11–21–97
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Federal Register

Friday
November 21, 1997

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WASHINGTON, DC

WHEN: December 16, 1997 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 62, No. 225
Friday, November 21, 1997

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–22–AD; Amendment 39–10211; AD 97–24–04]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France (Eurocopter) Model SE 3130, SE 313B, SA 3180, SA 318B, and SA 318C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter Model SE 3130, SE 313B, SA 3180, SA 318B, and SA 318C helicopters. This action requires a visual inspection of the main rotor blade reinforcement strips for debonding between the reinforcement strips of the blade; and a visual inspection of the main rotor blade (blade) skin for cracks or corrosion, and replacement of the blade with an airworthy blade if certain debonding or a crack or corrosion is found. This amendment is prompted by an accident in which a blade separated in flight. The actions specified in this AD are intended to detect debonding, cracks, or corrosion in the affected blades and to prevent failure of a blade and subsequent loss of control of the helicopter.

DATES: Effective December 8, 1997.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–22–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, Aerospace Engineer, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction General De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter Model SE 3130, SE 313B, SA 3180, SA 318B, and SA 318C helicopters with part number (P/N) 3130–S–11–10000, 3130–S–11–20000, or 3130–S–11–30000 main rotor blades installed. The DGAC advises that fatigue cracks, initiated by skin debonding or skin corrosion in the area of the reinforcement strip, may develop in the blade skin near the blade root, resulting in failure of the blade in flight and subsequent loss of control of the helicopter.

Eurocopter France has issued Eurocopter Telex Service 0033/00169/97, dated June 18, 1997, which specifies visual inspections of the blade root skin and reinforcement strip for bonding separation, and replacement of the blade with an airworthy blade if bonding separation is found; and a visual inspection of the blade root skin for cracks and corrosion, and replacement of the blade with an airworthy blade if cracks or corrosion are found. The DGAC classified this Telex Service as mandatory and issued AD 97–135–055(B) in order to assure the continued airworthiness of these helicopters in France.

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

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Model SE 3130, SE 313B, SA 3180, SA 318B, and SA 318C helicopters of the same type design registered in the United States, this AD is being issued to detect debonding, cracks, or corrosion in the affected blades and to prevent failure of a blade and subsequent loss of control of the helicopter. This AD requires a visual inspection in the area extending 5 mm (0.200 inch) from the strip reinforcing the inboard edge of the blade as shown in Figure 1 for debonding between the main rotor blade skin and reinforcement strip, and replacement of the main rotor blade with an airworthy blade if debonding is found; a visual inspection for debonding between the blade and the reinforcement strip on the leading edge of the blade that covers the blade spar, and replacement with an airworthy blade if debonding is present for more than 0.750 inch^2 (500 mm^2); and a visual inspection of the main rotor blade skin for cracks and corrosion, and replacement with an airworthy blade if any crack or corrosion is found.

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

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic,

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–22–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–24–04 Eurocopter France: Amendment 39–10211. Docket No. 97–SW–22–AD.

Applicability: Model SE 3130, SE 313B, SA 3180, SA 318B, and SA 318C helicopters with part number (P/N) 3130–S–11–10000, 3130–S–11–20000, or 3130–S–11–30000 main rotor blades, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect debonding, cracks, or corrosion in the affected blades and to prevent failure of a main rotor blade (blade) and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, and thereafter at intervals not to exceed 25 hours time-in-service, for part number (P/N) 3130–S–11–10000, 3130–S–11–20000, or 3130–S–11–30000, visually inspect:

(1) For debonding in the area extending 5 mm (0.200 inch) from the strip reinforcing the inboard edge of the blade as shown in Figure 1. If there is any debonding of the reinforcement strip, replace the blade with an airworthy blade.

(2) For debonding between the blade and the reinforcement strip on the leading edge of the blade that covers the blade spar. If debonding is present for more than 0.750 inches^2 (500 mm^2) at any point on the blade, replace the blade with an airworthy blade.

(3) For cracks in the blade skin in the first 12 inches (300 mm) of the blade measured from the root reinforcement strip using a 3× or higher magnifying glass. If any crack is found, replace the blade with an airworthy blade.

(4) For corrosion in the blade skin in the first 12 inches (300 mm) of the blade measured from the root reinforcement strip. If any corrosion is found, replace the blade with an airworthy blade.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

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

(c) Special flight permits are prohibited.

(d) This amendment becomes effective on December 8, 1997.

Note 3: The subject of this AD is addressed in Direction General De L'Aviation Civile (France) AD 97–135–055(B), dated June 20, 1997.

BILLING CODE 4910–13–U

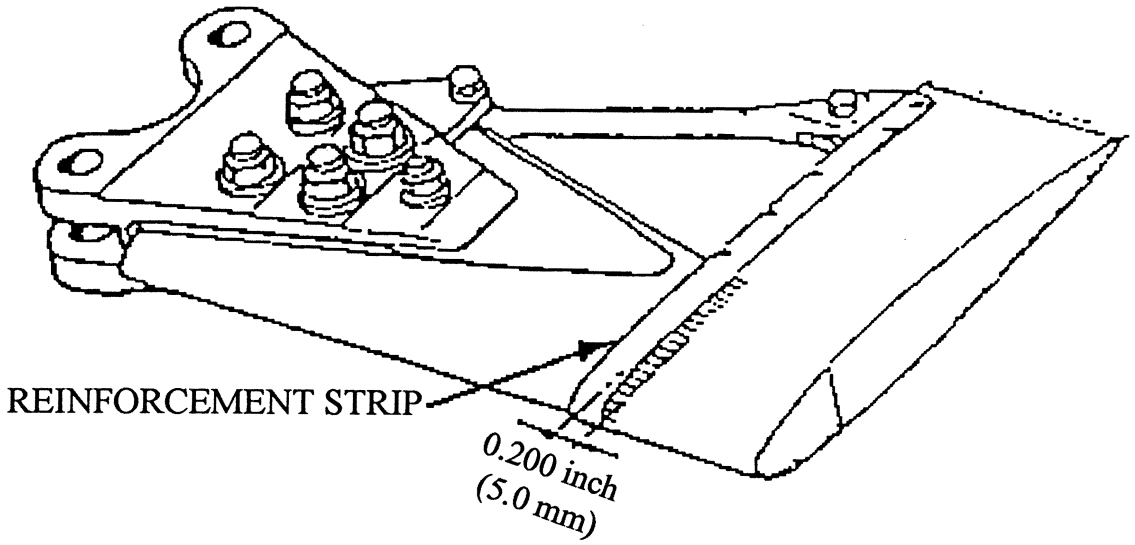

Figure 1

BILLING CODE 4910–13–C

Issued in Fort Worth, Texas, on November 14, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–30603 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Schering-Plough Animal Health Corp. to Sioux Biochemical, Inc.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, has informed FDA that it has transferred ownership of, and all rights and interests in NADA 9–505 (follicle stimulating hormone) to Sioux Biochemical, Inc., 204 Third St. NW., Sioux Center, IA 51250. Accordingly, the agency is amending the regulations in 21 CFR 522.1002 to reflect the transfer of ownership. The agency is also amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by alphabetically adding a new listing for Sioux Biochemical, Inc.

List of Subjects

21 CFR Part 510

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

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for ''Sioux Biochemical, Inc.'' and in the table in paragraph (c)(2) by numerically adding a new entry for ''063112'' to read as follows:

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

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * *	* * *
Sioux Biochemical, Inc., 204 Third St. NW., Sioux Center, IA 51250	063112
* * * *	* * *

(2) * * *

Drug labeler code	Firm name and address
* * *	* * * *
063112	Sioux Biochemical, Inc., 204 Third St. NW., Sioux Center, IA 51250
* * *	* * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.1002 [Amended]

4. Section 522.1002 *Follicle stimulating hormone* is amended in paragraph (b)(2) by removing ''000061'' and adding in its place ''063112''.

Dated: November 6, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–30563 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Doramectin

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 a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for intramuscular use of doramectin in swine for the treatment and control of certain infections of nematode and arthropod parasites.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, is sponsor of NADA 141–061, which provides for the subcutaneous and intramuscular use of Dectomax® 1 percent injectable solution (doramectin) for treatment and control of certain gastrointestinal roundworms, lungworms, eyeworms, grubs, lice, and mange mites of cattle, and to control infections and to protect cattle from reinfection with *Ostertagia ostertagi* for 21 days, and *Cooperia punctata* and *Dictyocaulus viviparus* for 28 days after treatment. The firm filed a supplemental NADA that provides for intramuscular use of doramectin in swine for the treatment and control of certain infections of gastrointestinal roundworms, lungworms, kidney worms, sucking lice, and mange mites. The supplemental NADA is approved as of September 18, 1997, and the regulations are amended in 21 CFR 522.770(d) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, a tolerance for residues of doramectin in edible swine tissues has not been previously established. Section 556.225 (21 CFR 556.225) is amended to provide for a tolerance for residues of doramectin in swine tissues.

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 supplemental 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.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning September 18, 1997, because the supplement contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplemental application and conducted or sponsored by the applicant. Exclusivity applies only to the added indication for the treatment and control of gastrointestinal roundworms, lungworms, kidneyworms, sucking lice, and mange mites in swine.

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

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

2. Section 522.770 is amended by revising the heading of paragraph (d) and redesignating paragraphs (d)(1), (d)(2), and (d)(3) as paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii), respectively, and by adding new paragraph (d)(2) to read as follows:

§ 522.770 Doramectin.

* * * * *

(d) *Conditions of use*—(1) *Cattle.* (i) *Amount.* * * *

* * * * *

(2) *Swine.* (i) *Amount.* 300 micrograms per kilogram (10 milligrams per 75 pounds).

(ii) *Indications for use.* For treatment and control of gastrointestinal roundworms, lungworms, kidney worms, sucking lice, and mange mites.

(iii) *Limitations.* Administer as a single intramuscular injection. Do not slaughter swine within 24 days of treatment. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.225 is revised to read as follows:

§ 556.225 Doramectin.

A tolerance of 0.1 part per million (ppm) is established for parent doramectin (marker residue) in liver (target tissue) of cattle and 0.16 ppm in liver of swine.

Dated: October 22, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30562 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Clopidol and Bacitracin Zinc With Roxarsone

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 abbreviated NADA provides for using approved clopidol, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis, improved feed efficiency, improved pigmentation, and increased rate of weight gain.

EFFECTIVE DATE: November 21, 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 200–207 that provides for combining approved clopidol, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated feeds for broilers containing clopidol 113.5 grams per ton (g/t) and bacitracin zinc 4 to 25 g/t with roxarsone 45.4 g/t. The Type C medicated feed is used as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

Alpharma Inc.'s ANADA 200–207 is approved as a generic copy of Rhone-Poulenc, Inc.'s NADA 44–016. The ANADA is approved as of November 21, 1997 and 21 CFR 558.175 is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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, from 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.

§ 558.175 [Amended]

2. Section 558.175 *Clopidol* is amended in paragraph (d)(1)(iii)(*b*) by removing ''No. 000061'' and adding in its place ''Nos. 000061 and 046573.''

Dated: November 7, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30564 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 809 and 864

[Docket No. 96N–0082]

RIN 0910–ZA03

Medical Devices; Classification/ Reclassification; Restricted Devices; Analyte Specific Reagents

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to classify/reclassify analyte specific reagents (ASR's) presenting a low risk to public health into class I (general controls), and to exempt these class I devices from the premarket notification (510(k)) requirements. FDA is classifying/reclassifying ASR's used in certain blood banking tests as class II (special controls) because general controls are insufficient to provide a reasonable assurance of safety and effectiveness. Finally, ASR's presenting a high risk are being classified or retained in class III (premarket approval). FDA is also designating all ASR's as restricted devices under the Federal Food, Drug, and Cosmetic Act (the act), and establishing restrictions on their sale, distribution and use. The scope of products covered by this final rule includes both pre-1976 devices, which have not been previously classified, as well as post-1976 devices, which are statutorily classified into class III. The intent of this final rule is to regulate these pre- and post-1976 devices in a consistent fashion. This rulemaking does not affect requirements for reagents that are subject to licensure under the Public Health Service Act (the PHS Act). This rulemaking also does not affect reagents sold to nonclinical settings, including those reagents sold as components to manufacturers of cleared or approved in vitro diagnostic tests.

DATES: This rule is effective November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Steven I. Gutman, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background

The the act (21 U.S.C. 201 *et seq.*), as amended by the Medical Device

Amendments of 1976 (Pub. L. 94–295) (the amendments) and the Safe Medical Devices Act of 1990 (Pub. L. 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the degree of regulatory controls needed to protect the public health. The three categories of devices are as follows: Class I, general controls; class II, special controls; and class III, premarket approval.

Devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), are classified under section 360c of the act after FDA has: (1) Received a recommendation from a classification panel, an FDA advisory committee, (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. A device that is first offered in commercial distribution after May 28, 1976, and is substantially equivalent to a device classified under this scheme, is also classified into the same class as the device to which it is substantially equivalent.

A device that was not in commercial distribution prior to May 28, 1976, and that is not substantially equivalent to a preamendments device, is classified by statute into class III without any FDA rulemaking proceedings. FDA determines whether new devices are substantially equivalent to previously offered devices by means of the premarket notification procedure in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

FDA held a meeting of its Immunology Devices Panel (the Panel) on January 22, 1996, to seek expert advice and public input on determining the regulatory controls to be placed on commercially marketed ASR's. ASR's are reagents composed of chemicals or antibodies that may be thought of as the ''active ingredients'' of tests that are used to identify one specific disease or condition. ASR's are purchased by manufacturers who use them as components of tests that have been cleared or approved by FDA and also by clinical laboratories that use the ASR's to develop in-house tests used exclusively by that laboratory. These in-house developed tests (sometimes referred to as ''home brew'' tests) include those that measure a wide variety of antibodies used in the diagnosis of infectious diseases, cancer, genetic, and various other conditions.

The Panel recommended that most ASR's be classified into class I because the Panel believed that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of these ASR's. The Panel's recommendation for classification was based on the applicability of the general controls usually associated with class I products (e.g., registration, listing, current good manufacturing practice (CGMP), and medical device reporting), as well as the inclusion of restrictions on distribution, use and labeling. The Panel determined that the primary risks to health presented by ASR's sold to clinical laboratories are that they may be manufactured with variable quality, or be inappropriately labeled, or be used by persons without adequate qualifications. The Panel was also concerned that practitioners ordering the in-house tests made from ASR's may be unaware that the clinical performance characteristics of these tests have not been independently reviewed by FDA. In addition, the Panel identified a subset of ASR's whose use posed unique risks to public health because of the substantial clinical impact of the information generated using these devices.

After the Panel meeting, FDA published a proposed rule to regulate ASR's (61 FR 10484, March 14, 1996). FDA received 31 comments on the proposed rule from individuals, manufacturers, professional societies, and consumer and health associations. The majority of the comments support the regulations proposed by FDA. A summary of the comments and FDA's response to them is provided below:

II. The Final Rule

A. General Approach

The final rule classifies or reclassifies the majority of ASR's as class I medical devices. The final rule also exempts these class I devices from the premarket notification requirements of section 510(k) of the act. A small number of ASR's are being classified in class II or III because the agency has determined that additional requirements are necessary for their safe and effective use. Under the authority of section 520(e) of the act (21 U.S.C. 360j(e)), the final rule restricts the sale, distribution or use of all ASR's subject to the rule. FDA has determined that these restrictions are necessary to provide a reasonable assurance of the safety and effectiveness of ASR's, commensurate with their potentiality for harmful effect or the collateral measures necessary to their use. The final rule restricts ordering the use of in-house developed tests using ASR's to physicians or other health care practitioners authorized by applicable state law to access such tests. The final rule also restricts the sale of ASR's to those clinical laboratories regulated under Clinical Laboratory Improvement Amendments of 1988 (CLIA) as qualified to perform high complexity testing. In order to clarify that the rule is intended to allow ASR's to be sold to State laboratories exempt from CLIA certification, the language of the regulation has been modified to refer to laboratories ''regulated'' under CLIA rather than ''certified'' under CLIA as had been proposed. In addition, to clarify that ASR's may be sold to Department of Veterans Affairs (Veterans Affairs) laboratories not covered by CLIA, the regulation has been modified to include Veterans Affairs laboratories regulated under comparable laws; currently that law is Pub. L. 102–139. The rule requires those laboratories covered by the regulation to provide a disclaimer with the results obtained through use of in-house developed tests incorporating these ASR's. The rulemaking does not affect reagents sold to nonclinical settings, including those sold as components to manufacturers of approved or cleared in vitro diagnostic tests. The rulemaking does not affect requirements for reagents that are subject to licensure under the PHS Act.

B. Class II or III ASR's

FDA has identified a small subset of ASR's that require class II special controls to provide a reasonable assurance of safety and effectiveness; these are ASR's used in blood banking tests classified as class II devices where the underlying tests have already been cleared for marketing under section 510(k) of the act.

Class II blood banking tests fall into two categories. One category consists of blood banking tests required by FDA that screen for diseases with a low potential for transmission. The second category consists of certain blood banking tests used electively by blood banks to screen for diseases that are likely to be transmitted to subsets of blood unit recipients known to be at greater risk of infection. An example of the second category is cytomegalovirus serological reagents, which are used in tests that aid in the diagnosis of diseases caused by cytomegaloviruses. An example of the first category is treponema pallidum nontreponemal test reagents, which are used in tests that aid in the diagnosis of syphilis.

Class II ASR's will be subject to special controls that consist of the following National Committee for

Clinical Laboratory Standards (NCCLS) documents: (1) ''Specifications for Immunological Testing for Infectious Disease; Approved Guideline'' (December 1994, NCCLS Document I/LA18–A) and (2) ''Assessment of the Clinical Accuracy of Laboratory Tests Using Receiver Operating Characteristic (ROC) Plots; Tentative Guideline'' (December 1993, NCCLS Document KGP10–T) and the following FDA guidance documents: (1) ''Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Mycobacterium spp.'' (July 6, 1993) and its ''Attachment 1'' (February 28, 1994); (2)'' Draft Review Criteria for Nucleic Acid Amplification-Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms'' (June 14, 1993); and (3) the Center for Biological Evaluation and Research's ''Points to Consider in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Antibodies to the Human Immunodeficiency Virus, Type I'' (54 FR 48943, November 28, 1989). FDA believes these special controls are sufficient to ensure safe and effective use of these ASR's because these ASR's have previously been evaluated in tests classified as class II and cleared by FDA.

Persons interested in obtaining the documents previously referenced should refer to section IV in this document on ''Access to Special Controls.''

In addition to the small subset of ASR's discussed above that have been identified as class III, FDA also has identified another small subset of ASR's for which class III premarket approval is necessary to protect the public health. These class III ASR's are those whose use poses unique risks because of the substantial clinical and public health impact of the information generated by using these devices. This subset of ASR's are those incorporated in tests intended to diagnose those contagious diseases that are highly likely to be fatal and where accurate diagnosis offers an opportunity to mitigate the public health impact of the condition or those ASR's incorporated in class III tests intended to establish the safety of blood and blood products, including genetic tests intended to ensure the safety of the blood supply. Examples of class III ASR's include ASR's used in tests to diagnose human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) or tuberculosis.

Under § 864.4020(b) (21 CFR 864.4020(b)), those analyte specific reagents that meet the class II or III ASR definition will be reviewed as a component of a test or kit. Because of the serious health risks associated with diseases diagnosed by tests utilizing class II or III ASR's, FDA believes that meaningful safety and effectiveness determinations require a review of the performance of the entire test or kit, including directions for use and expected analytical or clinical performance. Accordingly, FDA will undertake premarket review of the performance of the ASR and the test of which it is a component to determine the substantial equivalence or safety and effectiveness of class II and III ASR's. As a result, it is expected that most class II and III ASR's will not be marketed as independent components, separate from the test. Where manufacturers of the approved test or kit intend to market these class II and III ASR's independently, without the other components of the test, the restrictions issued under section 520(e) of the act will continue to apply. Cleared or approved class II or III ASR's that are marketed independently of kits may be sold only to in vitro diagnostic (IVD) manufacturers, laboratories qualified to do high complexity testing under CLIA, or nonclinical laboratories for research or other uses. These independently marketed ASR's must be labeled in accordance with § 809.10(e) (21 CFR 809.10(e)), which has been amended to include the following statement: ''Except as a component of the approved test (Name of approved test), analytical and performance characteristics are not established.''

Although manufacturers of Class II or III ASR's marketed as independent components are prohibited from making statements regarding the analytical or clinical performance of the ASR, they may identify the approved test or kit. Because the clinical laboratory is accountable for the use of the independently marketed ASR and its performance as a part of a test, the disclaimer required by § 809.30(e) (21 CFR 809.30(e) must be appended to the results of in-house developed tests using class II or III ASR's just as it is required with reports of results using class I ASR's. The same statement, of course, would not be applicable or required when test results are generated using the test that was cleared or approved in conjunction with review of the class II or III ASR.

C. General Controls

The final rule requires biological or chemical manufacturers and suppliers of ASR's to register with FDA and provide FDA with a list of the ASR's they supply to laboratories for use in developing in-house tests. The final rule also requires manufacturers and suppliers to conform to CGMP requirements (part 820 (21 CFR part 820)), as applicable. The final rule further requires manufacturers and suppliers to comply with medical device report (MDR) requirements (21 CFR part 803) and report to FDA adverse events that may have been due to the ASR's. FDA believes that these general controls address the risk to the public health presented by ASR's that may be manufactured with variable quality.

To reduce the burden on industry of complying with CGMP's, manufactures and suppliers have until November 23, 1998 to comply with part 820.

D. General Purpose Reagents

FDA has amended the definition of general purpose reagents to complement and be consistent with the ASR definition by adding language clarifying the distinction between ASR's and general purpose reagents.

E. Genetics Testing

FDA does not intend, at this time, to regulate ASR's used in genetic testing differently from other restricted class I medical devices that are exempt from premarket notification requirements. The ASR regulations are drafted to classify most ASR's used to develop in-house tests as class I devices because FDA believes this degree of regulatory control is commensurate with the need to bring consistency to the manufacture of these devices and to assure their safety and effectiveness when used by health and scientific personnel trained in laboratory practices.

FDA considered identifying a subset of ASR's that are used to develop tests intended for predictive genetic diagnosis as ASR's that pose unique risks to the public health because of the substantial clinical impact of the information generated using these devices. For the genetic tests currently in use, FDA is aware that both the genetic test and the ASR used in the genetic test are developed by the laboratory in-house. Because these ASR's are not being commercially marketed independently of the tests, they do not currently fall within the scope of this regulation. Nonetheless, FDA considered designating as class III devices those ASR's that would be marketed independently for use in tests intended for use in overtly healthy people to identify a genetic predisposition to a dementing disease, or to fatal or potentially fatal medical disorders (e.g., cancers or Alzheimer's disease), in situations where penetrance is poorly defined or variable and latency is 5 years or longer. However, after reviewing the comments and currently

available information, FDA has not yet identified criteria that would logically distinguish among genetic tests in order to determine which have the requisite impact to trigger more stringent controls. FDA has determined that the special issues related to genetic testing or predictive genetic testing do not warrant establishing a more stringent degree of regulatory control over ASR's used in these tests at this time. FDA believes that regulating most ASR's as restricted class I devices exempt from premarket notification establishes appropriate initial controls in the event more stringent requirements are later determined to be necessary for ASR's used in genetic tests.

FDA is aware of the public concern and desire that the regulation of products used in genetic testing be done in a thoughtful and prudent manner. As stated previously, FDA intends, with this regulation, to establish appropriate initial controls for ASR's use in genetic tests and to review agency policies relating to many aspects of regulation of genetic testing after FDA has had an opportunity to evaluate anticipated final recommendations from National Institute of Health's (NIH's) Task Force on Genetics Testing and other interested parties. After this review, FDA may propose additional regulation of genetic tests.

F. Definition of an ASR

Most comments found FDA's proposed definition for an ASR to be acceptable. However, FDA has decided to make minor changes to clarify the definition in response to some comments. FDA has amended § 864.4020(a) to clarify that the regulation only applies to reagents intended for use in a diagnostic application. FDA also has added the term ''ligand'' to the categories of materials that are within the definition of ASR because ligands bind the reagents to the analytes. Finally, FDA has amended the definition to clarify that binding between ASR's and their analytes may be through physical or chemical means.

