

~~11. Amount of Payment *(check all that apply):*~~

~~$ _____ ☐ actual ☐ planned~~

~~12. Form of Payment *(check all that apply):*~~

~~☐ a. cash~~
~~☐ b. in-kind; specify: nature _____~~
~~value _____~~

~~13. Type of Payment *(Check all that apply):*~~

~~☐ a. retainer~~
~~☐ b. one-time fee~~
~~☐ c. commission~~
~~☐ d. contingent fee~~
~~☐ e. deferred~~
~~☐ f. other; specify: _____~~

~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~

~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~

~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~

16. **Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.**

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ **Date:**

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

[FR Doc. 97–29998 Filed 11–13–97; 8:45 am]
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federal register

Friday
November 14, 1997

Part IV

Environmental Protection Agency

40 CFR Part 69

United States Virgin Islands Final Ruling on Petition Pursuant to Section 325(a)(1) of the Clean Air Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[FRL–5920–8]

United States Virgin Islands Final Ruling on Petition Pursuant to Section 325(a)(1) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On June 10, 1997, the Environmental Protection Agency (EPA) proposed to approve a petition submitted by the Governor of the U.S. Virgin Islands which requested a waiver from certain Clean Air Act (the Act) restrictions to the Hess Oil Virgin Islands Corporation (HOVIC) in St. Croix. This exemption was proposed pursuant to section 325(a)(1) of the Act. Specifically, the waiver would allow HOVIC to implement an Intermittent Control Strategy (ICS) based on atmospheric conditions, which is prohibited by section 123 of the Clean Air Act. The ICS would alleviate potential exceedances of the National Ambient Air Quality Standards for sulfur dioxide. In this action, EPA is promulgating this waiver which allows the HOVIC refinery in St. Croix to implement an ICS under conditions which will be specified in a federally enforceable Prevention of Significant Deterioration of Air Quality (PSD) permit.

EFFECTIVE DATE: This rule will be effective December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Annamaria Colecchia, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, Telephone: (212) 637–4016.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1996, the Governor of the United States Virgin Islands submitted a petition to the Administrator of the EPA for an exemption from certain requirements of the Act. The petition, submitted pursuant to Section 325(a)(1) of the Act, requests that the HOVIC refinery, located on the island of St. Croix, be granted an exemption from Section 123 of the Act which prohibits basing emission limitations using an ICS. HOVIC concurrently submitted a proposed modification to its existing Prevention of Significant Deterioration (PSD) permit to the EPA. Air quality analyses submitted in support of the proposed PSD modification indicated that although emissions of sulfur dioxide (SO_2) will be substantially reduced below the amount HOVIC is currently permitted to emit, occasional exceedances of the 24-hr National Ambient Air Quality Standard (NAAQS) for this pollutant could occur, to the north of the facility, during those days that the wind blows onshore for a persistent length of time.

The petition proposed to prevent these potential exceedances from occurring by reducing the sulfur content of the fuel processed during those time periods. Since this constitutes an ICS based on atmospheric conditions, reliance upon which in an implementation plan is specifically prohibited by the Act, the petition requested an exemption from this requirement through provisions available under Section 325 of the Act. Granting HOVIC's petition will make it possible for EPA to consider, in a separate action, HOVIC's request for a PSD permit modification. EPA is not entertaining HOVIC's PSD permit modification request in this action.

EPA proposed approval of the petition on June 10, 1997 (62 FR 31546) and this proposal contained the description of the petition, supporting documents and the minimum federally enforceable conditions under which the ICS shall be implemented. These conditions will also appear in a revised PSD permit. No comments were received on the proposed rulemaking. It should be noted, that for clarity EPA added some language into the CFR portion of this rulemaking which had previously been included in the preamble to this proposal (i.e., ICS must include a meteorological tower and ambient monitors).

Conclusion

Since HOVIC met the requirements in section 325 of the Act and EPA received no comments during the public comment period, EPA is promulgating this waiver to the HOVIC refinery in St. Croix under the conditions specified in the proposed approval.

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action by the Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2215), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. This is because the final rule applies only to the Hess Oil Virgin Islands refinery on St. Croix, Virgin Islands. This facility is not a small entity, and the action granting the petition will relieve the source from restrictions that would otherwise apply.

Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. 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 today's rule does not contain a Federal mandate that may result in expenditures of $100 million or more in any one year. This is because the rule is mainly deregulatory, relieving (subject to conditions) the sole regulated entity of limitations that would otherwise apply, and possibly resulting in resource savings to the Hess Oil Virgin Islands refinery that would not likely be obtained in the absence of today's rule. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, since it imposes no additional significant or unique burdens on the Virgin Islands to implement today's rule.

List of Subjects in 40 CFR Part 69

Environmental protection, Air pollution control.

Dated: November 6, 1997.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, 40 CFR part 69 is amended as set forth below:

PART 69—[AMENDED]

1. The authority citation for part 69 continues to read as follows

Authority: Sec 325(a), Clean Air Act, as amended (42 U.S.C. 7625–1).

2. Subpart D is added consisting of § 69.41 to read as follows:

Subpart D—The U.S. Virgin Islands

§ 69.41 New exemptions.

(a) Pursuant to section 325(a) of the Clean Air Act and a petition submitted by the Governor of the Virgin Islands, an exemption to section 123 of the Clean Air Act is granted to the Hess Oil Virgin Islands Corporation (HOVIC) at the St. Croix refinery. Specifically, the exemption waives the prohibition on the implementation of an Intermittent Control Strategy (ICS) based upon atmospheric conditions in order to set emission limitations. The emission limitations shall depend upon the sulfur content in the residual oil burned at the refinery.