G. Disclaimer

Under § 809.30, FDA is requiring that a disclaimer be appended by the laboratory to the test report informing the ordering practitioner of the test results obtained from the test in which the ASR was used. The statement will say, ''This test was developed and its performance characteristics determined by [Laboratory Name]. It has not been cleared or approved by the U.S. Food and Drug Administration.'' FDA believes the disclaimer clarifies the regulatory status of the test in which the ASR has been used, is consistent with other in vitro diagnostic labeling, and addresses the concern raised by the Panel that practitioners ordering the tests made from class I exempt ASR's or from class II or III ASR's marketed independently of an approved test may be unaware that the clinical performance characteristics of those tests have not been independently reviewed by FDA. The statement would not be applicable or required when test results are generated using the test that is cleared or approved in conjunction with review of the class II or III ASR. It will be FDA's responsibility to enforce the disclaimer requirement.

H. Sale Restrictions

The final rule does not regulate the sale of ASR's to nonclinical laboratories. FDA has amended § 809.30(a)(3) to clarify that ASR's may be sold for nonclinical uses or uses not directly related to patient care to academic and other research laboratories as well as to other nonclinical laboratories. It is not the intent of the ASR regulations to prevent the continued sale of ASR's to research institutions that are using these devices for nondiagnostic testing.

I. Labeling Changes and Ordering Restrictions

FDA has amended § 809.10(e)(9) to clarify that labeling for class I exempt ASR's must include the statement, ''Analyte Specific Reagent. Analytical and performance characteristics are not established.'' For class II and III ASR's, FDA has amended § 809.10(e)(9) to clarify that labeling must include the statement ''Analyte Specific Reagent. Except as a component of the approved/cleared test (Name of approved/cleared test), analytical and performance characteristics are not established.'' Such labeling is consistent with other IVD labeling and provides accurate information to users and purchasers of these products.

FDA has added § 809.10(f) to restrict ordering in-house developed tests using ASR's to physicians or other health care practitioners authorized by the law of the State in which the test is being offered. FDA believes that interpretation of results from in-house developed tests that use ASR's requires the expertise of a health care practitioner authorized by the State to provide a reasonable assurance of the safe and effective use of commercially marketed ASR's. Because the performance characteristics of the individual tests have not been cleared or approved by FDA, consumer use of such tests without the benefit of the experience of a health care professional would significantly undermine safe and effective use of these ASR's.

III. Response to Comments

A. Comments Received in Response to FDA's Solicitation of Opinions on Specific Issues

1. Genetic Testing

(Comment 1)

Several comments supported regulating ASR's used in genetic testing as class I exempt devices. Those comments asserted that:

(a) Use of genetic test results are better addressed through regulations pertaining to confidentiality of results, discrimination based on genetic information, and the qualifications of genetic counselors and physicians, and through standards and guidelines established by professional organizations rather than through more stringent device controls.

(b) CGMP requirements, labeling restrictions, as well as CLIA requirements for qualifying laboratories to perform high complexity testing adequately, address FDA concerns about the safety and effectiveness of ASR's used for such tests.

(c) More stringent classifications of ASR's used in genetic tests may hamper the availability of genetic testing, which would adversely affect the development and practice of genetic medicine by adding substantially to the time and expense associated with test development.

(d) Clinical laboratories have the responsibility and expertise to validate genetic tests, to establish standard operating procedures so that tests can be consistently replicated by technicians, and to generate in-house reference standards to test any new reagent lot for specificity.

(e) ASR's should not be singled out for more stringent classification because ASR's are only one component of the clinical assay; properties of the general reagents used in the assay, such as ionic strength, pH and concentration, as well as conditions and procedures at the test site, are also critical for determining analytical specificity.

(f) Genetic tests are not fundamentally different from other diagnostic technologies.

(g) The proposed ASR category would allow flexibility for medical decision making but a system that attempts to distinguish among different genetic categories of testing, such as diagnostic, carrier, population screening, or prenatal diagnosis, would be unwieldy.

(h) Many ASR's could be unintentionally overregulated if a higher

classification was established for this group of ASR's because a majority of ASR's could be used as ingredients in a genetic test, even if they were not sold for that use.

Other comments supported different treatment for ASR's used in genetic tests:

(a) One comment suggested that it was premature to regulate ASR's composed of human genetic products as class I until the molecular basis of human disease is better understood. Another comment suggested that ASR's should be regulated as class III medical devices if the practice of making in-house assays of genetic tests directly available to consumers becomes widespread or problematic.

(b) Two comments recommended that ASR's used in genetic screening tests for predictive purposes in apparently healthy persons should be regulated more strictly than class I, for example, by requiring premarket notification.

(c) One comment proposed that ASR's whose only labeled indications are in the area of genetic predisposition or in prognostic situations with long latency periods should be regulated as class II or III devices.

(d) Two comments proposed regulating ASR's used in genetic testing as class II devices. One comment proposed special controls for these ASR's and no exemption from notification. The second comment would allow the sale of ASR's to laboratories without regard to certification by CLIA.

(e) Because the clinical validity of ASR's may be difficult to establish, their sensitivity and predictive value may not be high, and the benefits they confer are not proven, one comment recommended that ASR's used in genetic screening tests for predictive purposes in apparently healthy persons should be available on an investigational basis only. Another comment said they should be available on an investigative basis until clinical validity is proven, and then they should be classified as class III devices. Two comments recommended that they should be regulated as class III devices.

In general, FDA agrees with those comments that support regulating ASR's used in genetic tests as class I exempt. (See the discussion in section II.E. of this document.) The regulations were issued to apply to ASR's as a category of device, and most ASR's can be used in a variety of in-house developed tests. At this time, FDA does not believe there is a scientific basis to distinguish between tests based on the use of DNA and tests based on the use of other proteins or substances, or between tests based on the use of DNA and tests based on the use of other molecular diagnostic technologies. However, FDA recognizes that there are special issues related to genetic testing or predictive genetic testing and that these issues may affect the degree of regulatory control needed to establish the safety and effectiveness of these tests or the ASR's used in their development. As stated previously, FDA intends to review its decision with respect to regulatory control of genetic testing after it has had an opportunity to evaluate final recommendations from NIH's Task Force on Genetics Testing and other interested parties.

FDA believes that this final regulation will assure the quality of material being used to develop in-house genetics tests. When used as part of in-house developed tests, the ASR regulations restrict use of commercially marketed ASR's to tests that are ordered by an authorized practitioner and to those clinical laboratories regulated under CLIA as qualified to perform high complexity testing. Except when test results are generated using the test that was cleared or approved in conjunction with review of the class II or III ASR, FDA is also requiring that a disclaimer be appended to the test report stating that the clinical laboratory determined and developed the test performance characteristics and that the test that incorporated the ASR has not been cleared or approved by FDA. FDA believes these restrictions address many of the concerns raised by those comments supporting more stringent regulation of ASR's used in genetic testing. The issuance of these regulations does not preclude FDA from reevaluating in the future whether additional controls may be needed for genetics testing or for ASR's used in such tests. FDA will reevaluate whether additional controls may be needed to provide an appropriate level of consumer protection if further developments in this area result in significant uses of ASR's in genetic assays or other IVD tests offered over-the-counter (OTC).

(Comment 2)

One comment stated that issues raised by predictive testing which yields information about the potential future health status of the patient and his or her blood relatives have been addressed by policy statements from professional groups. This comment asserted that the most practical approach to oversight and regulation of genetic testing would build on the existing system of professional society standards, using a system that creates either incentives for compliance or disincentives for noncompliance. The comment also stated that reliance on voluntary professional standards would minimize costs to Government agencies and avoid burdening compliant manufacturers with unnecessary regulation. Another comment recommended that regulation of human genetic testing should be considered separately from decisions regarding the appropriate classification and regulatory controls applied to ASR's.

As stated previously, FDA recognizes that there are special issues related to genetic testing or predictive genetic testing. Implementation of a system based on professional standards for oversight of genetic testing is one option for addressing these issues. FDA does not believe the regulatory steps being taken in this final rule overly burden manufacturers or preclude other types of controls in the future, including systems based on the principles described in this comment.

2. Nucleic Acids

(Comment 3)

Several comments agreed with FDA's proposal to include human nucleic acids within the definition of ASR's. Those comments stated that: (a) It would be inconsistent to exclude human nucleic acids; (b) human nucleic acids are essential for good patient management where no FDA approved alternative test can substitute; (c) the scientific basis for nucleic acid hybridization and amplification techniques utilizing oligonucleotide ASR's have been known for many years so that adherence to CLIA regulations should be sufficient regulation; (d) because factors affecting test performance, reliability, and accuracy of test results are assay dependent and not disease dependent, all ASR's should be regulated similarly as class I devices exempt from premarket notification; (e) the ongoing refinement of reagents for diagnosis of susceptibility genes required by the practice of medicine is facilitated when ASR's are required only to meet a minimum number of regulatory requirements; (f) the availability of nucleic acid probes for use in the practice of medicine will be facilitated if these nucleic acids are regulated as class I devices exempt from the premarket notification requirement; and (g) like other ASR's, human nucleic acids can be used in disease staging.

Several comments supported the exclusion of the word ''nonhuman'' to modify nucleic acids in the ASR definition, stating that it would be virtually impossible to distinguish between a nucleic acid synthesized in the laboratory and a human nucleic acid, and that human nucleic acids are

not the only category of ASR capable of being used in genetic tests. One comment expressed concern that FDA has appeared to misunderstand the panel's intent, which was to exclude human nucleic acids because they are most often used to directly identify genetic material or gene products.

FDA agrees with the comments that support including human nucleic acids in the ASR definition. FDA appreciates the basis for the concern raised by the comment about the intent of the panel recommendation, but remains concerned about the broad nature of such an exclusion. Consequently, the definition of ASR's in the final rule includes human nucleic acids. As discussed earlier, at a future date, FDA may reevaluate whether additional controls over genetic tests are appropriate.

3. Analyte Specific Reagent

(Comment 4)

Several comments supported the use of the term ''analyte specific reagent'' and no comment suggested an alternative.

Accordingly, FDA has retained this term in the final regulation.

4. Disclaimer

(Comment 5)

Several comments agreed with the proposed disclaimer, noting that it clarifies the regulatory status of ASR's, it is consistent with the current practice of labeling research or investigational IVD's, and it provides an incentive for laboratories to have their assays approved or cleared.

Several comments supported having a disclaimer, but would like it to contain more information, including that the clinical performance of the test has not been established, that neither the laboratory test nor the procedures used to obtain the results have been reviewed by FDA, and that the ASR manufacturer is accountable for the ASR.

Other comments suggested that the disclaimer be deleted, or, at a minimum, amended to read that the laboratory assay used to report these results has been validated in accordance with the requirements of CLIA. One comment would amend the disclaimer to read as follows:

The reagents used in this test are regulated by the Food and Drug Administration (FDA) under the general controls of the Food, Drug, and Cosmetic Act (FDC Act). The regulations that implement the FDC Act require compliance with current good manufacturing practices (CGMP), accurate labeling and adverse event reporting, among others. The distribution of these reagents is limited to manufacturers of in vitro tests, laboratories qualified to perform high complexity testing and forensic and underwriter laboratories. This test was validated in accordance with the provisions of the Clinical Laboratory Improvement Amendments (CLIA'88). The program is managed by another federal agency, the Health Care Financing Administration (HCFA). (Laboratory Name) was certified/recertified by HCFA on (date) as a high complexity laboratory that is in compliance with CLIA regulations.

Three comments opposed requiring any disclaimer, claiming it has no impact on the final diagnosis and is an intrusion on the process of medical interpretation. One of these comments suggested that it would be more reasonable to require the laboratory director to provide interpretive reporting to the physician.

FDA has considered the comments and has determined to require the disclaimer discussed in the proposed rulemaking. FDA believes that the disclaimer is sufficiently clear to communicate that the test that used the ASR was developed, and its performance characteristics defined, by the laboratory without FDA review. FDA believes this statement clearly communicates to health care providers the regulatory status of the in-house test that has used the ASR. FDA believes this labeling requirement is necessary to address the concern raised by the Panel that physicians may not be aware that the results of the testing they order using ASR's are generated by tests that have not been independently reviewed by FDA. Rather than being an intrusion on medical interpretation, the required statement ensures that health care providers have additional information upon which to make independent judgments. This labeling requirement would not be applicable or required when test results are generated using the test that was cleared or approved in conjunction with review of the class II or III ASR. FDA does not believe a more detailed or lengthy statement is necessary.

B. General Comments

(Comment 6)

Several comments supported the regulation of ASR's as class I devices, exempt from premarket notification requirements in section 510(k) of the act. These comments stated that: (a) The CLIA regulations regarding in-house modification of materials or methods are adequate to protect the health and well-being of patients without increasing the regulatory burden on manufacturers and laboratories or overloading FDA's already encumbered review process by classifying ASR's in a more stringent category; (b) in-house modification of materials and methods falls within the scope of the practice of medicine, and a more stringent classification would hamper the ability to provide quality medical services and care to patients, such as diagnostic work performed by pathologists; (c) stringent regulation of in-house modified or developed materials and methods would constrain the development of new and better technologies and the improvement of existing IVD technologies; and (d) a substantial and appropriate measure of control is gained by the regulation announced in the proposed rule.

As recommended in these comments, FDA is finalizing the class I exempt classification as the classification for most ASR's.

(Comment 7)

One comment expressed concern that the proposed regulation would put companies that have made the investment to obtain clearance of 510(k)'s for class II antibodies at a competitive disadvantage if antibodies that are currently classified as class II are reclassified as class I devices exempt from premarket notification.

FDA disagrees with this comment. Manufacturers that have submitted or intend to submit antibodies for review as class II test systems would be allowed to market those devices with clear intended uses and indications for use, instructions for use, and appropriate definition of performance parameters. Manufacturers of class I exempt ASR's will be required to limit their labeling to a description of the identity and purity (including source and method of acquisition) of the ASR in addition to standard information already required for general purpose reagents (e.g., net weight; storage instructions). Sale of class I exempt ASR's is also restricted in accordance with other restrictions listed in 21 CFR 809.30(b), while manufacturers of class II test systems cleared by FDA would be allowed to market those devices without regard to the restrictions in 809.30.

(Comment 8)

One comment questioned whether classification of class III ASR's by the type of test for which it is to be used will create a quagmire of regulations, resulting in numerous exceptions to the class I status, confusion about how ASR's that can be used in multiple tests will be regulated, and the difficulty of distinguishing one fatal illness, such as HIV/AIDS, from another, such as herpes encephalitis.

FDA believes that through a narrow definition of the class II and III identification, the exceptions to the general ASR classification have been limited to a manageable number. Under the final rule, exceptions to the ASR class I exempt classification are analytes

used in developing a test intended for use in the: (a) Diagnosis of a contagious condition that is likely to result in a fatal outcome and where prompt accurate diagnosis offers the opportunity to mitigate the public health impact of the condition; (b) screening of a condition for which FDA has established a recommendation or requirement for the use of the test in safeguarding the blood supply or establishing the safe use of blood and blood products (e.g., hepatitis or tests for identifying blood groups); or (c) screening for blood banking when screening test has been classified as a class II device. Currently, FDA believes that ASR's used to test for evidence and monitoring for levels of HIV/AIDS and tuberculosis (TB) are examples that would fall within the class III exception, and reagents used in the diagnosis of diseases caused by cytomegaloviruses and treponema pallidum nontreponemal test reagents which aid in the diagnosis of syphilis fall within the class II exception.

Most blood banking tests fall into class III and some into class II. Class II blood banking tests fall into two categories. One category consists of blood banking tests required by FDA to screen for diseases with a low potential for transmission, e.g., syphilis. The second category consists of certain blood banking tests used electively by blood banks to screen for diseases that are likely to be transmitted to subsets of blood unit recipients known to be at greater risk of infection, e.g., cytomegalovirus. Because these blood banking tests have previously been classified into class II, FDA has determined that special controls are sufficient and that the submission of a premarket approval application (PMA) associated with a class III device is not necessary for the ASR used in the test. (Comment 9)

One comment suggested that only those ASR's with the lowest risk factor for generating false results of little consequence should be classified as class I, and that the others should be classified as class II or III. The comment reasoned that the reliable, reproducible performance of a diagnostic test is dependent upon the entire integration of the test system. The comment also stated that while laboratories qualified to do high complexity testing have experience in utilizing and evaluating test systems developed by manufacturers, these laboratories do not have expertise in developing in vitro diagnostic tests. The comment noted that CLIA does not require the validation of diagnostic tests systems by rigorously controlled clinical trials to establish expected values and performance characteristics. Such trials are not required by CLIA but could be required by FDA if these tests were placed in class II or III.

FDA has considered this and related comments and appreciates the concerns raised about the development of in-house tests and the current marketing of test services based on tests that have not been reviewed independently for safety and effectiveness. FDA believes that clinical laboratories that develop such tests are acting as manufacturers of medical devices and are subject to FDA jurisdiction under the act. However, FDA recognizes that the use of in-house developed tests has contributed to enhanced standards of medical care in many circumstances and that significant regulatory changes in this area could have negative effects on the public health. For these reasons, FDA declines to accept the suggestion that all in-house developed tests be classified as class II or III medical devices. FDA views this final rule as a reasonable regulatory step at this time and an important contribution to assuring that the primary ingredients of most in-house developed tests are manufactured properly, used by trained professionals, and labeled accurately.

The focus of this rule is the classification and regulation of ASR's that move in commerce, not tests developed in-house by clinical laboratories or ASR's created in-house and used exclusively by that laboratory for testing services. The regulation restricts the sale of ASR's to a particular type of laboratory and FDA believes this restriction supports the safe and effective use of these ASR's. FDA believes that CLIA regulated laboratories qualified to perform high complexity testing have demonstrated expertise and ability to use ASR's in test procedures and analyses. In addition, the disclaimer being required by this rule will provide physicians with more complete information to better understand the basis of test development and to evaluate the information generated by the laboratory using the ASR.

Nevertheless, FDA understands that the use of ASR's to develop in-house tests raise questions about the safety and effectiveness of the tests that incorporate these ASR's. FDA has determined that certain types of testing raise public health concerns that require more stringent regulation of the ASR's that are the main ingredients of those tests: testing for highly contagious and fatal diseases and testing that protects the safety of the blood supply require different and additional review. As proposed, FDA is now classifying the ASR's associated with such testing into class III. In addition, FDA is classifying into class II those ASR's that are used in blood banking tests which previously have been classified into class II. These class II and III devices will be reviewed in association with the test that is incorporating the ASR so that FDA can assure a level of safety and effectiveness that is commensurate with the intended use of the ASR. In addition, ASR's and tests using ASR's that meet the definition of a biologic remain subject to licensure under the PHS Act.

Finally, FDA notes that the comment misunderstood the requirements under CLIA with respect to tests in the waived category. Under CLIA, manufacturers are required to submit studies to demonstrate that the statutory criteria for waiver are met, and any waived test must either be approved/cleared by FDA for home use or be simple, easy to perform, and essentially error free. The Centers for Disease Control and Prevention (CDC) is responsible for implementing the categorization provision of CLIA, including waived States.

(Comment 10)

One comment expressed concern that FDA has not fully discussed regulating moderate risk products and suggested that the level of sophistication of diagnostic technology requires more than two categories.

Although the final rule establishes three classes of ASR's, FDA disagrees that most moderate risk ASR's require additional regulation. FDA believes that the classification of most ASR's as restricted class I devices in conjunction with existing CLIA regulations and professional organization's standards applicable to laboratories qualified to do high complexity testing is adequate for regulating ASR's used in both low and moderate risk in-house assays. In addition, FDA has identified a small subset of ASR's used in class II blood banking tests that require special controls to provide a reasonable assurance of safety and effectiveness and that will be regulated as class II devices. The regulation represents an incremental regulatory change and does not preclude future regulatory activity by FDA or other Federal or professional groups involved in oversight of laboratory activities from developing mechanisms to improve the quality of laboratory practice or test production.

(Comment 11)

Several comments objected to any FDA regulation of ASR's. One of these suggested that FDA should work with HCFA to amend HCFA's regulation of clinical laboratories if changes in current regulation of home brews are

necessary, claiming that FDA's regulation in this area would only increase the administrative costs of medical care. Another comment stated that: (a) There is an absence of safety or effectiveness concerns in ASR use; (b) regulating ASR's increases the burden on FDA's scarce resources and facilities; (c) CLIA regulation is sufficient; and (d) the proposed rule does not target the party best suited to address issues of analytical validity, which is the laboratory preparing the in-house test. Another comment expressed concern that the proposed rule encourages in-house production of ASR's. Another comment suggested providing guidances rather than regulating by rulemaking.

FDA disagrees with these comments. FDA intends that this final rule, developed with input from HCFA and CDC, complement existing regulations issued under CLIA. FDA's rule establishes a basic requirement that manufacturers of ASR's for use in clinical laboratories comply with appropriate CGMP's. CGMP procedures and controls are designed to ensure high quality devices. FDA believes that high quality ASR's are likely to lower costs of developing and maintaining test systems at individual laboratory sites and to decrease, rather than increase, total medical costs.

FDA regards regulating ASR's using general controls and exempting them from the premarket notification requirements as a minimal burden and an appropriate level of regulation for devices that pose less safety or effectiveness concerns than devices marketed as test systems or test kits. In keeping with this approach, this rule addresses quality and identity of the ASR's and does not address analytic validity of the devices. FDA does not expect this regulation to independently increase efforts by laboratories to develop ASR's in-house. FDA believes that the in-house development of ASR's is driven by research goals, and is not a practice that grows in response to regulatory efforts. Finally, while it may be necessary for FDA to develop guidances concerning ASR's in the future, FDA believes that establishing a classification for ASR's through rulemaking is the appropriate mechanism to ensure consistent regulation of these devices for their manufacturers and users.

(Comment 12)

One comment suggested that the Panel's recommendation would unfairly burden the manufacturer of the ASR and that the clinical laboratory was the best party to ensure that the appropriate restraints are placed on interpretation of a diagnostic test through a disclaimer provision.

FDA agrees in part with the comment. FDA intends to minimize the regulatory burden on ASR manufacturers by regulating most ASR's as class I devices exempt from premarket notification. The final rule requires that a disclaimer be appended to the test report by the laboratory that uses the ASR. That statement will inform the ordering practitioner that: ''This test was developed and its performance characteristics determined by (Laboratory Name). It has not been cleared or approved by the U.S. Food and Drug Administration.'' The statement would not be applicable or required when test results are generated using the test that was cleared or approved in conjunction with review of the class II or III ASR.

(Comment 13)

One comment expressed concern about regulating the ASR ingredient, rather than the final test product, claiming that most clinical laboratories will not establish the clinical performance of a diagnostic product via properly controlled and population representative clinical trials.

FDA understands the concern raised by this comment but disagrees that regulation of ASR's will not be useful and that regulation of all in-house developed tests is appropriate at this time. As discussed previously, FDA has concluded that its regulation of ASR's will contribute to consistency and quality in their manufacture and that the requirement that the laboratory using the ASR explain the regulatory status of the test in which it was used will increase the information available to physicians ordering these tests. Development of in-house laboratory tests is a complex process in which diagnostic performance may be assessed either through the medical practice associated with a given laboratory or scientific literature. Although the types of trials performed in support of these tests are likely to be variable, laboratories will be responsible for both the quality and interpretation of results generated from these tests.

(Comment 14)

One comment questioned whether FDA has the resources to require CGMP compliance from all ASR manufacturers and prevent the inappropriate use of ''research use only'' labeling.

FDA believes it does have resources to enforce the requirements established by this regulation. The regulation requires all ASR manufacturers to follow general controls and, as with other FDA regulations, it is primarily the responsibility of the manufacturer to comply with the regulations pertaining to ASR's. FDA intends to monitor the level of compliance through inspections and, where necessary, take enforcement actions. FDA also expects that the clinical laboratory and physician community will join manufacturers in encouraging compliance; laboratories purchasing these ASR's and physicians ordering tests using these ASR's will now expect them to be produced consistently in accordance with appropriate CGMP's.

(Comment 15)

One comment suggested regulating the ASR by the same classification as the final assay.

FDA disagrees with this comment. A single class I ASR may be potentially used in multiple different versions of a final assay, which are developed and run by individual clinical laboratories. Basing the regulation of every class I ASR on the final assay developed and run by individual clinical laboratories, therefore, would be problematic. FDA believes that existing mechanisms for laboratory oversight under the mandate of CLIA are sufficient in most cases to assure proper test control.

(Comment 16)

One comment requested information on how the proposed rule relates to the immunohistochemical (IHC) regulation and the definition of IHC's, the Compliance Policy Guide (CPG) for the Distribution of Research and Investigational Use Products, and other classification actions currently underway.

Depending on their labeling and intended use, devices for use as IHC stains could be marketed under a variety of options. When an IHC is developed as a kit or system for ''in vitro diagnostic use'' (with a proposed intended use, indications for use, instructions for use, and performance characteristics), it would be subject to review as a class I, II, or III device according to intended use as outlined in the proposed IHC regulation (61 FR 30197, June 14, 1996). When an IHC is developed and marketed as an ASR (intended for ASR use only, with no instructions for use, and no defined performance characteristics), it would be subject to general controls and restrictions established by this final regulation but would be exempt from premarket review. When an IHC is developed and used only for ''research use'' or ''investigational use,'' it would be subject to appropriate labeling only with no requirement for premarket review or compliance with the general controls or restrictions of this ASR regulation.

In August of 1992, FDA invited comment on a draft CPG entitled

''Commercialization of Unapproved In Vitro Diagnostic Devices Labeled for Research and Investigation,'' which was intended to clarify the regulation of devices ''for research use'' or ''for investigational use'' and to describe FDA's enforcement policy concerning research or investigational IVD's that are being illegally commercialized for diagnostic or prognostic purposes. Any final CPG issued on this subject will be consistent with the ASR regulations.

(Comment 17)

One comment recommended that FDA create a task force to assist FDA in further delineating and defining issues raised in the proposed rule.

FDA believes that the comments submitted in response to the proposed rule provide the assistance FDA sought in delineating and defining the issues raised in the proposed rule and believes that it is unnecessary to institute an additional procedure at this time to address these issues. Where products pose new or unusual risks, FDA may seek assistance in classifying the products.

C. Adverse Event Reporting

(Comment 18)

One comment objected to the requirement that the ASR supplier be required to report adverse events and asserted that it would add an unnecessary step to the reporting process because ASR suppliers depend on the clinical laboratory to inform them of the occurrence of an adverse event.

FDA disagrees with this comment. This requirement is consistent with the medical device reporting regulations in part 803, which require device user facilities and manufacturers to report deaths and serious injuries to which a device has or may have caused or contributed, and to establish and maintain an adverse event file. Under these regulations, the burden for reporting adverse events is shared by both health care providers and manufacturers. If a number of events become associated with a particular ASR, it is the manufacturer who is likely to be in the best position to investigate the cause of the adverse events and to take corrective action, if necessary.

D. ASR Definition in § 864.4020(a)

(Comment 19)

One comment expressed concern that the proposed definition of ASR's would adversely impact basic research, noting that it included every polyclonal or monoclonal antibody specific to a human antigen and every oligonucleotide primer used in polynerase chain reaction (PCR), reverse transcription or labeled for use in detecting hybridization, including those whose primary or entire use is in basic research.

FDA does not intend to have this regulation apply to basic research and has amended the definition of ASR § 864.4020(a) to clarify that the regulation applies only to reagents intended for use in a diagnostic application.

(Comment 20)

One comment would add the term ''ligand'' to the proposed ASR definition, stating it is the ligand which binds to the categories of materials that are proposed to be within the ASR definition. Two comments would add ''diagnostic'' to the definition to clarify that an ASR is only intended for diagnostic use. One comment suggested amending the ASR definition to read ''specific binding or chemical reaction,'' noting that binding between ASR's and analytes is often through physical means and that ASR's may also react chemically with analytes.

FDA agrees with the suggested clarifications and has modified the definition accordingly.

(Comment 21)

One comment stated that the chemical or biological source of a reagent should not preclude it from being identified as an ASR.

FDA agrees with this comment and believes that the definition of ASR's supports this concept.

E. Blood Supply

(Comment 22)

Two comments supported the regulations of ASR's used in tests intended to safeguard the blood supply as class III devices.

FDA agrees with these comments and will continue to classify ASR's used in tests intended to safeguard the blood supply as class III devices because of the serious health risks associated with their use in that setting. As discussed previously, ASR's used in tests that previously have been classified in class II, will be class II, rather than class III. ASR's and tests using ASR's that meet the definition of a biologic remain subject to licensure under the PHS Act.

(Comment 23)

One comment questioned whether it is consistent to apply class II or III and other regulatory requirements to manufacturers of ASR's used in blood banking tests and suggested it would be more appropriate to have the regulatory focus be on the developer of the in-house assay.

Although FDA has concluded that class I is an appropriate classification for most ASR's, FDA believes that regulation of the blood supply requires maximum assurance of safety, and that ASR's used in tests intended to safeguard the blood supply require a different and more stringent level of control. Accordingly, ASR's used for tests that are intended to assure the safety of the blood supply will be reviewed in association with the test that is going to incorporate that ASR. The concern of the comment is addressed, therefore, because the test will be reviewed in order to establish that the ASR can be used safely and effectively. FDA's Center for Biologic Evaluation and Research (CBER) will continue to take the lead in the review of such products and should be the point of contact for manufacturers of ASR's that are intended to be used in tests relating to the safety of the blood supply. These tests remain subject to licensure under the PHS Act.

(Comment 24)

One comment expressed concern that labeling test results using ASR's as not having been reviewed by FDA would restrict the use of valuable reagents used in immunohematology and suggested that the regulation of blood bank/immunohematology tests be specifically addressed by a panel of expert serologists.

FDA does not believe that the situation suggested by the comment is likely to occur. CBER has not licensed any biologic that is used in tests intended to safeguard the blood supply without reviewing and approving the test that will incorporate that biologic. This policy will not be affected by this final rule. Under this policy, an ASR should not be incorporated into a home brew test designed to protect the safety of the blood supply unless that test has been approved by FDA or is being investigated under an effective investigational new drug application. Because these ASR's would only be used in association with tests that have already been approved, the disclaimer would not be applicable or required when test results are generated using the test that was cleared or approved in conjunction with review of the class II or III ASR.

F. Certification

(Comment 25)

Several comments recommended that FDA not require ASR suppliers to certify that sales comply with the proposed sale restrictions, claiming that such certification would be a recordkeeping burden.

These comments appear to have misread the rule. There was no certification requirement in the

proposed ASR regulation and none has been included in the final rule. The ASR rule does not require ASR suppliers to certify that sales comply with the proposed sale restrictions.

G. CGMP's

(Comment 26)

Several comments objected to the application of CGMP's where ASR's are rare reagents made only once or so infrequently that CGMP's cannot be properly applied, or where ASR's are reagents made in an academic or research setting, or by very small companies. One comment suggested that acceptance specifications developed by individual laboratories for key ingredients and test performance criteria would determine an individual laboratory's standard for acceptability for manufacturing those ASR's.

In response to these comments, FDA notes that manufacturers are not required to follow CGMP's for reagents made and used within academic or research settings. For rare or infrequently made ASR's, FDA intends to apply only those provisions of the CGMP's as are appropriate to ensure the quality and purity of the ASR's being marketed for clinical applications. However, the size of a company that commercially markets ASR's will not exempt that manufacturer from compliance with appropriate CGMP's.

H. Economics

(Comment 27)

One comment stated that carefully controlled and documented performance of IVD tests will curb medical care costs by contributing to more specific diagnosis and more selective patient management. This comment suggested that FDA's regulation of ASR's is not stringent enough and that FDA should regulate in-house developed tests the same way FDA regulates other IVD's.

FDA believes that applying general controls to the majority of ASR's used to develop in-house tests is, in conjunction with CLIA certification of the laboratory, the appropriate degree of regulatory control. As discussed previously, FDA appreciates the concerns that have been raised about in-house developed tests that are not reviewed independently. If future developments in laboratory technologies or marketing of in-house developed tests indicate that additional regulation is necessary to provide an appropriate level of consumer protection, FDA may reevaluate whether additional controls over in-house developed tests are warranted.

(Comment 28)

Several comments expressed concern that the proposed regulations will increase the cost of diagnostic tests and/or decrease the availability of those reagents that are low use/low revenue products. The comments suggested that large companies will pass along the increased costs to consumers and that small companies will be unable to comply because the cost is prohibitively expensive. A comment also questioned what the regulatory impact would be on a clinical laboratory that both manufactures the ASR and uses the ASR in an in-house test.

FDA believes that the ASR regulations are a minimal regulatory burden and should improve the assurance of quality for purchasers of ASR's for use in test development without significantly increasing costs. In response to the concern that this regulation will eliminate the manufacture of low use ASR's, FDA notes that it has recently published regulations for humanitarian device exemption procedures (61 FR 33232, June 26, 1996) which could be applied to low use/low revenue products to prevent disruption of this important market. As explained previously, ASR's developed in-house and not marketed to other laboratories generally would not be subject to the ASR requirements established under the final rule. However, as noted previously, ASR's and tests incorporating ASR's that meet the definition of a biologic that are intended to protect the blood supply will remain subject to licensure under the PHS Act.

I. Sales Restriction to CLIA Regulated Laboratories That Perform High Complexity Testing

(Comment 29)

One comment objected to the restriction of sales of ASR's to CLIA laboratories that perform high complexity testing, stating that such laboratories may lack training and/or experience in such tests. The comment suggested that the sale of ASR's should be restricted to a laboratory's area of testing, rather than complexity of testing. Another comment stated that CLIA'88 does not provide assurance of safety and efficacy of tests because it does not require assessment of a test's clinical validity or utility. Several comments supported the proposed restriction of sales to laboratories qualified to perform high complexity testing under CLIA because CLIA established minimum standards for proficiency testing, quality assurance, quality control, and personnel.

FDA believes that restriction to a laboratory regulated under CLIA or comparable laws regulating Veterans Affairs laboratories as qualified to perform high complexity testing will ensure that these devices are handled in a setting that complies with the most stringent Federal regulatory standards for laboratory practice. FDA believes that these laboratory practice standards are a more appropriate regulatory distinction than areas of speciality, which may often overlap and are difficult to define.

FDA recognizes that CLIA does not require laboratories to assess the clinical validity of in-house developed tests. Nor do FDA's ASR regulations address the clinical validity of these tests. The purpose of restricting the sale of ASR's to laboratories qualified to perform high complexity testing under CLIA is to make certain that these devices are being handled by individuals whose training and experience are likely to assure the safe and effective use of the ASR's themselves. FDA currently believes that regulating the active ingredients of in-house developed tests should provide an appropriate level of regulation to protect the public health. However, the ASR regulations do not preclude FDA or other Federal agencies from taking other measures authorized by law to assure assessment of a test's clinical validity or utility if such measures are needed. As stated previously, at a future date, FDA may reevaluate whether additional controls over the in-house tests are warranted to provide an appropriate level of consumer protection.

(Comment 30)

One comment asked how ASR manufacturers can identify laboratories qualified to perform high complexity testing and whether ASR suppliers would be required to re-assess a laboratory's classification on an annual basis.

The ASR regulations require ASR manufacturers to label and market ASR's appropriately. FDA is allowing manufacturers and suppliers until November 23, 1998 to deplete their current stock of lables before requiring compliance with the labeling requirements. While the ASR regulations do not require ASR suppliers to certify sales to laboratories qualified to perform high complexity testing, such voluntary certification programs may be one way to ensure proper marketing of ASR's. Information concerning whether a particular laboratory is qualified to perform high complexity testing may be obtained by calling the State survey agency in the State where the laboratory is located.

(Comment 31)

Two comments stated that CLIA does not certify or regulate European clinical

laboratories. The comments suggested that, in foreign countries, ASR's be sold in accordance with the laws of that country.

FDA agrees and does not expect the ASR regulations to affect the marketing of ASR's to laboratories or suppliers in foreign countries.

J. Research

(Comment 32)

One comment asked whether ASR's could be sold to universities doing pure research, and if so, would such ASR's require a separate research use only (RUO) label.

ASR's can be sold to universities doing research and FDA has amended 809.30 to clarify this point. ASR's and products labeled ''for in vitro diagnostic use'' can be used for research purposes so an additional label would not be necessary in those circumstances. However, products that have not been manufactured in accordance with CGMP's and are labeled ''for research use only'' cannot be marketed under the ASR classification or used by laboratories to develop clinical diagnostics.

K. Contagious Fatal Diseases

(Comment 33)

Two comments supported the regulation of ASR's used in tests intended for use in the diagnosis of potentially fatal contagious diseases as class III devices. Several comments objected to classifying such ASR's as class III, stating that: (a) Stricter regulation will impair the ability of the clinical laboratories to respond rapidly to outbreaks of new or emerging infectious diseases, (b) the patient population is small, (c) the proposed regulation of other ASR's provides sufficient regulation, and (d) it will cause confusion in a variety of situations, for instance, where the disease typically is not fatal, but occasionally may cause fatalities, or where an ASR may be used for multiple purposes, ranging from screening procedures to monitoring treatment or progression of disease, or where an ASR is used for the diagnosis of both infectious and noninfectious diseases. One comment suggested that it would be more appropriate to require premarket notification for these ASR's or to regulate them as class II devices that require premarket notification and special controls, rather than classify these ASR's as class III.

FDA does not believe that regulating this limited category of ASR's as class III devices will confuse the industry or interfere with laboratory development of tests. ASR's will be identified as class III devices only when they are intended to be used either in tests that establish or safeguard the safety of the blood supply or in tests that diagnose contagious fatal diseases when prompt, accurate diagnosis can mitigate risks to the public health. Examples of the diseases that meet these requirements are HIV/AIDS and tuberculosis. The ASR's used in tests that diagnose such conditions pose unique risks because of the substantial clinical and public health impact of the information generated by these tests. The agency has concluded, therefore, that class III controls are appropriate.

The agency does not believe that the application of these controls will hamper the development of accurate tests to respond to new conditions. FDA has in place procedures to expedite review of products when a device offers a potential for clinically meaningful benefit as compared to the existing alternatives or when the new medical device promises to provide a significant advance over currently available modalities. FDA also has issued procedures for obtaining a humanitarian device exemption (HDE) to encourage the discovery and use of devices intended to benefit patients in the treatment or diagnosis of diseases or conditions that affect or are manifested in fewer than 4,000 individuals in the United States. Therefore the agency does not expect that this regulation will impair the ability of clinical laboratories to develop useful tests.

L. General Purpose Reagent in 21 CFR 864.4010

(Comment 34)

Several comments agreed with the proposed amendment of the definition of general purpose reagents, stating that it clarifies the distinction between general purpose reagents and ASR's.

FDA agrees with these comments.

(Comment 35)

One comment claimed that ASR's are analogous to general purpose reagents because both are building blocks utilized in the development of home brews and are sold to clinical laboratories with no analytical or performance claims. The comment believed, therefore, that all ASR's should be class I devices, exempt from premarket notification and CGMP's, except for record-keeping and complaint files. The comment suggested that a first logical step would be to require registration and listing for ASR's before deciding what other regulatory requirements are needed.

FDA disagrees with this comment and notes that registration and listing are required for ASR's that are sold to clinical laboratories under this regulation. FDA believes that ASR's are distinguishable from general purpose reagents because they are more complex and have an implied intended use as the active ingredient for in-house developed tests. FDA has concluded, therefore, that ASR's merit a more stringent level of regulation than that currently applied to general purpose reagents.

M. Labeling

(Comment 36)

One comment stated that the ASR supplier should only be responsible for statements made on the ASR labeling because the ASR manufacturers have no control over a clinical laboratory's acceptance criteria for reagents. Another comment stated that the proposed label only goes to the identity and purity of the ASR and does not provide any directions for use, which would be desirable if the goal is to provide some regulation of in-house assays.

The agency agrees that the ASR supplier can only be responsible for statements made in the ASR labeling. FDA disagrees that the ASR labeling should include additional information. FDA believes the labeling required by the final rule communicates data that are appropriate and useful to laboratories creating in-house tests and also will establish regulatory consistency for all manufacturers of ASR's who seek to market their products to laboratories. Directions for use are not included in these labels because the laboratory producing the test, not the manufacturer of the ingredients, is accountable for the use of the ingredient. As mentioned earlier, the focus of the rule is to provide regulation of the ASR's, not to oversee the development of in-house testing.

(Comment 37)

One comment stated that promotional materials need to be regulated consistently with approved labeling, so that the purchaser can assess differences in product characteristics between different suppliers.

FDA agrees with this comment and requires promotional materials to be consistent with appropriate labeling. In addition, under section 502(q) of the act (21 U.S.C. 352(q)), a restricted device is misbranded if its advertising is false and misleading in any particular. § 809.10(e) delineates which product characteristics ASR labeling must address.

(Comment 38)

One comment proposed that products that are intended for use in diagnostic assays should be labeled with that intended use but that all reagents should be freely available for basic research.

FDA agrees with this comment. Products labeled ''analyte specific reagent'' or ''for in vitro diagnostic use'' would not be precluded from use by research laboratories for research purposes. (See comment 32 of section III.J. of this document.)

(Comment 39)

One comment from a manufacturer doing business in the European community suggested labeling ASR's ''for research use'' and defining that use, as do the Europeans, to include any reagent product not intended for a specific, well-defined diagnostic application. The comment claimed that products labeled ''for in vitro diagnostic use'' are required to include instructions for use in Europe while the proposed ASR regulation does not allow instructions for use. The comment claimed that the conflicting labeling regulations would restrict the ability of small manufacturers to compete in the global market and suggested that FDA not require the products be labeled ''for in vitro diagnostic use.'' Another comment suggested that FDA should provide a ''safe harbor'' for ASR suppliers of the research community, and allow such ASR suppliers to label the products ''not intended for use in diagnostic tests.''

FDA is interested in working with international groups to harmonize labeling whenever such changes are practical and possible. FDA has modified § 809.10(e)(9) to require the label to read ''analyte specific reagent'' and has amended the definition of ASR to clarify that ASR's are intended for use in a diagnostic application. FDA believes these changes will address the potential problems raised by the comments.

N. Section 809.10(e)

(Comment 40)

One comment recommended that § 809.10(e) be clarified to indicate that labeling of ASR's may also include information concerning expiration date, chemical/molecular composition, nucleic acid sequence, binding affinity, cross-reactivities, and interference with substances of known clinical significance.

FDA agrees with this comment and has modified § 809.10(e) accordingly.

O. Section 809.10(e)(9)

(Comment 41)

Two comments would add to § 809.10(e)(9) the following: ''For analyte specific reagent use only,'' claiming it is consistent with the investigational and research use labeling for IVD's and that it clarifies the ASR's regulatory status.

FDA generally agrees with these comments and has amended the labeling regulation to reflect that the products are for use as analyte specific reagents. Because these ASR's can also be used for research purposes, the regulation requires the label to read ''Analyte Specific Reagent,'' rather than ''For analyte specific reagent use only.''

(Comment 42)

One comment would add to § 809.10(e) the following for reagents not intended for diagnostic use: ''For laboratory research use only. CAUTION: Not for diagnostic use. The safety and efficacy of this product in diagnostic or other clinical uses has not been established.''

FDA declines to amend the ASR labeling regulation to include this language. FDA believes it would be confusing to have a requirement not applicable to ASR's but applicable to ''research use'' reagents in this section. The ASR regulations are intended to complement and be consistent with existing regulations. Regulations governing the labeling of research use only products are codified at § 809.10(c).

P. Section 809.30(b)

(Comment 43)

One comment recommended adding the following to § 809.30(b)(3): ''educational, academic and other research laboratories and nonclinical laboratories,'' stating it would minimize confusion and avoid the need for double-labeling of ASR's sold for diagnostic and research use. Another comment suggested that FDA add university and Government laboratories that are performing basic research to § 809.30(b)(3).

FDA has amended the regulation to include laboratories performing research as an example of organizations that use the reagents to make tests for purposes other than providing diagnostic information to patients and practitioners. As discussed previously, double labeling of ASR's sold for both diagnostic and research use will not be necessary.

(Comment 44)

One comment recommended directing the restrictions of § 809.30 to the users of ASR's rather than the sellers of ASR's by amending § 809.30(b) to delete, ''sold to,'' and to add, ''used in diagnostic applications by.''

FDA believes the concerns expressed by this comment have been addressed. Changes made in the final regulation clarify that the requirements only apply to ASR's used in diagnostic applications. Section 520(e) of the act provides that FDA may restrict the sale of a device to provide a reasonable assurance of safety and effectiveness of the device. FDA believes that the sale restrictions are necessary to provide reasonable assurance of the safe and effective use of ASR's; sale is restricted to those laboratories that have the expertise and qualifications to use ASR's to develop in-house tests, and to assess the performance of the ASR's. As recommended by the comment, the use of the ASR by the laboratory is also being restricted because such use must be associated with a disclaimer when the ASR is incorporated by the laboratory into a test that has not been independently reviewed by FDA.

Q. Section 809.30(d)

(Comment 45)

One comment suggested more fully defining ''identity and purity'' with regard to ASR's to include source and method of acquisition.

FDA agrees with this comment and modified identity and purity in § 809.30 to include source and method of acquisition.

R. Prescription

(Comment 46)

One comment objected to any distinction between assays that use ARS's and other laboratory tests with respect to who can order or receive results. The comment stated that: (a) CLIA requires that laboratories follow state laws regulating health care providers and access to health care testing and that FDA should not preempt such state requirements; (b) the implication that assays developed using ASR's are inherently less reliable or harder to interpret than comparable laboratory tests is unwarranted; and (c) such a restriction is the regulation of the provision of laboratory services, which is not within FDA's jurisdiction.

Other comments that opposed a prescription use requirement, stated that: (a) The ASR manufacturer does not play a significant role in determining the claims or uses of ASR's; (b) there are no clear reasons for the requirement; (c) most States already prohibit laboratories from reporting results directly to patients; (d) it is unneeded because state regulation makes all IVD tests that are not specifically cleared or approved for consumer self testing de facto prescription-use devices; (e) tests that contain ASR's as ingredients are likely only to be available from laboratories qualified to perform high complexity testing under CLIA and will not ordinarily be available for consumer self testing; and (f) professionals other than physicians should also be allowed to request tests, e.g., genetic counselors

accredited by the appropriate professional society.

One comment supported the idea that the use of tests containing ASR's should require a physician's order because the performance characteristics of such tests are not as well documented as OTC tests that have been reviewed by FDA.

In the proposed rule, FDA solicited comment on whether tests developed by the laboratories using ASR's should be made available only on order of a physician. FDA has reviewed the comments and has decided that tests developed by laboratories using ASR's should be available only on the order of a physician or other persons authorized by applicable state law to order such tests. FDA disagrees with comments that have suggested that results from in-house assays developed using ASR's are no different from other IVD test results and that OTC access to the use of ASR's in these settings does not raise issues of their safety and effectiveness. Traditionally, IVD test results are evaluated in the context of a patient's history, physical examination and other sources of diagnostic information. In many cases, those tests are approved or cleared by FDA and their performance criteria have been established. Despite that review, and as several comments indicate, a professional intermediary is ordinarily necessary to assure that the test is ordered appropriately and results are interpreted effectively. By contrast, results of IVD tests using ASR's may be particularly difficult for lay persons to interpret correctly without the guidance of a physician because the performance characteristics of the individual tests often have not been cleared or approved by FDA.

State laws vary concerning access to in-house developed testing but FDA has found none that establish an affirmative right for consumers to access such testing without the order of a health care professional. Therefore, although FDA's regulations would preempt different or additional State laws as they might apply to in-house developed testing, there appear to be no conflicts between the final rule and current state requirements. If particular situations subsequently arise that raise questions of preemption, FDA notes that states may request an advisory opinion from FDA or apply for exemptions from the Federal regulations under section 510(k) of the act.

Nor does FDA agree that this restriction is an unauthorized intrusion into the provision of laboratory services. FDA's focus is on safe and effective use of ASR's and FDA's determination that use should only be on the order of a qualified health professional is consistent with its authority to regulate medical devices. FDA believes that meaningful interpretation of results based on use of ASR's requires the expertise of a health care practitioner licensed by the State to provide a reasonable assurance of the safe and effective use of these devices. FDA is concerned that OTC access to results based on the use of ASR's would require FDA to establish more stringent regulatory controls in order to protect the public health. However, rather than restricting the ordering of tests using ASR's to physicians only, FDA is broadening that category to include all health care practitioners licensed by the State to order such tests.

IV. Access to Special Controls

The two NCCLS documents entitled ''Specifications for Immunological Testing for Infectious Disease: Approved Guideline'' NCCLS Document I/LA18–A, December 1994 and ''Assessment of the Clinical Accuracy of Laboratory Tests Using Receiver Operating Characteristic (ROC) Plots: Tentative Guideline'' and NCCLS Document KGP10–T, December 1993, may be obtained by writing the National Committee for Clinical Laboratory Standards (NCCLS) at 940 West Valley Rd., suite 1400, Wayne, PA 19087 or calling NCCLS at 610–688–0100 or faxing your request to NCCLS at 610–688–0700.