(b) The protocol to be followed for the ICS shall be set forth in a Prevention of Significant Deterioration of Air Quality (PSD) permit issued to HOVIC; and shall include as a minimum, the conditions listed in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section.

(1) HOVIC shall maintain a meteorological tower on its property for the purpose of the ICS which meets the required EPA QA/QC operating specifications. At a minimum, the wind direction data will be monitored, collected and reported as 1-hour averages, starting on the hour. If the average wind direction for a given hour is from within the designated sector, the wind will be deemed to have flowed from within the sector for that hour. Each ''day'' or ''block period'', for these purposes will start at midnight and end the following midnight.

(2) HOVIC shall maintain SO2 ambient monitors and collect ambient SO2 concentration data for the purpose of implementing the ICS at nearby locations approved by EPA and specified in the PSD permit. The ambient monitors must follow the required EPA QA/QC operating specifications. At a minimum, the data will be collected according to EPA approved State and Local Ambient Monitoring Stations procedures found at 40 CFR 58.20, but will, for these purposes, be averaged by the hour, starting on the hour.

(3) The switch to a lower sulfur fuel (0.5%) will take place when paragraphs (b)(3)(i) or (b)(3)(ii) of this section are met.

(i) The winds blow from a 45 degree sector defined as 143 to 187 degrees inclusive, where zero degrees is due north, for at least 6 consecutive hours during a 24-hour block period or any 12 non-consecutive hours during a 24 hour block period.

(ii) One of HOVIC's ICS monitors measures an average ambient SO2 concentration that is 75% of the 24-hour NAAQS during any rolling 24-hour average. (75% of the 24-hour NAAQS = 274 ug/m3 or 0.105 ppm).

(4) The switch back to the higher sulfur fuel (1.0%) may occur if the conditions in paragraphs (b)(4)(i), (b)(4)(ii), and (b)(4)(iii) of this section are met.

(i) If the ICS was triggered by paragraph (b)(3)(i) of this section, the switch back may occur when the winds blow outside the sector listed in paragraph (b)(3)(i) of this section for at least 3 consecutive hours following the period during which the winds were blowing inside the sector.

(ii) If the ICS was triggered by paragraph (b)(3)(ii) of this section, the switch back may occur after all of HOVIC's ICS ambient monitors measure a 24-hour average concentration which is less than 75% of the NAAQS for at least one 24-hour block period following any occurrence when the monitor measured the concentration which was 75% of the NAAQS.

(iii) If the ICS was triggered by both paragraphs (b)(3)(i) and (b)(3)(ii) of this section, the switch back may occur when both of the conditions in paragraphs (b)(4)(i) and (b)(4)(ii) of this section are met.

(c) The protocol may be modified by EPA to protect against exceedances of the sulfur dioxide NAAQS.

(d) In the event that there is an exceedance of the NAAQS, HOVIC will report the exceedance to EPA and recommend corrective action as well as amendments to the protocol to ensure the protection of the NAAQS.

(e) HOVIC must comply with all fuel switching requirements, contained in HOVIC's PSD permit.

(f) This exemption shall take effect only in the event that a final PSD permit modification becomes effective.

(g) The Administrator may terminate the exemption through rulemaking procedures upon determining that HOVIC's use of the ICS is causing or contributing to an exceedance of the NAAQS.

[FR Doc. 97–30021 Filed 11–13–97; 8:45 am]

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H.R. 2013/P.L. 105–70
To designate the facility of the United States Postal Service located at 551 Kingstown Road in South Kingstown, Rhode Island, as the ''David B. Champagne Post Office Building''. (Nov. 10, 1997; 111 Stat. 1455)

H.J. Res. 105/P.L. 105–71
Making further continuing appropriations for the fiscal year 1998, and for other purposes. (Nov. 10, 1997; 111 Stat. 1456)

S. 1227/P.L. 105–72
To amend title I of the Employee Retirement Income Security Act of 1974 to clarify treatment of investment managers under such title. (Nov. 10, 1997; 111 Stat. 1457)

H.R. 2464/P.L. 105–73
To amend the Immigration and Nationality Act to exempt internationally adopted children 10 years of age or younger from the immunization requirement in sec tion 212(a)(1)(A)(ii) of such Act. (Nov. 12, 1997; 111 Stat. 1459)

S. 587/P.L. 105–74
To require the Secretary of the Interior to exchange certain lands located in Hinsdale County, Colorado. (Nov. 12, 1997; 111 Stat. 1460)

S. 588/P.L. 105–75
To provide for the expansion of the Eagles Nest Wilderness within the Arapaho National Forest and the White River National Forest, Colorado, to include land known as the Slate Creek Addition. (Nov. 12, 1997; 111 Stat. 1462)

S. 589/P.L. 105–76
To provide for a boundry adjustment and land conveyance involving the Raggeds Wilderness, White River National Forest, Colorado, to correct the effects of earlier erroneous land surveys. (Nov. 12, 1997; 111 Stat. 1463)

S. 591/P.L. 105–77
To transfer the Dillon Ranger District in the Arapaho National Forest to the White River National Forest in the State of Colorado. (Nov. 12, 1997; 111 Stat. 1465)

H.R. 2264/P.L. 105–78
Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998 (Nov. 13, 1997; 111 Stat. 1467)

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