To receive the document entitled ''Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms spp,'' FDA, July 6, 1993, and its Attachment 1, February 28, 1994, via fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access Division of Small Manufacturers Assistance (DSMA) Facts, at second voice prompt press 2, and then enter the document No. 862 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

To receive the document from the Center for Biologics Evaluation and Research, FDA, entitled ''Points to Consider in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Antibodies to the Human Immunodeficiency Virus, Type I 1989'' (54 FR 48943, November 28, 1989) via fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 662 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

The Center for Devices and Radiological Health (CDRH), FDA, maintains an entry on the World Wide Web (WWW) for easy access to information, including text, graphics, and files that may be downloaded to a PC with access to the Web. The CDRH home page is updated on a regular basis and includes: The ''Draft Review Criteria for Nucleic Acid Amplification-Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms,'' FDA, July 6, 1993, document; device safety alerts; **Federal Register** reprints; information on premarket submissions (including lists of approved applications and manufacturers' addresses); small manufacturers' assistance; and information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The document entitled ''Draft Criteria for Nucleic Acid Amplification-Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms,'' FDA, July 6, 1993, is available at: ''http://www.fda.gov/cdrh/ode/odecl861.html''.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–22–0185 (terminal settings are 8/1/N). Once the modem answers, press ENTER several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select MEDICAL DEVICES AND RADIOLOGICAL HEALTH. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

V. Analysis of Impacts

FDA has examined the impact of the final rule under Executive Order 12866, the Unfunded Mandates Reform Act (Pub. L. 104–4), 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). FDA believes that this final rule is consistent with the regulatory philosophy and

principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order.

Title II of the Unfunded Mandates Reform Act requires that agencies prepare a written statement and economic analysis for any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The expenditures required by this rule will be far below this amount.

The Regulatory Flexibility Act requires agencies to prepare a Regulatory Flexibility Analysis for each rule unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. As explained below, the agency estimates that this final rule may impose significant costs on some small businesses. However, because FDA cannot adequately certify the extent of this impact, it has prepared a Regulatory Flexibility Analysis as part of its economic assessment.

A. Purpose and Objective of the Rule

As described previously in this document, FDA is taking this action to classify/reclassify analyte specific reagents (ASR's) presenting a low risk to public health into class I (general controls), and to exempt those class I ASR's from premarket notification. FDA is also restricting the sale, distribution, and use of all ASR's. FDA is regulating these reagents to ensure that ASR's are manufactured with appropriate quality controls, are labeled appropriately, and are used by persons with adequate qualifications to protect the public health and safety. The rule also classifies a small subset of ASR's into class II or III. Class II ASR's are those used in blood banking tests that have previously been classified as class II devices. Class III ASR's are those used in tests intended for use in the diagnosis of a contagious condition that is highly likely to result in a fatal outcome and where prompt, accurate diagnosis offers the opportunity to mitigate the public health impact of the condition, or for those used in tests intended for use in the diagnosis of a condition for which FDA has recommended or required testing in order to safeguard the blood supply or establish the safe use of blood and biological products.

B. Type and Number of Entities Affected

This rule will predominantly affect manufacturers and suppliers of ASR's that are for sale to clinical laboratories and, to a lesser extent, the clinical laboratories that develop and perform in-house tests using ASR's. Because ASR manufacturers and suppliers have not previously been required to register with the agency, FDA is uncertain of the number of entities that will be affected by this rule. The agency estimates that there are approximately 300 companies, of which most, if not all, are classified as small entities. (The Small Business Administration defines an entity in this industry as small if it employs less than 500 people.) HCFA estimates that there are approximately 57,000 certified or accredited clinical laboratories, most of which are small, that could potentially be required to add the statement delineated in the regulation to their test results. FDA does not know how many of these laboratories currently develop and perform in-house testing using ASR's.

C. Description of Economic Impact

The economic impact of this rule on individual manufacturers and suppliers will vary greatly. For the majority of firms that have other products already regulated by FDA, the added costs will be minimal because these firms are already required to register and list. If there are any firms without extensive experience producing FDA regulated products and without a comprehensive quality control program that produce many ASR's and that also derive a high percentage of income generated from sale of ASR's for clinical use, those firms will face greater costs.

1. Impact on Manufacturers and Suppliers

Because manufacturers of ASR's were not previously required to register and list with the agency, FDA does not know the precise number of firms and profile of the industry. The agency believes it probable, however, that the majority of ASR manufacturers also produce other medical devices already regulated by FDA and thus, can adapt their existing procedures and controls to these new requirements at a significantly lower cost than firms without such experience.

This rule requires manufacturers and suppliers of ASR's for sale to clinical laboratories to: (1) Register and list their ASR products with the agency, (2) conform to applicable medical device current good manufacturing practice requirements (21 CFR part 820), (3) comply with MDR reporting requirements (21 CFR part 803), (4) relabel products in accordance with this rule, and (5) restrict the sale of ASR's for clinical use to clinical laboratories that are CLIA certified as qualified to perform high complexity testing. The economic impact of these requirements on individual manufacturers will vary with a number of factors including: (1) Whether the firm currently produces other FDA regulated products and, therefore, has experience with FDA regulations, (2) the nature and number of ASR's produced, (3) the size of the firm, and (4) the adequacy of the firm's existing quality control procedures.

a. Registration and listing. The majority of manufacturers and suppliers of ASR's will incur a small cost to register and list their products with the agency. For manufacturers familiar with this requirement, the average time estimated to comply with the registration and listing requirement is 0.8 hour per year. For those manufacturers that do not currently produce any FDA regulated products, the initial registration and listing may require up to 2 hours of time (a combination of management and clerical time). If half of the estimated 300 manufacturers and suppliers have previous FDA experience, the estimated number of hours to comply with this requirement in the first year will be a maximum of 420 hours for a total industry cost of $9,555. In recurring years, registration and listing will require a total of 240 hours for an industry cost of $5,460 per year.

b. CGMP and MDR compliance. The actual costs of instituting CGMP and MDR procedures will vary greatly and, among other things, depend on the number and nature of the products produced, the size of the firm, and the nature of its current quality control system. FDA believes that the majority of firms have many of the necessary quality control procedures in place. However, for the smaller percentage of firms that do not currently have CGMP and MDR procedures in place, the cost of compliance with these two rules can be significant.

To comply with the CGMP regulation, manufactures will need to write and implement standard operating procedures for their operation, perform appropriate validation, train their employees, and develop, implement, and maintain procedures for reporting deaths and serious injuries related to their products. There will be additional documentation costs on an annual, recurring basis, and some firms may have to hire an additional person to perform the quality assurance function. Firms without FDA experience and those with limited regulatory staff may hire an industry consultant to help them come into compliance with this rule.

FDA believes that the majority of firms have experience producing FDA-related products. However, for the smaller number of firms that have little

or no experience producing FDA-regulated products, that have limited quality control procedures, and that could require the help of a consultant to assist with CGMP compliance, the one-time costs range from $50,000 to $200,000 depending on the number of products produced and the size of the firm. In addition, firms that must hire a quality assurance manager may incur costs of $40,000 to $50,000 per year in additional salary and documentation costs. Alternatively, firms that produce other medical devices under the CGMP regulations would incur much smaller costs because they would expand their current procedures to include ASR production. FDA cannot estimate the total economic impact of these two requirements because the agency does not know how many of the firms that produce ASR's also produce other regulated medical devices. The agency believes, however, that the majority of the manufacturers affected by this rule also produce other medical devices and/or have many of the necessary quality control procedures in place. These firms will incur costs significantly lower than the $50,000 to $200,000 estimated above.

c. Class II and III ASR's. A small subset of ASR's are classified as Class II or III devices. In addition to the general controls, these products will also be subject to special controls. To market these ASR's, manufacturers or suppliers must have an approved 510(k) for a class II device or a PMA for a class III device. Because FDA will review the performance of these ASR's with the test for which it is a component, the agency believes that these ASR's will not be marketed as independent components. Manufacturers of these ASR's are either currently marketing them to kit manufacturers or are themselves manufacturing the kits or tests that already have approved 510(k)'s or PMA's for marketing. Thus, no costs were estimated for this requirement.

d. Labeling. FDA is allowing manufacturers and suppliers up to 1 year to deplete current labeling stock before requiring compliance with the labeling requirements. All ASR manufacturers or suppliers must review their labeling, including promotional materials, to ascertain compliance with the new labeling requirements. The agency believes that, except for those ASR's sold to in vitro diagnostic manufacturers, almost all ASR's will require relabeling. The economic impact of this requirement is the one-time cost of redesigning and reviewing the new labeling. The agency estimates that the cost to redesign the label is $89.50 (1 hour to redesign the label, 3 hours of middle management review) and the cost to redesign promotional materials is $115.50 (1 hour to redesign materials and 4 hours to review). Because manufacturers have not been required to list their products with the agency, FDA does not know how many ASR products are sold to clinical laboratories. Industry experts estimate that between 5,000 and 10,000 ASR's are marketed. Assuming there are 7,500 ASR products, the total cost to redesign both labels and promotional materials is $1.5 million ($671,250 for labels, $866,250 for promotional materials) or $205 per product. The impact on an individual firm will depend on the number of products produced.

e. Restriction of sales. This rule restricts the sale of ASR's for clinical use to laboratories certified to perform high complexity testing under CLIA. HCFA estimates that there are approximately 57,000 accredited and certified laboratories in the United States. Because of the large number of laboratories, the agency believes this restriction will have no economic impact on the industry. FDA received no comments to the proposed rule that suggested otherwise.

2. Impact on Clinical Laboratories

Clinical laboratories that develop in-house tests using ASR's will be required to inform the person ordering the tests that these tests were not cleared or approved by FDA. In addition, ordering of such tests is limited to physicians and other persons authorized by applicable State law. FDA believes the economic impact of these two requirements on clinical laboratories will be minimal. As discussed earlier in this preamble in section III.A.4 of this document, the disclaimer is not inconsistent with existing CLIA requirements. In addition, both state laws and current industry practice limit the access of testing to trained professionals. Moreover, no comments were received with regard to either of these requirements suggesting that they would increase the economic burden on clinical laboratories. Since FDA has not mandated the specific means by which clinical laboratories must comply with the disclosure statement requirement, laboratories that produce computer generated reports may choose to reprogram to add the statement, to order preprinted report forms, or to order a stamp. FDA estimates a one-time cost of about $80 per establishment. However, because FDA does not know how many clinical laboratories develop and use in-house tests using ASR's, the agency cannot estimate the total industry impact of this requirement.

D. Analysis of Alternatives

The agency considered a number of alternatives in developing the proposal and this final rule. The rejected alternatives would have created a greater economic burden on industry without an appreciable increase in public health or safety. The agency considered: (1) Enforcing its statutory authority and regulating all postamendment ASR's as class III devices subject to the premarket approval procedures, (2) classifying a greater number of ASR's as class II or III devices, and (3) requiring premarket notification for all class I ASR's. These alternatives, which were discussed in the preambles to the proposed and final rules, were rejected because the agency determined that for the majority of ASR's (the class I products) general controls would be sufficient to ensure that ASR's are of consistent quality and have appropriate labeling. As a result, the agency believes that the current rule is the least burdensome alternative that meets the agency's public health goal.

E. Response to Comments Concerning Small Business

The major concern of small business with regard to the economic impact of this rule is the cost of complying with the CGMP regulation. One comment suggested that the CGMP regulation should not be applied to small companies. Another suggested that small companies would be at a competitive disadvantage to large firms, suggesting that large firms could pass through any increase in compliance costs, while small firms would be unable to afford the initial costs of developing CGMP's.

As a rule, the nature of a firm's existing quality system will be the major determinant of the cost of compliance with the CGMP regulation. The more comprehensive a firm's quality system and the more closely it resembles the CGMP, the easier it will be for a firm to adapt its current practice. The agency recognizes that for some firms with limited quality control systems and no experience manufacturing FDA regulated products, the cost of developing CGMP's can be significant. These costs would vary directly, although not proportionally, with the size of the firm. Smaller firms tend to have fewer products and, thus, need to develop fewer procedures and controls. They also have fewer employees to train. Larger firms are more likely than very small firms to currently manufacture other medical devices already subject to CGMP's. Such firms would have proportionately lower

compliance costs. FDA recognizes that some of the firms that sell only a small percentage of their products to the clinical laboratory market may choose not to comply with the CGMP regulation and sell their products only to manufacturers of IVD tests or kits, or to research laboratories. The agency believes, however, that this will have no significant effect on the supply of ASR's to clinical laboratories.

To reduce the burden on industry, FDA has delayed the effective date for required CGMP compliance to 1 year after the date of publication of this final rule and allowed the industry time to deplete current stock of labeling. In addition, the agency has taken steps specifically to assist small businesses with compliance through the Division of Small Manufacturers Assistance (DSMA). DSMA provides guidance documents through the FDA's World Wide Web site (http://www.fda.gov) and fax-on-demand system (800–899–0381 or 301–827–0111), as well as participating in agency and industry sponsored workshops, conferences, and meetings to inform and assist businesses with compliance issues. In particular ''The Medical Device Quality Systems Manual: A Small Entity Compliance Guide,'' available on the web site, provides examples of procedures and forms that can be adopted and modified by manufacturers to reduce their cost of compliance.

F. Summary

Because the firms that would be affected by this regulation are not currently required to register or list their ASR products, FDA cannot make a precise estimate of the total cost of this rule. The greatest cost, however, would be to facilities that are not currently subject to any CGMP's. FDA does not know how many firms would fall into this category, but even if all of the affected facilities needed to implement such requirements for the first time, the cost of the rule would be far below the $100 million threshold that determines an economically significant regulation under Executive Order 12866 or the Unfunded Mandate Reform Act. For some individual firms, the economic impact of this rule will be significant, but because the agency lacks an accurate profile of the industry, it can not determine if a substantial number of firms will be significantly affected.

VI. Environmental Impact

FDA has determined under 21 CFR 25.34(b) that this action is of the 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.

VII. The Paperwork Reduction Act of 1995

A. Comments on the Paperwork Reduction Act Statement

One comment stated that the estimate in the proposed rule of additional recordkeeping requirements was not accurate because the estimate did not account for the burden resulting from registration, listing, medical device reporting or application of the CGMP's. The comment also stated that FDA should not establish a certification program to demonstrate compliance with proposed restrictions.

FDA agrees that the estimate did not contain the burden for registration, listing, medical device reporting, or application of CGMP's. The registration, listing, medical device reporting collections of information have already been approved by OMB (OMB control number 0910—0059). On October 7, 1996, FDA published the CGMP final rule (61 FR 52602) and provided a 60-day comment period to submit written comments to FDA on the information collection provisions of the rule as required under the Paperwork Reduction Act of 1995. A notice soliciting comments for an additional 30 days on these provisions is under development. These burdens were not included in the chart because any CGMP, medical device reporting, registration and listing requirements have already been estimated separately.

Neither the proposed nor the final rule contain a certification requirement. Questions concerning certification are addressed in section III.F. of this document.

B. Information Collection Provisions in the Final Rule

This final rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S. 3501–3520). OMB did not approve FDA's information collection submitted to OMB with the proposed rule. The title, description and respondent description of the information collection requirements are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Labeling Requirements for Analyte Specific Reagents—Labeling for Laboratories.

Description: The final rule amends the labeling requirements for certain in vitro diagnostic products to require that manufacturers of analyte specific reagents provide certain information concerning the reagents to laboratories that will use the reagents to develop tests for clinical use. The final regulation will also require that advertising and promotional material for analyte specific reagents include information about the identity and purity of the reagents and not make any claims about analytic or clinical performance. The purpose of the regulation is to assure that laboratories developing tests using these reagents have sufficient information about their identity and purity.

Description of Respondents: Businesses and other for profit organizations.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
809.10(e)	300	1	300	25	7,500
809.30(d)	300	1	300	25	7,500
Total				50	15,000

The proposed rule provided a 30-day comment period. As discussed previously, the revised burden hour estimates in the final rule are based partially on comments received. FDA has submitted the information collection provisions of the final rule to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection

provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects

21 CFR Part 809

Labeling, Medical devices.

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 809 and 864 are amended as follows:

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

1. The authority citation for 21 CFR part 809 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 357, 360b, 360c, 360d, 360h, 360i, 360j, 371, 372, 374, 381.

2. Section 809.10 is amended in paragraph (a) by adding at the end of the first sentence ''or as provided in paragraph (e) of this section'' and by adding new paragraph (e) to read as follows:

§ 809.10 Labeling for in vitro diagnostic products.

* * * * *

(e)(1) The labeling for analyte specific reagents (e.g., monoclonal antibodies, deoxyribonucleic acid (DNA) probes, viral antigens, ligands) shall bear the following information:

(i) The proprietary name and established name (common or usual name), if any, of the reagent;

(ii) A declaration of the established name (common or usual name), if any;

(iii) The quantity, proportion, or concentration of the reagent ingredient; and for a reagent derived from biological material, the source and where applicable, a measure of its activity. The quantity, proportion, concentration, or activity shall be stated in the system generally used and recognized by the intended user, e.g., metric, international units, etc.;

(iv) A statement of the purity and quality of the reagent, including a quantitative declaration of any impurities present and method of analysis or characterization. The requirement for this information may be met by a statement of conformity with a generally recognized and generally available standard that contains the same information, e.g., those established by the American Chemical Society, U.S. Pharmacopeia, National Formulary, and National Research Council. The labeling may also include information concerning chemical/molecular composition, nucleic acid sequence, binding affinity, cross-reactivities, and interaction with substances of known clinical significance;

(v) A statement of warnings or precautions for users as established in the regulations contained in 16 CFR part 1500 and any other warnings appropriate to the hazard presented by the product;

(vi) The date of manufacture and appropriate storage instructions adequate to protect the stability of the product. When applicable, these instructions shall include such information as conditions of temperature, light, humidity, date of expiration, and other pertinent factors. The basis for such instructions shall be determined by reliable, meaningful, and specific test methods, such as those described in § 211.166 of this chapter;

(vii) A declaration of the net quantity of contents, expressed in terms of weight or volume, numerical count, or any combination of these or other terms that accurately reflect the contents of the package. The use of metric designations is encouraged, wherever appropriate;

(viii) The name and place of business of manufacturer, packer, or distributor;

(ix) A lot or control number, identified as such, from which it is possible to determine the complete manufacturing history of the product;

(x) For class I exempt ASR's, the statement: ''Analyte Specific Reagent. Analytical and performance characteristics are not established''; and

(xi) For class II and III ASR's, the statement: ''Analyte Specific Reagent. Except as a component of the approved/cleared test (Name of approved/cleared test), analytical and performance characteristics of this ASR are not established.''

(2) In the case of immediate containers too small or otherwise unable to accommodate a label with sufficient space to bear all such information, and which are packaged within an outer container from which they are removed for use, the information required by paragraphs (e)(1) through (e)(6) of this section may appear in the outer container labeling only.

3. New § 809.30 is added to subpart C to read as follows:

§ 809.30 Restrictions on the sale, distribution and use of analyte specific reagents.

(a) Analyte specific reagents (ASR's) (§ 864.4020 of this chapter) are restricted devices under section 520(e) of the Federal Food, Drugs, and Cosmetic Act (the act) subject to the restrictions set forth in this section.

(b) ASR's may only be sold to:

(1) In vitro diagnostic manufacturers;

(2) Clinical laboratories regulated under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), as qualified to perform high complexity testing under 42 CFR part 493 or clinical laboratories regulated under VHA Directive 1106 (available from Department of Veterans Affairs, Veterans Health Administration, Washington, DC 20420); and

(3) Organizations that use the reagents to make tests for purposes other than providing diagnostic information to patients and practitioners, e.g., forensic, academic, research, and other nonclinical laboratories.

(c) ASR's must be labeled in accordance with § 809.10(e).

(d) Advertising and promotional materials for ASR's:

(1) Shall include the identity and purity (including source and method of acquisition) of the analyte specific reagent and the identity of the analyte;

(2) Shall include the statement for class I exempt ASR's: ''Analyte Specific Reagent. Analytical and performance characteristics are not established'';

(3) Shall include the statement for class II or III ASR's: ''Analyte Specific Reagent. Except as a component of the approved/cleared test (name of approved/cleared test), analytical and performance characteristics are not established''; and

(4) Shall not make any statement regarding analytical or clinical performance.

(e) The laboratory that develops an in-house test using the ASR shall inform the ordering person of the test result by appending to the test report the statement: ''This test was developed and its performance characteristics determined by (Laboratory Name). It has not been cleared or approved by the U.S. Food and Drug Administration.'' This statement would not be applicable or required when test results are generated using the test that was cleared or approved in conjunction with review of the class II or III ASR.

(f) Ordering in-house tests that are developed using analyte specific reagents is limited under section 520(e) of the act to physicians and other persons authorized by applicable State law to order such tests.

(g) The restrictions in paragraphs (c) through (f) of this section do not apply when reagents that otherwise meet the analyte specific reagent definition are sold to:

(1) In vitro diagnostic manufacturers; or

(2) Organizations that use the reagents to make tests for purposes other than providing diagnostic information to patients and practitioners, e.g., forensic, academic, research, and other nonclinical laboratories.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

4. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

5. Section 864.4010 is amended by revising paragraph (a) to read as follows:

§ 864.4010 General purpose reagent.

(a) A general purpose reagent is a chemical reagent that has general laboratory application, that is used to collect, prepare, and examine specimens from the human body for diagnostic purposes, and that is not labeled or otherwise intended for a specific diagnostic application. It may be either an individual substance, or multiple substances reformulated, which, when combined with or used in conjunction with an appropriate analyte specific reagent (ASR) and other general purpose reagents, is part of a diagnostic test procedure or system constituting a finished in vitro diagnostic (IVD) test. General purpose reagents are appropriate for combining with one or more than one ASR in producing such systems and include labware or disposable constituents of tests; but they do not include laboratory machinery, automated or powered systems. General purpose reagents include cytological preservatives, decalcifying reagents, fixative and adhesives, tissue processing reagents, isotonic solutions and pH buffers. Reagents used in tests for more than one individual chemical substance or ligand are general purpose reagents (e.g., *Thermus aquaticus* (TAQ) polymerase, substrates for enzyme immunoassay (EIA)).

* * * * *

6. New § 864.4020 is added to subpart E to read as follows:

§ 864.4020 Analyte specific reagents.

(a) *Identification.* Analyte specific reagents (ASR's) are antibodies, both polyclonal and monoclonal, specific receptor proteins, ligands, nucleic acid sequences, and similar reagents which, through specific binding or chemical reaction with substances in a specimen, are intended for use in a diagnostic application for identification and quantification of an individual chemical substance or ligand in biological specimens. ASR's that otherwise fall within this definition are not within the scope of subpart E of this part when they are sold to:

(1) In vitro diagnostic manufacturers; or

(2) Organizations that use the reagents to make tests for purposes other than providing diagnostic information to patients and practitioners, e.g., forensic, academic, research, and other nonclinical laboratories.

(b) *Classification.* (1) Class I (general controls). Except as described in paragraphs (b)(2) and (b)(3) of this section, these devices are exempt from the premarket notification requirements in part 807, subpart E of this chapter.

(2) Class II (special controls/guidance documents), when the analyte is used in blood banking tests that have been classified as class II devices (e.g., certain cytomegalovirus serological and treponema pallidum nontreponemal test reagents). Guidance Documents:

1. ''Specifications for Immunological Testing for Infectious Disease; Approved Guideline,'' NCCLS Document I/LA18–A, December 1994.

2. ''Assessment of the Clinical Accuracy of Laboratory Tests Using Receiver Operating Characteristic (ROC) Plots; Tentative Guideline,'' NCCLS Document KGP10–T, December 1993.

3. ''Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Mycobacterium spp,'' FDA, July 6, 1993, and its ''Attachment 1,'' February 28, 1994.

4. ''Draft Review Criteria for Nucleic Acid Amplification-Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms,'' FDA, July 6, 1993.

5. The Center for Biologics Evaluation and Research, FDA, ''Points to Consider in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Antibodies to the Human Immunodeficiency Virus, Type I'' (54 FR 48943, November 28, 1989).

(3) Class III (premarket approval), when:

(i) The analyte is intended as a component in a test intended for use in the diagnosis of a contagious condition that is highly likely to result in a fatal outcome and prompt, accurate diagnosis offers the opportunity to mitigate the public health impact of the condition (e.g., human immunodeficiency virus (HIV/AIDS)or tuberculosis (TB)); or

(ii) The analyte is intended as a component in a test intended for use in donor screening for conditions for which FDA has recommended or required testing in order to safeguard the blood supply or establish the safe use of blood and blood products (e.g., tests for hepatitis or tests for identifying blood groups).

(c) *Date of 510(k), or date of PMA or notice of completion of a product development protocol is required.* (1) Preamendments ASR's; No effective date has been established for the requirement for premarket approval for the device described in paragraph (b)(3) of this section. See § 864.3.

(2) For postamendments ASR's; November 23, 1998.

(d) *Restrictions.* Restrictions on the sale, distribution and use of ASR's are set forth in § 809.30 of this chapter.

Dated: November 13, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–30334 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 657

RIN 2125–AE20

Truck Size and Weight; Office of Management and Budget Control Number and Expiration Date

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document adopts a technical amendment to the regulations at 23 CFR part 657 to provide the Office of Management and Budget (OMB) control number for the Federal Highway Administration's (FHWA) collection of information from the States about their size and weight enforcement programs and explains the significance of referencing that number in 23 CFR part 657.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Klimek, Office of Motor Carrier Information Analysis, (202) 366–2212, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Federal law requires each State to certify to the Secretary of Transportation before January 1 of each year that it is enforcing: (1) Federal law regarding (i) vehicle weight on the Interstate System and (ii) vehicle size on the former Federal-aid primary, secondary and urban systems; and (2) State size and weight laws on the former Federal-aid primary, secondary and urban systems [23 U.S.C. 141(a)].

If the weight laws that apply on the Interstate System in a State are not consistent with the Federal standard [23 U.S.C. 127], the State is subject to the withholding of its National Highway System (NHS) funds. If the size laws that apply on the former Federal-aid systems mentioned above (now designated the National Network [NN] for trucks) are not consistent with the Federal standard [49 U.S.C. 31111–31114], the State is subject to injunctive action in Federal court. If the State does not file a certification at all, or if the certification fails to demonstrate adequate enforcement of State size and weight laws, the Federal-aid funds that would otherwise be apportioned under 23 U.S.C. 104 must be reduced by 10 percent [23 U.S.C. 141(b)(2)].

The FHWA regulations implement these statutory mandates by requiring each State annually to file: (1) an enforcement plan setting forth measurable goals; and (2) a certification that discusses the consistency of State law with Federal requirements and the State's success in achieving its enforcement goals for the previous fiscal year (23 CFR part 657).

Under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], regulations which impose an information collection requirement must be authorized by the Office of Management and Budget (OMB). The information collection requirements of 23 CFR part 657 are currently authorized under OMB Control Number 2125–0034, which is valid until May 31, 2000. The FHWA, however, inadvertently failed to list the control number in part 657 or to inform the States of its legal significance, as required by OMB rules [5 CFR 1320.5(b)]. When a currently valid OMB control number is not displayed, failure to submit to the FHWA an annual enforcement plan or certification with the form and content specified by part 657 would not be grounds for withholding 10 percent of a State's Federal-aid highway funds [44 U.S.C. 3512(a)]. The reporting requirement [23 U.S.C. 141(a)–(b)] would remain in effect, but any kind of ''certification'' that met the terms of the statute would be adequate.

The FHWA is therefore amending 23 CFR part 657 to add a note at the end stating that the information collection requirements of that part have been approved by OMB. The agency has held OMB approvals for the information collection requirements associated with part 657 since the Paperwork Reduction Act became effective. The FHWA finds good cause pursuant to 5 U.S.C. 553(b) to dispense with prior notice and an opportunity for public comment on this document. Part 657 was adopted through notice and comment rulemaking, and the FHWA applied for and received the OMB control number in the normal manner. This amendment simply displays the control number, as required by OMB rules, and is not separately subject to notice and comment rulemaking procedures. The agency also finds good cause under 5 U.S.C. 553(d)(3), for the reasons given above, to make this amendment to part 657 final upon publication in the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is neither a significant regulatory action within the meaning of Executive Order 12866 nor significant within the meaning of Department of Transportation regulatory policies and procedures. It merely adds the OMB control number to the regulations requiring States to submit information about their size and weight programs. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Since it deals with regulations applicable to the States, it should have no effect on any small entities. Based on this evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements necessary for States to be able to certify that they are enforcing their size and weight laws, as provided in 23 CFR 657, have been approved by the OMB under control number OMB 2125–0034 in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The approval expires on May 31, 2000.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects 23 CFR 657

Grant programs—transportation, Highways and roads, Motor carrier size and weight.

Issued on: November 7, 1997.

Gloria J. Jeff,

Acting Administrator.

In consideration of the foregoing, the FHWA amends title 23 CFR part 657 as set forth below:

PART 657—[AMENDED]

1. The authority citation for 23 CFR part 657 is revised to read as follows:

Authority: Sec. 123, Pub. L. 95–599, 92 Stat. 2689; 23 U.S.C. 127, 141, and 315; 49 U.S.C. 31111, 31113, and 31114; sec. 1023, Pub. L. 102–240, 105 Stat. 1914; and 49 CFR 1.48(b)(19), (b)(23), (c)(1), and (c)(19).

2. Part 657 is amended by adding the following note:

Note: The recordkeeping requirements contained in this part have been approved by the Office of Management and Budget under control number 2125–0034.

[FR Doc. 97–30655 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11–97–009]

Drawbridge Operation Regulations; Oakland Inner Harbor Tidal Canal, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of deviation from regulations.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the opening of the Fruitvale Railroad Vertical Lift Bridge over the Oakland Inner Harbor Tidal Canal. The deviation allows Alameda County, on behalf of the U.S. Army Corps of Engineers, to provide an opening on 30 minutes advance notice between sunrise and sunset from December 1 through December 20, 1997. At all other times, the bridge will continue to operate under its published regulations. The purpose of this deviation is to allow the Corps of Engineers to perform an electromagnetic test for adequacy of the bridge's 32 haul ropes.

DATES: The effective period of the deviation begins on Monday, December 1, 1997 and continues through Saturday, December 20, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry P. Olmes, Bridge Administrator, Eleventh Coast Guard District, Building 50–6 Coast Guard Island, Alameda, CA, at (510) 437–3514.

SUPPLEMENTARY INFORMATION: The Coast Guard anticipates that the economic consequences of this deviation will be minimal. Mariners can avoid experiencing any adverse consequences throughout the effective period by either providing the bridge operator 30 minutes advance notice between sunrise and sunset or transiting at other times. Moreover, the Coast Guard expects the bridge to resume its normal operating schedule before the end of the effective period if the Corps of Engineers completes its tests in less than 20 days.

This deviation from the normal operating regulations in 33 CFR 117.181 is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: November 6, 1997.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 97–30687 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 258

[Docket No. 96–3 CARP SRA]

Rate Adjustment for the Satellite Carrier Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule and order; correction.

SUMMARY: This document corrects the preamble to the final rule and order published in the **Federal Register** of October 28, 1997, (62 FR 55742), announcing the adjustment of the royalty rates for superstation and network signals under the satellite carrier compulsory license, 17 U.S.C. 119.

EFFECTIVE DATE: Effective on November 21, 1997.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, or Tanya Sandros, Attorney Advisor, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The final rule published by the Librarian of Congress on October 28, 1997 (62 FR 55742), contained two errors which need to be corrected. On page 55753 of October 28, 1997, FR Doc. 97–28543, add ''not'' before the phrase ''served households as well'' in the third column, first paragraph, third sentence. On page 55758, FR Doc. 97–28543, add ''not'' before the phrase ''asked to do so.'' in the first column, first paragraph, sixth sentence.

Dated: November 18, 1997.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 97–30631 Filed 11–20–97; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5925–8]

Alabama: Final Authorization of Revisions to State's Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Alabama has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Alabama's revisions consist of the ''Used Oil Management Standards'' provision in RCRA Cluster III, and provisions in RCRA Clusters IV and V. These requirements are listed in section B of this document. The Environmental Protection Agency (EPA) has reviewed Alabama's applications and has made a decision, subject to public review and comments, that Alabama's hazardous waste management program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Alabama's hazardous waste management program revisions. Alabama's applications for program revisions are available for public review and comment.

DATES: Final authorization for Alabama shall be effective January 20, 1998 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Alabama's program revision application must be received by the close of business December 22, 1997.

ADDRESSES: Copies of Alabama's program revision applications are available during 8 am to 4:30 pm at the following addresses for inspection and copying: Alabama Department of Environmental Management, 1751 Congressman W. L. Dickinson Drive, Montgomery, Alabama 36109–2608, (334) 271–7700; U.S. EPA, Region IV, Library, Atlanta Federal Center, 61 Forsyth Street, S.W. Atlanta, Georgia 30303–3104. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 10th Floor, 61 Forsyth Street, Atlanta, Georgia 30303–3104; (404) 562–8448.

SUPPLEMENTARY INFORMATION:

I. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act (''RCRA'' or ''the Act''), 42 U.S.C. 6926(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 program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to

revise their program to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to state hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, state program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268, and 270.

A. Alabama

Alabama initially received final authorization for its base RCRA program effective on December 22, 1987. Alabama received authorization for revisions to its program on January 28, 1992, July 2, 1992, December 21, 1992, May 17, 1993, November 23, 1993, April 4, 1994, January 1, 1995, October 13, 1995, April 15, 1996, and June 24, 1996. Today, Alabama is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Alabama's applications and has made an immediate final decision that Alabama's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Alabama. The public may submit written comments on EPA's immediate final decision until December 22, 1997.

Copies of Alabama's applications for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document. Approval of Alabama's program revisions will become effective January 20, 1998, unless an adverse comment pertaining to the State's revisions discussed in this document is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a document containing a response to comments which affirms that either the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Alabama is today seeking authority to administer the following Federal requirements promulgated on September 10, 1992 for the ''Recycled Used Oil Management Standards'', on July 1, 1993–June 30, 1994 for RCRA Cluser IV and on July 1, 1994–June 30, 1995 for RCRA Cluster V.

Federal requirement	FR reference	FR promulgation date	State authority
Checklist 112, Recycled Used Oil Management Standards.	57 FR 41566	9/10/92	335–14–1–.02(1), 335–14–2–.01(3)(a), 335–14–2–.01(3)(a) 2(v)(1), 335–14–2–.01(3)(a) 2.(v)(11), 335–14–2–.01(5)(j), 335–14–2–.01(6)(a), 2.(iii).(viii), 335–14–2–.1(6)(a)4, 335–14–7–.08(1), 335–14–17–.1(1), 335–14–17–.02(1), 335–14–17–.02(1)(a), (b), (b)1.(i), (b)1.(ii), 335–14–17–.02(1)(b), 1.(ii)(1)(b)1.(ii)(11), 335–14–17–.02(1)(b)2, 335–14–17–.02(1)(b)2(ii), 335–14–17–.02(1)(b)2(iii), 335–14–17–.02(1)(b)3, 335–14–17–.02(1)(c)(d), (d)1(d)2, 335–14–17–.02(1)(e), 335–14–17–.02(1)(e)2–4, 335–14–17–02(1)(f)–(i), 335–14–17–.02(2), 335–14–17.02(2)Table 1, 335–14–17–.02(3)(a)–(c), 335–14–17–.03(1)(a), 335–14–17–.03(1)(b), 334–14–16–.03(3)(4)(5), 335–14–17–.4(1)(2)(3), 335–14–17–.05(1)–(8), 335–14–17–.06(1)–(10), 335–14–17–.07(1)–(8), 335–14–17–.08(1)–(6), 335–14–17–.09(1)(2)(3).
Checklist 122, Recycled used Oil Management Standards; Technical Amendments and Corrections I.	58 FR 26420	5/3/93	335–14–2–.01(4)b13–15, 335–14–2–.01(5)(j), 335–14–5–.01(1)g2, 335–14–6–.01(1)(c)6, 335–14–17–.01–(1), 335–14–17–.02(1)(b)2, 335–14–17–.02(c)–9e), 335–14–17–.02(1)(i), 335–14–17–.02(2), Table 1, 335–14—17–.02(3)(c)3, 335–14–17–.03(2)a 335–14–17–.03(4)(a), (b)(c), 335–14–17–.05(1)(a)4, 335–14–17–.05(1)(d)4, 335–14–17–.05(3)(a)(b), 335–14–17–.06(2)(a), 335–14–17–.06(3)(b)6, (3)(b)6.(viii)(lll), 335–14–17–.06(5), 335–14–17–.07(a)(b)1, 335–14–17–.0793)(a), 335–14–18–.07(5), 335–14–17–.08(1)–(5)a.
Checklist 125, Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations.	FR 38816	7/20/93	335–14–1–.02(2), 335–14–7–.08(5), 335–14–7–.08(7), 335–14–7 Appendix.
Checklist 126, Testing and Monitoring Activities.	58 FR 46040	8/31/93	335–14–1–.2(2), 335–14–1–.0392)(d)1(i), 335–14–2–.03(3)(a)1, 335–14–2–.03(3)(a)2, 335–14–2–.03(5)(a), 335–14–2–Appendix, 335–14–5–.10(1)(a), 335–14–5–.14(a5)(c), 335–14–6–.10(1)(a), 335–14–6–.14)(15)(d), 335–14–9–.01(7), 335–14–9–.04(1)(2), 335–14–9–Appendix I&IX, 335–14–8–.02(1)(c)1.(iii), 335–14—8–.02(10)(c), 1.(iv), 335–14–8–.06(2)(b)2, .(I)(lll)(IV), 335–14–8–.06(5)(c)2.(iii).

Federal requirement	FR reference	FR promulgation date	State authority
Checklist 127, Boilers & Industrial Furnaces; Administrative Stay & Interim Standards for Bevill Residues.	58 FR 59598	11/9/93	335–14–7–.08(13), Incorporated by Ref., 335–14–7–Appendix VII, Incorporated by Ref.
Checklist 128, Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection.	59 FR 458–469	1/4/94	335–14–1–.02(2), Incorporated by Ref. 335–14–2–Appendix VIII.
Checklist 129, Revision of Conditional Exemption for Small Scale Treatability Studies.	59 FR 8362	2/18/94	335–15–2–.01(4)(e)2.(i), 335–14–2–.01(4)(e)2.(ii), 335–14–2–.01(4)(e)3 (f)3–5.
Checklist 130, Recycled Used Oil Management Standards; Technical Amendments & Corrections II.	59 FR 10550	3/4/94	335–14–17–.01(1), 335–14–17–.01 (1)'' used oil transfer ''facility'', 335–14–17–.02(1)(b)1.(ii)(b)2.(iii), 335–100000004–17–.02(1)(g), 335–14–17–.02(1)(g)1–6, 335–14–17–.03(1)(b)2(i), 335–14–17–.03(1)(b)2(ii), 335–14–17–.03(1)(b)2 (ii)(I–V), 335–14–17–.05(2)(c), 335–14–17–.05(5)(c), 335–14–17–.05(7)(a), 5.(i)(ii)(b)5.(i)(ii), 335–14–17–.06(4)(c), 335–14–17–.07(4)(c).
Checklist 131, Recordkeeping Instructions; Technical Amendment.	59 FR 13891	3/24/94	335–14–5–Appendix I, Table 1 Table 2, 335–14–6–Appendix I, Table 1, Table 2.
Checklist 132, Wood Surface Protection; Correction.	59 FR 28484	6/2/94	335–14–1–.02(2), Incorportarted by Ref.
Checklist 133, Letter of Credit Revision.	59 FR 29958	6/10/94	335–14–5–.08(12)(d), 335–14–5–.08(12)(k).
Checklist 134, Correction of Beryllium Powder (PO15) Listing.	59 FR 31551	6/20/94	335–14–1–.0494)(e), 335–14–2–Appendix VIII, 335–14–9–.05(3), Incorporated by Ref.
Checklist 135, Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste.	59 FR 38536	7/28/94	335–14–2–.01(3)(c)2.(ii) (II), 335–14–2–/01(4)(a)12, 335–14–2–.01(6)(a)3. (iv)–(vi), 335–14–7–.08(1).
Checklist 136, Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C-Recyclable Materials Used in a Manner Constituting Disposal; Final Rule.	59 FR 43496	8/24/94	335–14–7–.03(1)(c), 335–14–9–.04(4).
Checklist 137, Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes.	59 FR 47982, 60 FR 242.	9/19/94, 1/3/95	335–14–1–.03(10)(10)(b), 335–14–1–.03(11)(a), (11)(a)(b), 335–14–1.03(12)(13), 335–14–1–.03(13)(a)(b), 335–14–1–.01(2)(e)1.iii, 335–14–5–.01(1)(g)6, 335–14–6–.01(1)(c)10, 335–14–7–.03(4)(a), 335–14–7–.08(1), 335–14–7–Appendix 335–14–9–.01(1)(2)(3), 335–14–9–.01(7)(9), 335–14–9–.04(1–4)(6–8), 335–14–9–Appendix IV V & X.
Checklist 139, Hazardous Waste Management SystemTesting & Monitoring Activities.	60 FR 3089	1/13/95	335–14–1–.02(2).
Checklist 140, Hazardous Waste Management System; Carbamate Production Identification & Listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities.	60 FR 7824, 60 FR 19165, 60 FR 2619.	2/9/95, 4/17/95, 5/12/95, 8/9/95.	335–14–2.01(3)(a), 2.(iv)(V)(VI)(VII), 335–14–2–.01(3)(c)2, 2.(ii)(IV), 335–14–2–.04(3), 335–14–2.04(4)(e), 335–14–2–.04(4)(f), 335–14–2–Appendix VII, VIII.
Checklist 141, Hazardous Waste Management System; Testing & Monitoring Activities.	60 FR 17001	4/4/95	335–14–1–.02(2).
Checklist 142 A, Universal Waste Rule; General Provisions.	60 FR 25492	5/11/95	335–14–1–.02(1), 335–14–2–.01(5)(c), 335–14–2–.01(5)(c)1–6, 335–14–2–.01(5)(f)3, (I)–(v), 335–14–2–.01(5), 335–14–2–.01(5)(g)3(i–v), 335–14–2–.01(9), 335–14–3–.01(1)9b)–(g), 335–14–3–.01(2)(d), 335–14–5–.01(1)(g)12, 335–14–6–.01(1)(c)14, 335–14–9–.01(1), 335–14–8–.01(1)(c02.(ix), 335–14–11–.01(1)(a)(b), 335–14–11–.01(5)(a), (A)1(a)2(b), 335–14–11–.01(6), 335–14–11–.02(1), 335–14–11–.02(2), (2)(a)(2)(b)(3)(5)(6), (6)(a–c), 335–14–11–.02(8)(a)(b), 335–14–11–.02(9)(a)–(h), 335–14–11–.02(10)(11), (11)(a)(b)(c), 335–14–11–.03(1)–(11), 335–14–11–.04(1)–(7), 335–14–.05(1)(a)(b), 335–14–11–.05(2)(a)–(d), 335–14–11–.05(3)(a)(b), 335–14–11–.06, (2)(a)(b), 335–14–11–.03(3)(a)1(a), 2(b), 335–14–11–.03(5)–(11), 335–14–11–.04(1)–(7), 335–14–11–.05(1)–(3), 335–14–11–.06(1).

Federal requirement	FR reference	FR promulgation date	State authority
Checklist 142 B, Universal Waste Rule; Specific Provisions for Batteries.	60 FR 25492	5/11/95	335–14–2–.01(1), 335–14–2–.01(6)(a)3.(ii), 335–14–2–.01(6)(a), 3.(iii)–(v), 335–14–2–.01(9)(a), 335–14–.01(1)9g)12.(i), 335–14–6–.01(1)(c)14.(i), 335–14–7–.07(1), 335–14–9–.01(1), 335–14–.01(1)(c)2.(ix)(I), 335–14–11–.01(2)(a)1,2, (b), 335–14–11–.01(3)(c)1,2, 335–14–11–.01(6), 335–14–11.02(4)(a), (5)(a), 335–14–11–.03(4)(a)1–3, 335–14–11–.03(5)(a).
Checklst 142 C, Universal Waste Rule; Specific Provisions for Pesticides.	60 FR 25492	5/11/95	335–14–.01(1), 335–14–2–.01(9)(b), 335–14–5–.01(1)(g), 12.(ii), 335–14–6–.01(1)(c), 14.(ii), 3335–14–9–.01(1), 335–14–8–.01(1)(c), 2.(ix)(II), 335–14–11–.01(1)(a)2, 335–14–11–.01(3)a–d, 335–14–11.01(6), 335–14–11–.02(4)(b), (b) 1–4, 335–14–11–.02(5)(b), (5)(b) 1,2, 335–14–11–.02(5)(c), (5)(c)1.(i),(ii),(iii) 2, 335–14–11–.03(3)(a)1,3, (4)(b), (4)(b)1–5, 335–14–11–.03(5)(c), (5)(c)1.(i)(ii)(iii)(5)(c)2.
Checklist 142 D, Universal Waste Rule: Specific Provisions for Thermostats.	60 FR 25492	May 11, 1995	335–14–2–.01(1), 335–14–2–.01(9)(a), 335–14–5–.01(1)(g), 12.(iii), 335–14–6–.01(1)(c), 14(iii), 335–14–9–.01(1), 335–14–8–.01(1)(c)2., (ix)(I), 335–14–11–.01(1)(a)1), 335–14–11–.01(4)(a), 335–11–.01(4)(b)(c), 335–14–11–.01(6), 335–14–11–.02(4)(c), 335–14–11–.02(4)(c)1–3, 335–14–11–.02(5)(d), 335–14–11–.03(4)(c), (4), (c)1–3, 335–14–11–.03(5)(d).
Checklist 142 E, Universal Waste Rule: Petition Provisions to Add a New Universal Waste.	60 FR 25492	May 11, 1995	335–14–1–.03(3)(a)–(d), 335–14–11–.07(1)(a)(b), (c)(2)(a)–(h).

Alabama is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

B. Decision

I conclude that Alabama's applications for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Alabama is granted final authorization to operate its hazardous waste program as revised.

Alabama now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision applications and previously approved authorities. Alabama 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.

II. 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.

III. 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. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule 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. Alabama's 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, Alabama will gain the authority to implement the program within its jurisdiction, in lieu of 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 regulations are left to EPA.

In any event, 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. EPA does not anticipate that the

approval of Alabama's hazardous waste program referenced in today's document will result in annual costs of $100 million or more. 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 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 sections 202 and 205 of the UMRA.

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 EPA authorizes a State to administer its own hazardous waste program and any revisions to the 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.

IV. Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the State requirements authorized by EPA under 40 CFR part 271. EPA's authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, 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 approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This, rule, therefore, does not require a regulatory flexibility analysis.

V. 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, 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).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This document 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)).

Phyllis P. Hall,

Acting Regional Administrator.

[FR Doc. 97–30656 Filed 11–20–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2760

RIN 1004–AC91

Reclamation Projects, Grant of Lands in Reclamation Townsites for School Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This rule removes the regulations on sales and grants of land in reclamation townsites for reclamation projects and school purposes. The Bureau of Land Management (BLM) is removing these regulations because they consist of outdated material and restatements of statutory language. Consequently, the regulations are unnecessary and can be removed without any significant effect.

EFFECTIVE DATE: December 22, 1997.

ADDRESSES: You may send inquiries or suggestions to: Director (630), Bureau of Land Management, 1849 C Street, N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren, Bureau of Land Management, Lands and Realty Group, (202) 452–7779.

SUPPLEMENTARY INFORMATION:

I. Background

The existing regulations at 43 CFR part 2760 were written for BLM to assist the Bureau of Reclamation in disposing of lands through public sale or grants to townsites for school purposes. BLM is removing these regulations because they are rarely used and contain no applicable, substantive provisions beyond what is already in the statutes.

The final rule published today is a stage of a rulemaking process that will conclude in the removal of the regulations in 43 CFR part 2760. This rule finalizes a proposed rule that was published on October 3, 1996, in the **Federal Register** at 61 FR 51666. The rule provided for a comment period of 60 days, and BLM received no comments from the public.

II. Final Rule as Adopted

This rule will remove the regulations at 43 CFR part 2760 in their entirety. Subpart 2764 consists entirely of unnecessary material. Sections 2764.1 and 2764.3 concern procedures the Commissioner of Reclamation must follow when appraising and selling the lots at issue. These provisions are derived from 43 U.S.C. 561–573, and merely inform the public of the role assumed by the Bureau of Reclamation in this program. The regulations are redundant because they repeat language in 43 U.S.C. 564, and for this reason, these two sections have no substantive effect. The remaining sections of subpart 2764 are direct restatements of statutory language: section 2764.2 repeats 43 U.S.C. 564–565, and section 2764.4 largely repeats 43 U.S.C. 566. Finally, the last sentence of section 2764.4, the part which does not merely repeat the statute, is outdated because it directs municipal corporations to comply with a CFR section that no longer exists.

Subpart 2765 consists of the filing procedures school districts must follow when applying for a land grant for school purposes. These regulations elaborate on the statutory provisions at 43 U.S.C. 570 authorizing the Secretary of the Interior to grant school districts

up to six acres from a reclamation townsite. BLM is removing these regulations to give itself and the Bureau of Reclamation added flexibility in processing the rare application for a school grant. Rather than requiring the school district to submit the lengthy requirements currently contained in section 2765.1, BLM will only ask that an application be submitted which complies with any Bureau of Reclamation requirements and is otherwise adequate to inform BLM of its request. The substantive provisions currently contained in subpart 2765, such as the 6-acre limit and the reversion held by the United States in the event the land is used for purposes other than a school, are entirely contained in the statute at § 570.

III. Responses to Comments

BLM received no comments from the public, and is therefore adopting the proposed rule without changes.

IV. Procedural Matters

National Environmental Policy Act

BLM has determined that because this final rule only eliminates provisions that have no impact on the public and no continued legal relevance, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10. In addition, this action does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This final rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined under the RFA that this final rule would not have a significant economic impact on substantial number of small entities. As discussed above, the rule merely removes unnecessary regulations and causes no change in status or rights of any entities.

Unfunded Mandates Reform Act

Removal of 43 CFR part 2760 will not result in any unfunded mandate to state, local or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

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

Executive Order 12630

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of ''policies that have takings implications.'' Since the primary function of the final rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, BLM has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author: The principal author of this rule is Erica Petacchi, Regulatory Management Group, Bureau of Land Management, 401LS, 1849 C Street, NW, Washington, DC 20240; Telephone (202) 452–5084.

List of Subjects for 43 CFR Part 2760

Public lands—sale, Reclamation, Schools.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, part 2760 of Group 2700, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is removed.

Dated: November 4, 1997.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 97–30664 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7677]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW.,

room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Arkansas: White County, unincorporated areas	050467	October 7, 1997	June 7, 1977.
Kentucky: Crittenden County, unincorporated areas	210254	.....do	December 23, 1977.
Missouri:			
Bates County, unincorporated areas	290786	October 10, 1997	April 19, 1983.
Worth County, unincorporated areas	290842	.....do	
Washington: Lummi Indian Reservation, tribe of, Whatcom County.	530331	October 14, 1997	
Kentucky:			
Hardin, city of, Marshall County	210303	October 15, 1997	January 25, 1980.
Junction City, city of, Boyle County	210377	October 16, 1997	
Virginia: Orange, town of, Orange County	510366	October 17, 1997	
Colorado: Lake County, unincorporated areas	080282	October 20, 1997	October 18, 1977.
Michigan:			
Grant, township of, Keneenan County	261004	October 27, 1997	
Jamestown, township of, Ottawa County	261001	.....do	
Novesta, township of, Tuscola County	261002	.....do	
Otter Lake, village of, Lapeer County	261003	.....do	
Minnesota: Upsala, city of, Morrison County	270306	October 28, 1997	October 25, 1974.
New Eligibles—Regular Program			
California:			
Laguna Niguel, city of, Orange County,[1]	060764	October 9, 1997	January 3, 1997.
Solvang, city of, Santa Barbara County[2]	060756	.....do	June 5, 1997.
Missouri: Cainsville, city of, Harrison County	290620	October 10, 1997	NSFHA.
Washington: Woodinville, city of, King County	530324	.....do	May 20, 1996.
California: Citrus Heights, city of, Sacramento County[3]	060765	October 15, 1997	November 15, 1989.

State/location	Community No.	Effective date of eligibility	Current effective map date
Washington: Coupeville, town of, Island County	530281	.....do	August 16, 1995.
North Carolina: Davidson, town of, Mecklenburg County [4].	370503	October 16, 1997	February 3, 1993.
Florida: Aventura, city of, Dade County [5]	120676	October 22, 1997	March 4, 1994.
North Carolina: Vance County, unincorporated areas	370366	.....do	July 16, 1991.
California: Shasta Lake, city of, Shasta County [6]	060758	.....do	September 20, 1995.
Texas: Rio Grande City, city of, Starr County [7]	481678	.....do	July 1, 1987.
California: Laguna Hills, city of, Orange County [8]	060760	October 31, 1997	January 3, 1997.
Withdrawal			
Oklahoma: Stuart, town of, Hughes County	400330	November 17, 1977, Emerg.; February 5, 1986, Reg.; October 28, 1997, With.	February 5, 1986.
Reinstatements			
Arkansas: Johnson, city of, Washington County	050218	April 28, 1976, Emerg.; July 16, 1980, Reg.; July 16, 1980, Susp.; October 1, 1997, Rein..	February 5, 1997.
Kentucky: Ravenna, city of, Estill County	210319	May 19, 1976, Emerg.; September 18, 1985, Reg.; September 18, 1985, Susp.; October 2, 1997, Rein.	September 18, 1985.
Colorado: Mancos, town of, Montezuma County	080123	July 25, 1975, Emerg.; September 29, 1986, Reg.; November 16, 1990 Susp.; October 3, 1997, Rein.	September 29, 1986.
Pennsylvania: South Greensburg, borough of, Westmoreland County.	420900	February 10, 1976, Emerg.; July 3, 1986, Reg.; August 5, 1987, Susp.; October 8, 1997, Rein.	August 5, 1997.
Virginia: Buchanan County unincorporated areas	510024	November 8, 1974, Emerg.; September 16, 1988, Reg.; September 16, 1988, Susp.; October 9, 1997, Rein.	August 19, 1997.
Michigan: Swan Creek, township of, Saginaw County	260888	May 12, 1995, Emerg.; October 16, 1997, Reg.; October 16, 1997, Susp.; October 24, 1997, Rein.	October 16, 1997.
Indiana: Fountain County, unincorporated areas	180064	December 21, 1978, Emerg.; March 2, 1979, With.; October 28, 1997, Rein.	November 4, 1977.
Regular Program Conversions			
Region II			
New Jersey: Mendham, township of, Morris County	340511	October 2, 1997, Suspension Withdrawn	October 2, 1997.
New York: Hume, town of, Allegany County	361007	.....do	Do.
Region IV			
Florida: Hillsboro Beach, town of, Broward County	120040	.....do	Do.
Region V			
Indiana: Dyer, town of, Lake County	180129	.....do	Do
Michigan:			
Bridgeport, charter township of, Saginaw County	260186	October 16, 1997, Suspension Withdrawn	October 16, 1997.
Carrollton, township of, Saginaw County	260187	.....do	Do.
Frankenmuth, city of, Saginaw County	260188	.....do	Do.
James, township of, Saginaw County	260802	.....do	Do.
Kochville, township of, Saginaw County	260501	.....do	Do.
Saginaw, city of, Saginaw County	260189	.....do	Do.
Spaulding, township of, Saginaw County	260303	.....do	Do.
St. Charles, village of, Saginaw County	260593	.....do	Do.
Swan Creek, township of, Saginaw County	260888	.....do	Do.
Taymouth, township of, Saginaw County	260503	.....do	Do.
Tittabawassee, township of, Saginaw County	260504	.....do	Do.
Zilwaukee, city of, Saginaw County	260285	.....do	Do.
Zilwaukee, township of, Saginaw County	260286	.....do	Do.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension; With.-Withdrawn; NSFHA—Non Special Flood Hazard Area.

[1] The City of laguna Niguel has adopted the Orange County (CID #060212) Flood Insurance Rate Map dated January 3, 1997.

[2] The City of Solvang has adopted the Santa Barbara County (CID #060331) Flood Insurance Rate Map dated June 5, 1997.

[3] The City of Citrus Heights has adopted the Sacramento County (CID #060262) Flood Insurance Rate Map dated November 15, 1989, panels 80, 85, 90, 95, 105, and 115.

[4] The Town of Davidson has adopted the Mecklenburg County (CID #370158) Flood Insurance Rate Map dated February 3, 1993, panels 10, 20, and 25.

[5] The City of Aventura has adopted the Dade County (CID #120635) Flood Insurance Rate Map dated March 4, 1994, panels 82 and 84.

[6] The City of Shasta Lake has adopted the Shasta County (CID #060358) Flood Insurance Rate Map dated September 20, 1995.

[7] The City of Rio Grande City has adopted the Starr County (CID #480575) Flood Insurance Rate Map dated July 1, 1987.

[8] The City of Laguna Hills has adopted the Orange County (CID #060212) Flood Insurance Rate Map dated January 3, 1997.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: November 13, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–30665 Filed 11–20–97; 8:45 am]

BILLING CODE 6718–05–P

Proposed Rules

Federal Register
Vol. 62, No. 225
Friday, November 21, 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.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 97–030A]

RIN 0583–AC41

Labeling Standards for Ovine Carcasses, Parts of Carcasses, Meat and Meat Food Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: Pursuant to a requirement in the Farm Bill of 1996, the Department is issuing this advance notice of proposed rulemaking to determine the type of labeling standards it should establish for lamb and mutton and their meat food products. The principal issue of concern in the marketing of sheep is the identification, for the benefit of consumers, of the higher valued lamb carcasses compared to the lower valued mutton and sheep carcasses. One of the key elements of this issue is the attributes that give lamb meat products this higher value, such as flavor, texture, moisture, color, mouth feel, or portion size.

ADDRESSES: Please send an original and two copies of written comments to FSIS Docket Clerk, Room 102 Cotton Annex, 300 12th Street, SW, Washington, DC 20250. Copies of USDA guidance material cited in this notice are available for review in the FSIS Docket Room. All comments submitted in response to this advance notice of proposed rulemaking will be available for public inspection in the FSIS Docket Room, Room 102 Cotton Annex from 8:30 a.m. to 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Alfred Liepold, Food Technologist, Regulations Development and Analysis Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 205–0292.

SUPPLEMENTARY INFORMATION:

Background

Section 279 of H.R. 2854—Federal Agriculture Improvement and Reform Act of 1996 (Farm Bill) (Pub. L. 104–127, 4/4/96) reads as follows:

SEC 279. LABELING OF DOMESTIC AND IMPORTED LAMB AND MUTTON

Section 7 of the Federal Meat Inspection Act (21 U.S.C. 607) is amended by adding at the end the following:

''(f) LAMB AND MUTTON.—The Secretary, consistent with United States international obligations, shall establish standards for the labeling of sheep carcasses, parts of carcasses, sheepmeat and sheepmeat food products.''

According to the legislative history (House Conference Report, No. 104–494), this provision originated in a Senate provision which also stated that the standard to be used was to be based on the break or spool joint method to differentiate lamb from mutton by the degree of calcification of bone to reflect maturity. Immature mammals have long bones composed of three bony parts—a central bony shaft and two bony plates, one at each end. The three parts are joined by cartilage and, as the animal grows more cartilage is formed and some of the existing cartilage turns to bone. As the animal matures enough of the cartilage turns to bone so that the three bony parts fuse into one. So long as the animal is immature, the bony plate at the end of the bone can be cleanly broken through the cartilage between the shaft and the end plate, leaving clean bone surfaces on both sides of the break. This is the break joint; the one used on lambs is the metacarpal bone of the foreleg between the shaft and the plate nearest the hoof. Industry terms for the metacarpal bones are canon bones or trotters. Once the bone fuses and will not cleanly separate, it is called a spool joint. It is not a true joint.

This spool joint criterion of the Senate Bill did not carry through to the Farm Bill. Accordingly, the Secretary may prescribe objective criteria, or, in accordance with the regulatory reform initiative, specify the end to be achieved (performance standard), and allow producers to develop their own criteria to meet these performance standards.

Prior Grading Standards

In the past, the Agricultural Marketing Service (AMS) published two standards voluntarily regulating the marketing of sheep, lamb, and yearling carcasses and their meat food products on the basis, among other things, of age and/or maturity. These two publications were titled ''Official United States Standards for Grades of Slaughter Lambs, Yearlings and Sheep'' and ''Official United States Standards for Grades of Lamb, Yearling Mutton, and Mutton Carcasses.''

The purpose of these voluntary grading standards was to develop and establish efficient marketing methods and practices for agricultural commodities so that consumers could obtain the quality of product they desire at a reasonable cost. The grade standards were developed to provide uniform language to describe the characteristics of many meat food commodities in the marketplace. However, rapid changes in consumer preferences together with associated changes in commodity characteristics, processing technology, and marketing practices outpaced the issuance of regulatory modifications or revisions, leaving the marketplace burdened with outdated grading standards. Therefore, in line with the President's regulatory review initiative, the standards were removed from Volume 7 of the Code of Federal Regulations on December 4, 1995, but have been kept available as guidelines in pamphlet form.

In the publication containing the grade standards for slaughter lambs, yearlings, and sheep, the term *lamb* is defined as: ''A lamb is an immature ovine, usually under 14 months of age, that has not cut its first pair of incisor teeth.'' The term *yearling* is defined as: ''A yearling is an ovine usually between one and two years of age that has cut its first pair of permanent incisor teeth but has not cut the second pair.'' The term *sheep* is defined as: ''A sheep is an ovine , usually over 24 months of age, that has cut its second pair of permanent incisor teeth.''

In the publication containing the grade standards for lamb, yearling mutton, and mutton carcasses where the head is not available, the following criteria are used. Typical lamb carcasses tend to have slightly wide and

moderately flat rib bones and a light red color and a fine texture of lean. By contrast, typical yearling mutton carcasses have moderately wide rib bones which tend to be flat and a slightly dark red color and coarse texture of lean.

The AMS standard recites that, in the dressing of ovine carcasses, both front cannon bones (trotters) normally are left attached to the carcass although in some instances, one or both trotters may be removed. If present, trotters will terminate in perfect break joints (all ridges forming the break joints are intact and well defined), imperfect break joints or spool joints. For determining the maturity of ovine carcasses, an imperfect break joint is considered the same as a spool joint and it is assumed that there was a spool joint on any missing trotter. These variations, as indicated by the following guidelines, are important considerations in determining whether a carcass is classed as lamb, yearling mutton, or mutton.

A carcass with perfect break joints on both trotters will be classed as lamb or yearling mutton based on its other evidences of maturity.

A carcass with spool joints on both trotters will be classed as yearling mutton or mutton based on its other evidences of maturity. Mutton carcasses always have spool joints on both front trotters.

A carcass which has a perfect break joint on one trotter and has either (1) a spool joint on the other trotter, or (2) has had the other trotter removed, will be classed as a lamb if its other maturity characteristics are not more advanced than described in the grade specifications as typical of the more mature lamb group. Otherwise, such carcasses will be classed as yearling mutton. Maturity within the lamb class shall be based on the combination of lean and all skeletal characteristics.

Except for the above referenced considerations given to break joints and spool joints, when making other maturity evaluations, more consideration is given to the characteristics of the flesh than is given to the characteristics of the skeleton.

Question Concerning New Grading Standards

The criteria stated above are those used by AMS to distinguish the more valued lamb meat from the less valued meat of older ovines. The standards have been voluntary; the costs to secure grading by an authorized USDA employee have been paid for by the person requesting the service. By and large, the only grading used has been that for ''lamb.'' If one were to set up a labeling standard and permit the marketplace to determine its own methods of objectively identifying lamb carcasses so that they were acceptable to buyer and seller, the goal of identifying the more valued meat might be achieved by more simple and less costly means. One of the necessities of such a labeling standard would be to determine the desirable attributes that make lamb meat more valuable and whether these attributes can be determined directly and objectively. If lamb is a more desirable meat than mutton because of its attributes, e.g., it is more moist, has a finer texture, or a different chewy feeling, then some type of analysis may be able to determine objective data concerning moisture and chewiness. If the increased desirability of lamb meat results from lighter color, milder flavor, or the size of the portions, such as lamb chops, a colorimetric test may be devised. On the other hand, flavor is too subjective to be easily used for grading purposes; and too many variables other than maturity can influence portion size to make that factor of much value.

AMS has continued to grade lamb and mutton (sheep) carcasses, using the same grades as before the regulation change. The grading is on a voluntary basis, so the fact that the standards have been removed from the regulations has not affected such grading. As a practical matter, producers of lamb that they think will achieve U.S. Prime or Choice will have such lamb officially graded by AMS meat graders. But, since the program is voluntary, producers will not have other grades and classes of ovines graded. Further, although neither FSIS nor AMS has a definition of the word ''lamb'' in the regulations, when the term ''lamb'' is used on a federally inspected meat food product, the product must come from meat that meets the definition of ''lamb'' in the AMS standards. It is clear that if new standards are developed, they could differ from the current voluntary AMS grading standards.

This situation raises a number of practical questions: Should FSIS issue new grading standards or should AMS reissue the AMS standards in the regulations? If the standards are reissued, should compliance with such standards remain voluntary? Should the standards include the standard for yearling mutton, as the old AMS standard did? What criteria should FSIS use, if not the old AMS ones? Should FSIS only use some of these criteria, other criteria, some combination of these and other criteria, or performance standards? What would be the economic and other regulatory impacts of new standards on producers and processors?

According to a representative of the New Zealand Meat Producers Board, the break joint method of determining maturity is not used in Australia or New Zealand and would be considered a ''thinly veiled attempt to erect a non-tariff trade barrier.'' The New Zealand representative states that the only appropriate method of defining lamb is to use a definition accepted throughout the world, namely; ''young sheep under 12 months with no permanent incisors in wear.'' Some U.S. authorities agree with the foreign comments that the break-joint method is not sufficiently reliable.[1] However, the New Zealand definition differs from the AMS standards in the use of the term ''in wear'' and, more importantly, in the situation where there is no head on the carcass, the teeth method of defining is not viable. One issue there is whether the U.S. should accept the principle of grading in the export country, using the teeth method?

Other practical issues exist raised by the Farm Bill directly or indirectly, but not specifically mentioned in it; FSIS would appreciate any comments on these issues also: Attempts have been made in the past to label young ovine carcasses which had not been graded and which possibly do not meet the lamb criteria as ''no-roll lamb,'' meaning that the grade markings have not been applied, or rolled on, the carcasses. The Agency considered this misbranding, since the phrase included the term ''lamb'' which could be inapplicable. Should this policy be changed? Also should the nomenclature for carcasses of one to two year old ovines be changed as has been requested from ''yearling mutton'' to ''yearling lamb?'' At present this also is considered misbranding. Further, although there is no definition for ''lamb'' in the regulations, FSIS, in 9 CFR 317.8 (b)(4) does define the term ''spring lamb'' or ''genuine spring lamb'' as applicable only to carcasses of new-crop lambs slaughtered during the period beginning in March and terminating not beyond the close of the week containing the first Monday of October. Should this present definition of ''spring lamb;'' be changed, deleted, or added to the standard? Also, as a matter of FSIS policy, sheep brains, hearts, and tongues are considered practically indistinguishable from lamb brains, hearts, and tongues, respectively; therefore, these articles from ovine carcasses may be designated as either sheep or lamb. Should this be changed?

[1] Field, Ray A., University of Wyoming, Letter to Rosemary Mucklow, Western States Meat Association, 6/1/94.

If the U.S. requires the grading of lambs, and, at the same time, permits the grading of imported lambs in the country of origin by officials of that country, the economic effects of such a compulsory grading standard on the exporting country would be lessened. If this is not permitted, the country would have to leave the bone ends on the trotters, a practice which is not routine at the present time. This would mean a change in the slaughter technique in the originating country, an increase of a few ounces in the shipping weight of each carcass, and an increased cost of having each imported carcass graded at producer expense by U.S. Department of Agriculture personnel. It appears that such mandatory grading would not materially affect the number of imported lambs, since imported lambs tend to be younger than domestic ones at time of slaughter. Under a required grading program, domestic stock would also have to be graded and some domestic producers may consider this an undesirable requirement.

Any further information on these or other economic or regulatory impacts would be welcome. If there are related issues not mentioned, but relevant, any information or comments on such issues should also be submitted for evaluation.

Done at Washington, D.C., on November 14, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–30569 Filed 11–20–97; 8:45 am]

BILLING CODE 3410–DM–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–7476; File No. S7–22–97]

RIN 3235–AH23

Equity Index Insurance Products

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; extension of comment period.

SUMMARY: The Commission is extending from November 20, 1997, to January 5, 1998, the comment period for Securities Act Release No. 7438 (Aug. 20, 1997), 62 FR 45359 (Aug. 27, 1997). This release requested public comment on the structure of equity index insurance products, the manner in which they are marketed, and any other matters the Commission should consider in addressing federal securities law issues raised by equity index insurance products.

DATES: Comments must be received on or before January 5, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–22–97; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Electronically submitted comments will also be posted on the Commission's internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Attorney, (202) 942-0670, Office of Insurance Products, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549–6009.

SUPPLEMENTARY INFORMATION: On August 20, 1997, the Commission issued a concept release soliciting comment on the structure of equity index insurance products, the manner in which they are marketed, and any other matters the Commission should consider in addressing federal securities law issues raised by equity index insurance products.[1] The Commission requested that comments on the release be received by November 20, 1997.

In a letter dated November 3, 1997, the American Council of Life Insurance (''ACLI'') requested a 45-day extension of time within which to comment on the concept release.[2] The ACLI requested the extension to provide an opportunity for careful analysis and constructive comment on the release.

To permit additional time for careful analysis and constructive comment, and in light of the importance of comments on this subject, the Commission believes that a 45-day extension of the comment period is appropriate. Therefore, the comment period for responding to Securities Act Release No. 7438 is extended to January 5, 1998.

November 17, 1997.

[1] Securities Act Rel. No. 7438 (Aug. 20, 1997) [62 FR 45359 (Aug. 27, 1997)].

[2] Letter from Carl B. Wilkerson, Senior Counsel, American Council of Life Insurance, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission (Nov. 3, 1997).

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30629 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–042–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of proposed amendments to the Maryland regulatory program (hereinafter the ''Maryland program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments consist of revision to the Maryland regulations regarding a reduced bond liability period for lands remined. The amendments are intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., E.S.T., December 22, 1997. If requested, a public hearing on the proposed amendment will be held on December 16, 1997. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T., on December 8, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220 Telephone: (412) 937–2153

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689–4132.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.15 and 920.16.

II. Description of the Proposed Amendment

Maryland provided and informal amendment to OSM regarding a reduced bond liability period for land remined in a letter dated August 18, 1996. OSM completed its review of the informal amendment and submitted comments to Maryland in a letter dated August 4, 1997. By letter dated October 9, 1997 (Administrative Record No. MD–579–00), Maryland submitted its response to OSM's comments in the form of a proposed amendment to its program pursuant to SMCRA.

The provisions of the Code of Maryland Regulations (COMAR) that Maryland proposes to amend are as follows:

1. COMAR 26.20.01.02B Definitions

Specifically, Maryland proposes to delete the existing definition at (49), ''keyway,'' and add a new definition at (49) as follows:

''Lands eligible for remining'' means any land that would otherwise be eligible for expenditures under Environment Article. Title 15, Subtitle 11, Annotated Code of Marland.

2. COMAR 26.20.14.05 Duration of Performance Bonds

Paragraph B. is modified by adding to the opening phrase, ''except on lands eligible for remining,'' and new paragraph C. is added as follows:

On lands eligible for remining included in permits issued before September 30, 2004, or any later date authorized by the federal Surface Mining Control and Reclamation Act, or any renewal thereof, the period of liability for a bond shall continue for a period of not less than 2 full years, beginning with the last year of augmented seeding, fertilizing, irrigation, or other work. The period of liability shall begin again when augmented seeding, fertilizing, irrigation or other work is ordered by the Bureau to correct a failure to maintain the permanent vegetative cover required under COMAR 08.20.29 on the site.

Existing paragraph C. is re-lettered as D. and the 5-year reference is deleted.

3. COMAR 26.20.14.08. Criteria and Schedule for Release of Performance Bond

Existing paragraph D.(2) is deleted and new paragraph D.(2) is added as follows:

For acreage on which Reclamation Phase II has been completed and for which a bond release application has been submitted, an amount of bond not to exceed 50 percent of the per acre rate submitted in accordance with Regulation .03D of this chapter may be released;

Existing paragraph D.(3) is deleted and new paragraph D.(3) is added a follows:

For acreage on which Reclamation Phase III has been completed and for which a bond release application has been submitted, the remaining amount of bond equal to 50 percent of the per acre rate submitted in accordance with Regulation .03D of this chapter may be released;

New paragraph D.(4) is added as follows:

On lands eligible for remining, for acreage on which Reclamation Phases II and III have been completed and for which a bond release application has been submitted, bond in the amount of the per acre rate submitted in accordance with Regulation .03D of this chapter may be released.

4. COMAR 26.20.29.07. Standards for Success

Existing paragraph B.(8) is revised by adding the phrase ''except on lands eligible for remining as provided in § B.(9) of this regulation.''

New paragraph B.(9) is added as follows:

On lands eligible for remining included in permits issued before September 30, 2004, or on any later date authorized by the federal Surface Mining Control ad Reclamation Act, or any renewal thereof, the period of responsibility shall continue for a period of not less than 2 full years.

New paragraph C. is added as follows:

On lands eligible for remining included in any permit, the lands shall equal or exceed the standards for success during the growing season of the last year of the responsibility period of § B(9) of this regulation.

5. COMAR 08.20.14.14 Release of Bonds on Remining Areas

Maryland proposed to add, and the Office Of Surface Mining approved, this section as published in the **Federal Register** (61 FR 12028) dated March 25, 1996. However, Maryland subsequently chose not to promulgate this regulation. Instead, Maryland now proposes the changes enumerated in Items 1. through 4. above.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''DATES'' or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. December 8, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the

audience who wish to speak have been heard.

Any disabled individual who has need for special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 14, 1997.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–30598 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–05–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

Accessibility Guidelines for Outdoor Developed Areas; Meeting of Regulatory Negotiation Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Regulatory negotiation committee meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. This document announces the dates, times, and location of the next meeting of the committee, which is open to the public.

DATES: The committee will meet on: Sunday, December 14, 1997, 2:00 p.m. to 6:00 p.m.; Monday, December 15, 1997, 8:30 a.m. to 5:00 p.m.; and Tuesday, December 16, 1997, 8:30 a.m. to 5:00 p.m.

ADDRESSES: The committee will meet at the Wyndham Sea Tac Hotel, 18118 Pacific Highway South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request. This document is also available on the Board's web site (http://www.access-board.gov/rules/outdoor.htm).

SUPPLEMENTARY INFORMATION: In June 1997, the Access Board established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. (62 FR 30546, June 4, 1997). The committee will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by December 1, 1997, by calling (202) 272–5434 extension 34 (voice) or (202) 272–5449 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 97–30652 Filed 11–20–97; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE40

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Riparian Brush Rabbit and Riparian Woodrat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the riparian brush rabbit (*Sylvilagus bachmani riparius*) and the riparian (San Joaquin Valley) woodrat (*Neotoma fuscipes riparia*) as endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). The brush rabbit and woodrat inhabit riparian communities along the lower portions of the San Joaquin and Stanislaus rivers in the northern San Joaquin Valley, California. Only a single remaining population of each species has been confirmed. Potential threats to these species include flooding, wildfire, predation, and other random factors. This proposal, if made final, would extend the Act's protective provisions to these animals.

DATES: Comments from all interested parties must be received by January 20, 1998. Public hearing requests must be received by January 5, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, 3310 El Camino Ave., Suite 130, Sacramento, California 95821. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Windham at the above address (telephone 916/979–2725).

SUPPLEMENTARY INFORMATION:

Background

The riparian brush rabbit (*Sylvilagus bachmani riparius*) was described as a distinct subspecies by Orr (1935) and is one of 13 subspecies of *S. bachmani* (Hall 1981). *Sylvilagus bachmani* belongs to the order Lagomorpha and family Leporidae. The riparian brush rabbit is a medium to small cottontail with a total length of 300 to 375 millimeters (mm) (11.8 to 14.8 inches (in)) and a mass of 500 to 800 grams (g) (1.1 to 1.8 pounds). It is unique in that the sides of the rostrum (nasal/upper jaw region of the skull), when viewed from above, are noticeably convex instead of straight or concave as in other races of *bachmani* (Orr 1940). The color varies from dark brown to gray above to white underneath. The subspecies visually resembles the desert cottontail (*Sylvilagus audubonii*), a species that also occurs in riparian habitats within the historic range of the riparian brush rabbit. In-hand identification is required to definitively distinguish between young individuals of these species (Williams 1993).

Brush rabbits in general breed between December and May or June (Mossman 1955). After a gestation period of 26 to 30 days, the young are born in nest cavities lined mainly with fur and covered with a grass plug (Davis 1936, Orr 1940, Orr 1942). The young are born naked, blind, and helpless and open their eyes in 10 days (Orr 1940, Orr 1942). Young rabbits remain in the nest about 2 weeks before venturing out, and the female will continue to suckle her young for 2 to 3 weeks after their birth. Orr (1940) reported a mean litter size of between three and four with a range of two to five, while Mossman (1955) reported an average of four with a range of three to six. Riparian brush rabbits grow to adult size in 4 to 5 months, but do not reach sexual maturity until the winter following birth. Females give birth to about 5 litters per season with an estimated average of 9 to 16 young per breeding season (Basey 1990). The percentage of females active during the breeding season is unknown, but in 1 study, 9 of 25, or 36 percent of, female adults examined showed no signs of reproductive activity (Basey 1990).

The habitat of the riparian brush rabbit is riparian forests with a dense shrub layer. Common food plants in riparian brush rabbit habitat include *Rosa californica* (California wild rose), *Rubus ursinus* (Pacific blackberry), *Vitis californica* (wild grape), *Sambucus mexicana* (elderberry), and grasses (Williams 1988, Basey 1990). Brush rabbits have relatively small home ranges that usually conform to the size and shape of available brushy habitat (Basey 1990). In general, the home ranges of males are larger than those of females but male home ranges do not overlap the primary activity centers within female territories (Basey 1990).

The riparian brush rabbit is currently restricted to a single population at Caswell Memorial State Park, San Joaquin County, along the Stanislaus River (Williams and Basey 1986). In surveys conducted in all potential habitat along the Merced, San Joaquin, Stanislaus, and Tuolumne rivers during 1985 and 1986, no additional populations of riparian brush rabbits were located (Williams 1988). A maximum of about 81 hectares (ha) (198 acres (ac)) in Caswell Memorial State Park are suitable habitat for riparian brush rabbit (Williams 1993). During periods of heavy flooding, when virtually no suitable habitat remains exposed as a refugium, the population can drop dramatically. Williams (1988) estimated a population low of 10 or fewer individuals after severe winter flooding in 1985–86. Extended flooding occurred during the winter and spring of 1997, but no population estimate is yet available (see factor A in the ''Summary of Factors Affecting the Species'' section). Such low population levels may make this subspecies extremely vulnerable to detrimental genetic processes and random events (see factor E in the ''Summary of Factors Affecting the Species'' section). Maximum population estimates from surveys conducted in recent years at Caswell Memorial State Park are 88 to 452 individuals (Williams 1988), 320 to 540 individuals (Basey 1990), and 170 to 608 individuals (Williams 1993).

Because this subspecies was not described until after it is believed to have been extirpated from most of its historic range, definitive information on its former distribution is lacking. Even though riparian brush rabbit specimen records and sightings were known only from along the San Joaquin River near the boundary of San Joaquin and Stanislaus counties, Orr (1940) believed, based on the presence of suitable habitat, that its historic range extended along the San Joaquin river system, from Stanislaus County north to the Sacramento-San Joaquin River Delta. It apparently has been extirpated from the Delta, as well as most of the lower San Joaquin River and its tributaries—the Stanislaus, Tuolumne, and Merced rivers (Williams 1986). The range of the subspecies likely extended farther upstream south of the Merced River, assuming that suitable habitat occurred historically along the length of the San Joaquin River system (Williams and Basey 1986).

The riparian (San Joaquin Valley) woodrat (*Neotoma fuscipes riparia*) was first described by Hooper (1938) and is 1 of 11 subspecies of *N. fuscipes* in the family Muridae (order Rodentia). The subspecies has been retained by Hall (1981) and Williams (1986 and 1993). The riparian woodrat is a medium-sized rodent, its total length averaging 443 mm (17.4 in), its tail length averaging 217 mm (8.5 in) (Hooper 1938), and its total weight, based on measurements of other subspecies, averaging about 227 g

(8 ounces), with marked seasonal variation (Williams *et al.* 1992). The riparian woodrat is predominantly gray and cinnamon above and whitish beneath, with white hindfeet. *Neotoma fuscipes riparia* is distinguished from other subspecies of *N. fuscipes* by size and coloration of the body, tail, ears, or feet, in addition to skull measurements and characteristics (Hooper 1938).

The following information is taken from a number of studies on *Neotoma fuscipes,* including *riparia* and related subspecies. Mostly active at night, the woodrat's diet is diverse and mainly herbivorous, with leaves, fruits, terminal shoots of twigs, flowers, nuts, and fungi comprising the bulk of ingested material (Williams *et al.* 1992). Females have one to five litters per year with three to four young each time. Reproduction occurs in all months, with the fewest pregnancies in December and the most in February. The number of juveniles appearing outside the nest is greatest in July and least in January and February (Williams *et al.* 1992).

The young are born in stick nest houses or lodges, which are located on the ground and measure 0.6 to 0.9 meters (m) (2 to 3 feet (ft)) high and 1.2 to 1.8 m (4 to 6 ft) in diameter. Most lodges are positioned over or against logs (Cook 1992, cited in Williams 1993). Unoccupied houses can persist for 20 to 30 years (Williams 1993). Unlike other subspecies, the riparian woodrat occasionally builds nests in cavities in trees and artificial wood duck nest boxes (Williams 1986). Nest houses usually are occupied by single adults. Young seldom disperse far from their natal houses, and nest clusters occupied by related individuals tend to develop in favored habitats. Unlike males, females remain in or near natal areas throughout their life (Williams *et al.* 1992). At Caswell Memorial State Park, Williams (1993) reported a mean density of houses of 8.3 per ha (3.4 per ac), or 757 houses on 91 ha (225 ac) of suitable habitat; occupancy of these houses was not verified.

In a study of another subspecies of *Neotoma fuscipes,* Linsdale and Tevis (1951, cited in Williams *et al.* 1992) found that 70 percent of the population survived less than 1 year, 27 percent survived 2 years, and 3 percent survived 3 years or more. Williams *et al.* (1992) also cited a number of studies that indicated woodrats are highly responsive to habitat alteration, with populations fluctuating widely in response to a variety of perturbations such as fire, flood, drought, habitat modification, and browsing and trampling by ungulates.

Historical localities for the riparian woodrat are distributed along the San Joaquin, Stanislaus, and Tuolumne rivers, and in Corral Hollow in San Joaquin, Stanislaus, and Merced counties (Hooper 1938, Williams 1986). This range is similar to the presumed historical range for the riparian brush rabbit. Thus, prior to the statewide reduction of riparian communities by nearly 90 percent (Katibah 1984), the riparian brush rabbit and woodrat probably occurred throughout the extensive riparian forests along major streams flowing onto the floor of the northern San Joaquin Valley.

The only known population of the riparian woodrat occurs in, and immediately adjacent to, Caswell Memorial State Park, also the site of the only riparian brush rabbit population (Williams 1993). A woodrat population was reported during the early 1970s near the type locality at Vernalis, but the current status of the population is unknown (D. Williams 1986, pers. comm. 1994). The site of an old record at Corral Hollow, San Joaquin County, no longer supports suitable habitat (D. Williams, pers. comm. 1994). Cook (1992) estimated the Caswell Park population at 637 woodrats over 102 ha (250 ac) of habitat. Williams (1993) estimated a peak population at Caswell of 437 animals, based on mean density of 4.8 woodrats per ha on 91 ha (225 ac) of suitable habitat.

Today, riparian forests of the lower San Joaquin River and its tributaries outside of Caswell Memorial State Park have nearly been eliminated. The remaining habitat is small, narrow forest patches confined within levees. These areas flood completely during major storm events. Because these forest remnants are small, isolated, and subject to periodic prolonged flooding (Williams and Basey 1986), their capability to support viable populations of these subspecies over the long-term is doubtful. Historic habitat and refugia from flooding in adjacent lands are now mainly cultivated fields, orchards, and vineyards, habitats unsuitable for these subspecies (Williams and Basey 1986). Flooding, wildfire, predation, and other factors imperil their continued existence.

Previous Federal Action

Federal action on these two species began on September 18, 1985, when the Service published the Vertebrate Wildlife Notice of Review (50 FR 37958), which included the riparian brush rabbit and riparian woodrat as category 2 candidate species. Category 2 candidates, a designation discontinued in a Notice of Review published by the Service on February 28, 1996 (61 FR 7596), were taxa for which information in possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate but for which conclusive data on biological vulnerability and threats were not currently available. In the January 6, 1989, Animal Notice of Review (54 FR 554), the Service elevated the riparian brush rabbit to a category 1 candidate species as a result of more intensive field work by Williams and Basey (1986) that identified only a single remaining population of this subspecies. Category 1 comprised taxa for which the Service currently had substantial information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. The Service retained the riparian brush rabbit as a category 1 candidate and elevated the status of the riparian woodrat to category 1 in the November 21, 1991, Animal Notice of Review (56 FR 58804), based on a reevaluation of the information contained in the study conducted by Williams and Basey (1986). The November 15, 1994, Animal Notice of Review (59 FR 58987) included both subspecies in category 1. The February 28, 1996, combined Animal and Plant Notice of Review (61 FR 7596) included both subspecies as candidates.

The processing of this proposed listing rule conforms with the Service's listing priority guidance for fiscal year 1997 published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings following two related events, the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the status of proposed listings. A lower priority is assigned to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or reclassify species from threatened to endangered status (Tier 3). The lowest priority actions are in Tier 4, a category which includes processing critical habitat determinations, delistings, or other types of

reclassifications. Processing of this proposed rule is a Tier 3 action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the riparian brush rabbit (*Sylvilagus bachmani riparius*) and the riparian woodrat (*Neotoma fuscipes riparia*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Both the riparian brush rabbit and the riparian woodrat inhabit riparian forests, and each has been extirpated from all of its historical range except for a single population at Caswell Memorial State Park along the Stanislaus River. Katibah (1984) estimated that only 41,300 ha (102,000 ac) remain of an estimated 373,000 ha (921,600 ac) of pre-settlement riparian forest in California's Central Valley, a reduction of 89 percent. Moreover, nearly one-half of the remaining forests are in a disturbed and/or degraded condition, and it is likely that the majority of the rest have been and continue to be heavily impacted by human activities. This elimination and modification of riparian forests along valley floor river systems was attributed to—urban; commercial, and agricultural development; wood cutting; land reclamation and flood control activities; groundwater pumping; river channelization; dam construction; and water diversions (Katibah 1984).

Several land use practices and related human activities have contributed to the decline of the riparian brush rabbit and riparian woodrat throughout their historical ranges. During the past 10 to 20 years, cultivation has expanded along the floodplains of the main tributaries of the lower San Joaquin River system (Basey 1990). Increased habitat conversion to agricultural uses has resulted from the recent construction of the following dams on tributaries that individually and collectively altered the timing, frequency, duration, and intensity of flooding—Exchequer Dam on the Merced River, New Melones Dam on the Stanislaus River, and New Don Pedro Dam on the Tuolumne River. Before these dams and other flood control projects were constructed, much of the floodplain was livestock pasture (Basey 1990). Uneven topography on the floodplains provided escape areas for species because some land remained above most flood levels and contained patches of shrubs and trees for cover. Sites like these probably provided refuge from flooding for brush rabbits. Williams and Basey (1986) stated that, ''virtually all areas outside of flood control levees now have been cleared, leveled, and planted to orchards, vineyards, or annual row crops.'' Conversion from pasture to cultivated fields also eliminated hedge rows and other residual patches of cover that provided travel corridors and refuge sites for the two subspecies. The effects of catastrophic flooding are discussed further under factor E.

Although brush clearing adversely affected the habitat of the riparian brush rabbit and riparian woodrat populations at Caswell State Park in the mid-1980s (Williams 1986), the State Park populations are no longer directly threatened by brush clearing, tree cutting, or the conversion of land to agricultural uses. Because the State Park harbors the only known populations of these species, these activities outside of the park do not pose a direct threat to either species. Such activities continue, however, to eliminate and fragment patches of remnant habitat within the historic range of these species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a problem for either species. However, the very small population at the remaining site makes the riparian brush rabbit vulnerable to extinction from recreational hunting and collection for scientific or other purposes. The brush rabbit (*Sylvilagus bachmani*) is designated as a resident small game species in California and is hunted from July 1 through January 30 with a daily bag limit of five animals (Williams and Basey 1986). Hunting regulations set by the California Fish and Game Commission do not distinguish the riparian brush rabbit from other subspecies of S. bachmani. Therefore, riparian brush rabbits that disperse beyond the boundaries of Caswell Memorial State Park (as they may, especially during times of flooding) face a potential threat of being hunted.

C. Disease or Predation

All rabbits, including cottontails, are known to be susceptible to a variety of diseases that sometimes reach epidemic proportions. The small population size and restricted distribution of both the riparian brush rabbit and riparian woodrat increase their vulnerability to epidemic diseases, such as tularemia in the case of the brush rabbit (Williams 1988). However, the significance of the threat of disease to the riparian brush rabbit and riparian woodrat is not known.

Coyotes, gray foxes, long-tailed weasels, raccoons, feral cats and dogs, hawks, and owls are known predators of brush rabbits as well as other small mammals, including woodrats (Williams 1988, Verner and Boss 1980, Orr 1940). At currently depleted population levels, predation events could significantly affect the survival of these two subspecies.

D. The Inadequacy of Existing Regulatory Mechanisms

Federal, State, and local laws and regulations have not proven adequate to curb habitat losses for the riparian brush rabbit and riparian woodrat. The National Environmental Policy Act (NEPA) and section 404 of the Clean Water Act (CWA) represent the primary Federal laws that potentially may afford some protection for these species. However, neither NEPA nor the CWA protect candidate species. Moreover, brush clearing, tree cutting, and the conversion to agricultural uses that are adversely affecting these species are generally unregulated at any level of government. For example, pursuant to 33 CFR 323.4, the U.S. Army Corps of Engineers (Corps) has promulgated regulations that exempt some farming, forestry, and maintenance activities from the regulatory requirements of section 404.

Caswell Memorial State Park has a management plan for the riparian brush rabbit that provides some measure of protection to the population. This plan does not address the riparian woodrat. Despite the existence of a management plan, both the riparian brush rabbit and woodrat remain vulnerable to threats and hazards originating outside of the park (see factor E below).

The California Environmental Quality Act (CEQA) requires a full public disclosure of the potential environmental impact of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the

range of a rare or endangered plant or animal.'' Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. Once significant impacts are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, at the discretion of the lead agency involved. The CEQA provides that when overriding social and economic considerations can be demonstrated, project proposals may go forward, even in cases where the continued existence of the species may be jeopardized, or where adverse impacts are not mitigated to the point of insignificance. Furthermore, proposed revisions to CEQA guidelines, if made final, may weaken protections for threatened, endangered, and other sensitive species.

The California Endangered Species Act affords the riparian brush rabbit some conservation benefits. The animal was listed as an endangered species by the State of California in May 1994. Although this State law provides a measure of protection to the species, resulting in the formulation of mitigation measures to reduce or offset impacts for any projects proposed in riparian brush rabbit habitat, this law is not adequate to prevent the ongoing loss of riparian habitat. Many of the threats facing the riparian brush rabbit and the riparian woodrat (see factor E below) are not amenable to management without supplementing the depleted habitat base upon which these species depend. Moreover, State listing does not provide a nexus with Federal agencies, such as the Corps, that regulate flood control and other activities in waters of the United States.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Random events such as flooding or fire may be more critical than genetic considerations to the survival of species (Shaffer 1987, Gilpin 1987). This is especially true for taxa, like the riparian brush rabbit and woodrat, that are represented by only one or a few small, isolated populations. In such cases, little or no possibility of recolonization exists if a chance environmental or human-caused catastrophe affects the population. Riparian habitat at Caswell State Park is confined entirely within river levees, and offers less habitat value for these subspecies during periods of high stream flow. This habitat is routinely flooded during the wet winter season. Major flooding likely drowns a significant portion of the populations, eliminates foraging habitat and shelter for prolonged periods, and exposes brush rabbits and woodrats to increased predation by concentrating the population on high ground and in areas with little or no cover. Only about 3.6 ha (8.9 ac) in five small areas of the 104.5 ha (258 ac) park showed regular use by brush rabbits in the summer of 1986 after floods in February and March of that year (Williams 1988).

Williams (1986) found that riparian brush rabbits sometimes gain temporary shelter from floods by climbing trees, but he estimated that only 10 or fewer individual rabbits survived the severe winter flooding in 1985–86 (Williams 1988). Basey (1990) concluded, based on visual sightings and pellet surveys, that this same riparian brush rabbit population may have been reduced to fewer than 15 to 20 individuals during flooding in 1983.

The floods of January 1997 left about 85 percent of Caswell Memorial State Park under 0.6–3.0 m (2–10 ft) or more of water in most areas for at least 2 weeks and, in lower areas, for as long as 7 weeks. During efforts in January to locate and potentially rescue stranded riparian brush rabbits, only a single rabbit pellet was found (D. Williams, *in litt.* 1997). In areas of the park searched visually in March 1997, no rabbits or pellets were found, although searchers did find two mounds containing fresh grass. Such mounds, or ''forms'' are typically made by rabbits. In April 1997, searchers found two rabbit fecal pellets, but no other sign of rabbits or woodrat activity. Trapping surveys were initiated in early May, well after flood waters had receded, in hopes that any surviving rabbits would be located. During 22 nights of trapping, no rabbits were caught, one rabbit was sighted, and at another location, fresh rabbit tracks were found (D. Williams, *in litt.* 1997). In comparison, during trapping efforts of similar intensity in January 1993, 41 brush rabbits were captured and several rabbits were sighted (D. Williams, *in litt.* 1997). A significant increase in brush rabbit sign was noted during surveys after May 30, 1997, including the finding of four separate groups of fecal pellets, two separate groups of dust baths with rabbit tracks, about a dozen rabbit runways, and one rabbit sighted by spotlight (P. Kelly, San Joaquin Valley Endangered Species Recovery Program, *in litt.* 1997a, 1997b). Two sightings were also reported by park visitors (K. Graham, California Dept. of Parks and Recreation in Kelley, *in litt.* 1997a).

The riparian woodrat also is vulnerable to flooding, although its ability to nest in trees and wood duck nest boxes (Williams 1993) suggests some ability to avoid the negative effects of flooding. Nonetheless, the large majority of nests occur on the ground (Williams 1993, pers. comm. 1994). After the January 1997 floods left Caswell Memorial State Park under 0.6–3.0 m (2–10 ft) of water for 2 to 7 weeks, trapping and survey efforts in May 1997 resulted in capture of only eight woodrats (D. Williams, *in litt.* 1997). Trapping efforts of similar intensity in 1993 resulted in the capture of 57 woodrats (D. Williams, *in litt.* 1997). Severe flooding could eliminate the Caswell Memorial State Park populations of both the riparian brush rabbit and the riparian woodrat and result in the extinction of these subspecies.

Flooding is also likely to increase competition between riparian brush rabbits and desert cottontails, a species that occurs in a wider range of habitats, including riparian zones, within the same geographic area (Basey 1990). Riparian brush rabbits cannot return to their home areas if displaced more than about 340 m (1,116 ft). Desert cottontails, in contrast, may return home when displaced as much as 4.8 kilometers (3 miles). Therefore, if displaced by flooding more than about 340 m (1,116 ft) from their home areas, riparian brush rabbits may be stranded in habitats where desert cottontails have a competitive advantage.

The number of individuals in the sole population of each subspecies is now sufficiently low that the effects of inbreeding may result in the expression of deleterious genes in the population (Gilpin 1987). Deleterious genes reduce individual fitness in various ways, the most typical being decreased survivorship of young. Small populations are also more at risk due to the effects of genetic drift, a decrease in genetic variation due to random changes in gene frequency from one generation to the next. This reduction of variability within a population limits the ability of that population to adapt to environmental changes.

Although Caswell Memorial State Park provides protection to the riparian brush rabbit and the riparian woodrat against some threats, the park is also a recreational facility and consequently faces an increased threat of human-caused wildfires that may kill both the riparian brush rabbit and woodrat and destroy their habitat (Basey 1990). The

brushy areas most vulnerable to fire are important habitat for brush rabbits and woodrats (Basey 1990). Between 1975 and 1987, 10 wildfires were reported within the park. After a large area burned in 1981, no evidence of brush rabbits was found in the area (Basey 1990). The extent to which recreational activities, such as vehicular and pedestrian traffic, dogs, etc., also may affect habitat quality is unknown.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these subspecies in determining to propose this rule. Based on this evaluation, the preferred action is to list the riparian brush rabbit (*Sylvilagus bachmani riparius*) and the riparian woodrat (*Neotoma fuscipes riparia*) as endangered. The single, small population of each of these two taxa render them vulnerable to a wide array of threats. Increases in human population and pressures associated with urban development, as well as the inadequacy of existing regulatory mechanisms have led to a significant loss of historic habitat and reduced these subspecies to the brink of extinction. Both subspecies currently face threats from floods, wildfires, and predation. Riparian forests, the habitat type upon which the riparian brush rabbit and woodrat depend, are so depleted along the San Joaquin River system that all habitat remnants outside of Caswell Memorial State Park are too small and isolated to support viable populations of these animals. Thus, even if the few remaining unsurveyed tracts of habitat do harbor these subspecies, the status of the riparian brush rabbit and woodrat would not change and listing of these taxa as endangered would be warranted.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the detriments of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that the designation of critical habitat for the riparian brush rabbit and riparian woodrat is not prudent because such designation would not provide any additional benefit to the two species beyond that conferred by listing them as endangered species. The basis for these conclusions, including the factors considered in weighing the benefits against the detriments of designation, is explained below.

As discussed above, the sole site currently occupied by the riparian brush rabbit and the riparian woodrat is within Caswell Memorial State Park, and no other currently suitable habitat for these species is known to exist within their historical ranges (Basey 1990). State Park designation provides protection to the natural resources of the park, such as through hunting prohibitions, and facilitates appropriate resource management. This protection would not be increased through critical habitat designation.

A high potential for Federal involvement exists because of the flood control activities of the Corps and water regulation activities of the U.S. Bureau of Reclamation (BOR). Section 7 of the Act requires that Federal agencies refrain jeopardizing the continued existence of a listed species and from contributing to the destruction or adverse modification of critical habitat. However, implementing regulations (50 CFR part 402) define ''jeopardize the continued existence of'' and ''destruction or adverse modification of'' in virtually identical terms. Jeopardize the continued existence of means to engage in an action ''that reasonably would be expected . . . to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' Destruction or adverse modification means an ''alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.'' Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. In this case, because each species exists as a single, small population, it is even clearer that any activity that would destroy or adversely modify their habitat would also likely jeopardize their continued existence. For this reason, designation of critical habitat provides no benefit beyond that conferred by listing.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations that implement this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed, section 7(a)(2) requires Federal

agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions that may require conference or consultation with the Service include the funding or authorization by the Corps of levee and channel maintenance projects along the lower San Joaquin River and its tributaries and the operation of upstream dams by the Corps and the BOR.

Listing the riparian brush rabbit and riparian woodrat as endangered species would also provide for the development of a recovery plan (or plans) for the taxa. Such a plan would establish a framework for State, Federal, and local governmental efforts to coordinate conservation planning for these animals. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish them. The plan also would describe site specific management actions necessary to achieve conservation and survival of these subspecies.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any such species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Under some circumstances, permits may be issued for a specified period for species in trade in order to relieve undue economic hardship that would be suffered if such relief were not available.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the range of the two species. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Possession of legally acquired riparian brush rabbits and riparian woodrats;

(2) Light to moderate livestock grazing in riparian brush rabbit and riparian woodrat habitat that prevents or minimizes the encroachment of invasive plant species and does not significantly reduce shrub cover;

(3) Federally approved projects, such as those involving the discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or alteration of surface or ground water into or out of riparian areas (i.e., due to roads, impoundments, discharge pipes, stormwater detention basins, etc.), when conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act.

Activities that the Service believes could potentially harm the riparian brush rabbit and the riparian woodrat and result in ''take'' include, but are not limited to:

(1) Unauthorized collecting or handling of the species;

(2) Unauthorized destruction/alteration of occupied habitat of the riparian brush rabbit or riparian woodrat through the discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or the alteration of surface or ground water flow into or out of riparian habitat of these two species (i.e., due to the construction/installation of roads, impoundments, discharge pipes, stormwater detention basins, etc.);

(3) Any activity constituting a violation of discharge permits which results in death of or injury to riparian brush rabbits or riparian woodrats or which results in degradation of their occupied habitat;

(4) Burning, cutting, or mowing of riparian vegetation which results in death of or injury to riparian brush rabbits or riparian woodrats or which results in degradation of their occupied habitat;

(5) Application of pesticides in violation of label restrictions which results in death of or injury to riparian brush rabbits or riparian woodrats;

(6) Discharging or dumping toxic chemicals, silt, or other pollutants (i.e., sewage, oil, or gasoline) which results in death of or injury to riparian brush rabbits or riparian woodrats;

(7) Interstate and foreign commerce (commerce across State lines and international boundaries) and import/export (as discussed earlier in this section) without prior obtainment of an endangered species permit. (Permits to conduct these activities are available for purposes of scientific research and enhancement of propagation or survival of the species.)

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed wildlife and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The Service will also comply with its policy on peer review, published on July 1, 1994 (59 FR 34270), in the processing of this proposed rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species;

(4) Current or planned activities in the subject area and their possible impacts on these species; and,

(5) Information on biological considerations, land ownership, habitat restoration potential, flood control constraints, and other factors that may lead to a critical habitat determination.

Final promulgation of the regulations for these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein, as well as others, is available from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Authors. The primary authors of this proposed rule are Peter Sorensen and Diane Windham, U.S. Fish and Wildlife Service, Sacramento Field Office (see **ADDRESSES** section), telephone 916/979–2725.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Rabbit, riparian brush.	Sylvilagus bachmani riparius.	U.S.A. (CA)	Entire	E	.....	NA	NA
*	*	*	*	*	*	*	
Woodrat, riparian (San Joaquin Valley).	Neotoma fuscipes riparia.	U.S.A. (CA)	Entire	E	.....	NA	NA
*	*	*	*	*	*	*	

Dated: October 30, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–30553 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 62, No. 225

Friday, November 21, 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.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Submission for OMB Review; Comment Request for Employee Surveys in the Benefit/Cost Analysis of the Javits-Wagner-O'Day Program

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee) is inviting public comment on surveys submitted for review by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Committee is seeking public comment on surveys being conducted as part of 2 comprehensive Benefit/Cost Analysis of the JWOD Program. This request is for renewal with revisions of a questionnaire for interviews with individuals who are blind or have other severe disabilities employed on contracts authorized under the JWOD Act and for renewal of the Employee Information Form.

DATES: Submit comments on or before December 22, 1997.

ADDRESSES: Written comments should be addressed to Daniel Werfel, Desk Officer for the Committee for Purchase, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the OMB submission and the proposed information collection requests should be submitted to Sheryl Kennerly, Committee for Purchase from People Who Are Blind or Severely Disabled, 1215 Jefferson Davis Highway, Suite 310, Arlington, VA 22202–4302.

FOR FURTHER INFORMATION CONTACT: Sheryl Kennerly, Committee for Purchase from People Who Are Blind or Severely Disabled, 1215 Jefferson Davis Highway, Suite 310, Arlington, VA 22202–4302, telephone: 703–603–7740, fax: 703–603–0655.

SUPPLEMENTARY INFORMATION: The enabling regulations for the JWOD Act prescribe that the Committee: ''Conduct a continuing study and evaluation of its activities under the JWOD Act for the purpose of assuring the effective and efficient administration of the JWOD Act. The Committee may study, independently, or in cooperation with other public or nonprofit private agencies, problems relating to (1) The employment of the blind or individuals with other severe disabilities * * *.'' (41 CFR Ch. 51–2.2(g)).

As part of the effort to evaluate its activities and study the employment of individuals who are blind or severely disabled, the Committee has initiated a comprehensive analysis of benefits and costs of the JWOD Program. The following survey instruments included in the submission for OMB approval are required to collect data for determining the benefits and costs of the JWOD Program to individuals who are blind or have other severe disabilities and to taxpayers in general. Comments should reference the title of the collection of information to which they apply.

Title: JWOD Employee Interview Questionnaire.

Type of Review: Reinstatement with revisions.

Frequency: One-time.

Affected Public: Individuals who are blind or severely disabled and who participated in the baseline surveys for this study.

Burden Estimate:

Responses: 360.

Total Burden Hours: 180 hours.

Average Burden per respondent: 30 minutes.

Abstract: The burden estimate above is based on actual use of the previous survey questionnaire in baseline interviews with the same individuals who will participate in interviews using the revised follow-up survey. This survey instrument will be used in oral interviews conducted either by telephone or in person depending on individual circumstances. The follow-up survey has been revised based on comments and issues identified during the baseline interviews. The follow-up survey is significantly shorter than the baseline survey. Data collected will be used to determine long-term effects of employment provided through the JWOD Program.

Title: Employee Mail Questionnaire.

Type of Review: Reinstatement with Revisions.

Frequency: One-time.

Affected Public: Individuals who are blind or severely disabled who participated in the baseline surveys for this study and who are not available for an oral interview.

Burden Estimate:

Responses: 129.

Total Burden Hours: 64.5 hours.

Average Burden per respondent: 30 minutes.

Abstract: This survey contains the same survey questions as the Employee Interview Questionnaire with formatting changes suited for self-administration through a paper format. This survey will be sent to individuals who are not able or available to participate in an oral interview.

Title: JWOD Employee Information Form.

Type of Review: Reinstatement with revisions.

Frequency: One-time.

Affected Public: Nonprofit agencies that employed individuals who are blind or severely disabled who participated in the baseline surveys for this study.

Burden Estimate:

Responses: 82.

Total Burden Hours: 196.8 hours.

Average Burden per respondent: 2.4 hours per agency.

Abstract: This survey will be completed by the nonprofit agencies who currently or previously employed individuals participating in the baseline survey. The information to be collected by this survey will provide critical contact information and will provide employment data that cannot be accurately obtained from each survey respondent. The estimate of burden is based on a similar Employee Information Form completed by the same nonprofit agencies at the baseline stage.

Dated: November 18, 1997.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–30679 Filed 11–20–97; 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 commodities and 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 22, 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 commodities and 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 commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirments for the Naval Station, Ingleside, Texas)
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas

Extra Life & Shipper
M.R. 858
M.R. 859
NPA: Industries of the Blind, Inc., Greensboro, North Carolina

Sponge, Cellulose
7920–01–444–3650
NPA: Mississippi Industries for the Blind, Jackson, Mississippi

Services

Janitorial/Custodial
Robert N.C. Nix, Sr. Federal Center
9th & Market Street
Philadelphia, Pennsylvania
NPA: Elwyn, Inc., Elwyn, Pennsylvania

Mailroom Operation
Veterans Affairs Medical Center
Denver, Colorado
NPA: Bayaud Industries, Inc., Denver, Colorado

Switchboard Operation
Veterans Affairs Medical Center 2250 Leestown Road
Lexington, Kentucky
NPA: Kentucky Industries for the Blind, Louisville, Kentucky.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–30677 Filed 11–20–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: December 22, 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 June 13, August 1, September 5, 12, 26 and October 3, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 32288, 41339, 46943, 48050, 50555 and 51827) of proposed additions to and deletions from the Procurement List:

Additions

The Following Comments Pertain to Janitorial/Custodial, Calexico, California

Comments were received from the current contractor for this janitorial/custodial service. The commenter claimed that this addition to the Procurement List would have a severe adverse impact on the company and its employees as little other Federal work would remain in its area after this and other Procurement List additions.

This addition would not, in the Committee's view, remove a large enough percentage of the commenter's total sales to constitute severe adverse impact. The commenter was not the current contractor for the other janitorial services in its area which have been added to the Procurement List, so it was not impacted by losing the opportunity to perform those services. The commenter did not provide information concerning possible job losses by its employees, but given the relatively small amount of labor involved in the contract, at most only one or two employees would be impacted. Moreover, the Procurement List addition will create employment for people with severe disabilities, who have an unemployment rate far above that of people without disabilities. Consequently, the Committee believes this job creation outweighs the possible job loss by one or two of the commenter's employees.

The Following Comments Pertain to Tray, MM, Fiberboard

The Committee initially proposed to add the Government requirement for fiberboard MM trays and sleeves to the Procurement List. Comments were received from two companies which

were current contractors for these items at the time the Committee wrote to them to request sales data. One company indicated that the items made up a substantial portion of its sales, and losing them would also cause layoffs of some workers. The other company described the production process and questioned whether the designated nonprofit agency would be capable of acquiring the machinery needed to perform it to Government specifications.

Because of concerns over contractor impact, the trays and sleeves have been separated into two Procurement List addition processes. This addition involves only the fiberboard MM sleeves. Neither company is currently a contractor for the sleeves, so the addition will have no impact on them or their workers. The company which is the contractor is a very large business, so the impact of the addition on it will not be severe.

The designated nonprofit agency has experience in producing corrugated items for the Government and other customers. The Committee's industrial engineer has reviewed the capability assessments which have been done by the contracting activity and the central nonprofit agency, and has concluded that the nonprofit agency will be capable of producing the sleeves to Government specifications at the time of contract performance.

The Following Comments Pertain to Dispenser, Tape

Comments were received from the current contractor for the tape dispenser. The commenter noted that the tape dispenser requires very little labor to produce, so it would not create much employment for people with severe disabilities. He also claimed that the Committee was adding a sizeable portion of his company's business to the Procurement List when earlier additions are considered along with this addition. The commenter also mentioned the impact of losing investment in product development and tooling to produce items which are then added to the Procurement List, and claimed that the company had not been contacted in the past before other Procurement List additions were made.

The Committee agrees that this particular tape dispenser produces only a small amount of direct labor employment for people with severe disabilities. However, it will complement other products, including another tape dispenser, being produced by the nonprofit agency to generate direct labor employment for people who are blind.

The commenter was not the current contractor for the other items it mentioned at the times they were added to the Procurement List. Consequently, the Committee did not contact the commenter to inquire about the impact of the additions on its sales, as it did for the current addition. The Committee does not consider loss of the opportunity to bid on future Government purchases of an item to constitute severe adverse impact on a company which is not the current contractor for the item. The current addition represents a percentage of the commenter's sales which is well below the level the Committee normally considers to have a severe adverse impact.

Because no contractor is guaranteed a contract under the Government's competitive bidding system, product development and tooling investment is a business expense which a contractor makes with the understanding that it may be lost if the contractor fails to secure a Government contract for the item in question. Consequently, the Committee does not consider such loss to constitute severe adverse impact. In addition, the contractor sold its stencil dies to nonprofit agencies which are producing stencils under the Committee's Javits-Wagner-O'Day (JWOD) Program, and has developed new business lines to replace the bidding opportunities it claims to have lost to the JWOD Program.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies
(Requirements for the U.S. Military Academy, West Point, New York)

Tape Dispenser
7520–00–240–2408

Sleeve, MM, Fiberboard
P.S. Item 3916A

Services

Carpet Replacement, National Gallery of Art, 6th & Constitution Avenue, NW, Washington, DC

Janitorial/Custodial, Calexico Border Patrol Station, Calexico, California

Janitorial/Custodial, U.S. Army Reserve Center, Moffett Field, California

Janitorial/Custodial, Eisenhower Library Complex, 200 S.E. 4th Street, Abilene, Kansas.

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.

Deletions

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.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Cover, Mattress
7210–00–241–9718
7210–00–067–7969

Smithsonian Institution Women's Council Newsletter

7690–00–NSH–0037

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–30678 Filed 11–20–97; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 4:00 p.m. on Tuesday, December 9, 1997, at the Catholic Charities, Conference Room, 467 Bloomfield Avenue, Bloomfield, Connecticut 06002. The purpose of the meeting is to discuss and plan followup activities to the Civil Rights Leadership Conference held on November 12 and 13, 1997, in Waterbury.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Neil Macy, 860–242–7287, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–30691 Filed 11–20–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m. on Wednesday, December 17, 1997, at the Hotel Inter-Continental, 100 Chopin Plaza, Miami, Florida 33131. The purpose of the meeting is to discuss new project ideas, and new member orientation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–30694 Filed 11–20–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 6:30 p.m. on Thursday, December 11, 1997, at the United Technical Center, Region 4, Conference Room, 200 Hogan Road, Bangor, Maine 02208. The purpose of the meeting is to plan future events and discuss progress of the Committee report, ''Limited English Proficient Students in Maine: An Assessment of Equal Educational Opportunities.''

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Barney Bérubé, 207–287–5980, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–30692 Filed 11–20–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on Friday, December 5, 1997, at the Board of Directors Room, Alumnae House, Smith College, Northampton, Massachusetts 01063. The purpose of the meeting is to discuss followup activities to the Springfield briefing on police-community relations and plan for the 1998 Civil Rights Leadership Conference.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Fletcher Blanchard, 413–585–3909, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–30690 Filed 11–18–97; 4:15 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Friday, December 12, 1997, at the Hilton Head Island Hilton, 23 Ocean Lane, Hilton Head Island, South Carolina 29938. The purpose of the meeting is to discuss new project ideas and new member orientation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern

Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–30693 Filed 11–20–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 931]

Grant of Authority for Subzone Status, Nissan Industrial Engine Manufacturing USA, Inc.; (Spark Ignition Industrial Engines), Marengo, Illinois

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Rockford Airport Authority, grantee of Foreign-Trade Zone 176, for authority to establish special-purpose subzone status at the spark ignition industrial engine manufacturing plant of Nissan Industrial Engine Manufacturing USA, Inc., in Marengo, Illinois, was filed by the Board on October 16, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 76–96, 61 FR 55268, 10–25–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 176D) at the Nissan Industrial Engine Manufacturing USA, Inc., plant in Marengo, Illinois, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 12th day of November 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–30701 Filed 11–20–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 932]

Voluntary Relinquishment of the Grant of Authority Foreign-Trade Zone 188, Yakima, Washington

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on November 30, 1992, the Foreign-Trade Zones (FTZ) Board issued a grant of authority to the Yakima Air Terminal Board, authorizing the establishment of Foreign-Trade Zone 188 at the Yakima International Airport, in Yakima, Washington (Board Order 606, 57 FR 58457, 12/10/92);

Whereas, the Yakima Air Terminal Board has made a request (FTZ Doc. #37–97, 3–31–97) to the FTZ Board for voluntary relinquishment of the grant of authority for FTZ 188, and;

Whereas, the FTZ Board, noting the concurrence of the U.S. Customs Service, adopts the findings of the FTZ staff report and concludes that approval of the request is in the public interest;

Now, therefore, the Foreign-Trade Zones Board terminates the FTZ status of Foreign-Trade Zone No. 188 effective this date.

Signed at Washington, DC, this 12th day of November, 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–30700 Filed 11–20–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, 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: 97–091. *Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, 207 Henry Administration Building, Urbana, IL 61801. *Instrument:* Upgrade and Replacement Parts for Asphalt Testing Equipment. *Manufacturer:* Industrial Process Controls Ltd., United Kingdom. *Intended Use:* This is an upgrade for existing instrumentation that will be used for studying asphalt concrete with the objective of improving design of asphalt concrete in highway and airfield pavements. *Application accepted by Commissioner of Customs:* October 27, 1997.

Docket Number: 97–092. *Applicant:* University of Wisconsin, Mechanical Engineering, 1513 University Avenue, Madison, WI 53706. *Instrument:* Flame Ionization Detector System, Model HFR400. *Manufacturer:* Cambustion Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure the concentrations of hydrocarbons produced during studies of the transient behavior of hydrocarbons produced by internal combustion engines. The

objectives of these studies are to extend the fundamental understanding of the hydrocarbon formation process, to extend the fundamental understanding of how engine transients affect this hydrocarbon formation and to understand the difference in hydrocarbon formation between steady-state and transient operation of the engine. *Application accepted by Commissioner of Customs:* October 30, 1997.

Docket Number: 97–093. *Applicant:* National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Building 8, Room 219, Bethesda, MD 20892. *Instrument:* Micromanipulator Microscope, Model MSM. *Manufacturer:* Singer Instrument Co., Ltd., United Kingdom. *Intended Use:* The instrument will be used for dissecting the spores formed during genetic crosses of the mutants in yeast that are essential to extending studies on the biochemistry, regulation and genetics of the amines, putrescine, spermidine and spermine and of the biosynthetic enzymes in *S. cerevisiae. Application accepted by Commissioner of Customs:* October 31, 1997.

Docket Number: 97–094. *Applicant:* Centers for Disease Control, National Institute for Occupational Safety and Health, 1095 Willowdale Road, Mail Stop/2015, Morgantown, WV 26505–5288. *Instrument:* Electron Microscope, Model JEM–1220. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for investigating the impact of particulates and vapors on tissues, cells and cell organelles and for morphometric analysis to determine the extent of pathological changes in structures visible only at the electron microscope level. In addition, the instrument will be used to train Ph.D. candidates, postdoctoral fellows and staff in biomedical and occupational health research. *Application accepted by Commissioner of Customs:* November 5, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–30702 Filed 11–20–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed by Import Administration, between July 1, 1997 and September 30, 1997. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background:

The Department's regulations (19 CFR 351.225(o)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed by Import Administration, between July 1, 1997, and September 30, 1997, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in January 1998 a notice of scope rulings and anticircumvention inquiries completed between October 1, 1997, and December 31, 1997, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

I. Scope Rulings Completed Between July 1, 1997 and September 30, 1997

Country: People's Republic of China

A–570–502 Iron Construction Castings

Metraflex Company—Certain ''Y'' pipe strainers, imported by Metraflex Company, are outside the scope of the order. 8/13/97.

A–570–504 Petroleum Wax Candles

Indio Products Inc.—Various tapers, votives, pillars, and rounds are within the scope of the order. 9/15/97.

M.G. Maher & Co. Inc.—A red flame 12-inch spiral candle is within the scope of the order. 9/25/97.

Russ Berrie Co., Inc.—Heart-shaped ''trinket box'' candle is within the scope of the order. 9/25/97.

Russ Berrie Co., Inc.—Star-shaped confetti pillar candles are within the scope of the order. 9/2/97.

Meijer, Inc.—Four terra cotta candles (bell, tree, reindeer, and star) are within the scope of the order. A Jack O'Lantern candle is outside the scope of the order. 9/8/97.

Enesco Corporation—Birthday candle (style #9500340) is outside the scope of the order. 9/30/97.

A–570–822 Helical Spring Lock Washers (HSLWs)

Shakeproof Industrial Products Division of Illinois Tool Works (SIP)—Helical Spring Lock Washers which are imported to the United States in an uncut, coil form are within the scope of the order. 9/30/97

A–570–827 Certain Cased Pencils

Nadel Trading Corporation—A plastic, ''quasi-mechanical'' pencil known as the Bensia pencil is outside the scope of the order. 9/15/97.

A–570–836 Glycine

Consolidated Pharmaceutical Group, Inc.—D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order. 7/23/97.

Country: Taiwan

A–583–816 Certain Stainless Steel Butt-Weld Pipe Fittings

Eckstrom Industries—Eckstrom's cast stainless steel fittings are within the scope of the order. 9/29/97.

A–583–820 Helical Spring Lockwashers (HSLWs)

Shakeproof Industrial Products Division of Illinois Tool Works (SIP)—Helical Spring Lockwashers imported into the United States in an uncut, coil form are within the scope of the order. 9/30/97.

II. Anticircumvention Rulings Completed Between July 1, 1997 and September 30, 1997

None.

III. Scope Inquiries Terminated Between July 1, 1997 and September 30, 1997

None.

IV. Anticircumvention Inquiries Terminated Between July 1,1997 and September 30, 1997

None.

V. Pending Scope Clarification Requests as of September 30, 1997:

Country: Canada

A–122–823 Certain Cut-to-Length Carbon Steel Plate

Petitioners—Clarification to determine whether certain carbon steel plate with boron added is within the scope of the order.

Country: Sweden

A–401–040 Stainless Steel Plate

Avesta Sheffield AB and Avesta Sheffield NAD, Inc.—Clarification to determine whether stainless steel slabs that are manufactured in Great Britain and rolled into hot bands in Sweden are within the scope of the order.

Country: Germany

A–428–801 Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof

FAG Aerospace & Superprecision Bearings GmbH—Clarification to determine whether certain aerospace bearings which have entered the United States but have been returned to Germany for repair or refurbishing, and which then reenter the United States, are within the scope of the order.

Country: People's Republic of China

A–570–501 Natural Bristle Paint Brushes and Brush Heads

Kwick Clean and Green Ltd.—Clarification to determine whether a group of bristles held together at the base with glue, which are to be used as replaceable parts within the cavity of the paintbrush body, is within the scope of the order.

A–570–504 Petroleum Wax Candles

Long Island Distributing Co. Ltd.—Clarification to determine whether various pillars, Christmas tin candles, cherub candles, and fruit/veggie candles are within the scope of the order.

Sun-It Corporation—Clarification to determine whether taper candles containing oil of citronella are within the scope of the order.

Ocean State Jobbers—Clarification to determine whether taper candles consisting of a blend of petroleum wax and beeswax are within the scope of the order.

American Drug Stores—Clarification to determine whether spherical candles with a ''wax veneer'' are within the scope of the order.

A–570–808 Chrome-Plated Lug Nuts

Wheel Plus, Inc.—Clarification to determine whether imported zinc-plated lug nuts which are chrome-plated in the United States are within the scope of the order.

A–570–827 Certain Cased Pencils

Creative Designs International, Ltd.—Clarification to determine whether 10 piece dress-up/vanity sets for young girls, containing two pencils (approximately 3 inches in length with no eraser or ferrule), are within the scope of the order.

Country: South Korea

A–580–803 Small Business Telephones From Korea

TT Systems Corporation—Clarification to determine whether the ''Model 4300'' which is a ''blocking'' system should be excluded from the scope of the order which pertains to ''non-blocking'' systems.

Country: Taiwan

A–583–009 Color Television Receivers, Monochrome and Color

Coach Master International Corporation (CMI)—Clarification to determine whether the Kitchen Coach Unit 8100 manufactured by Action Electronics and imported by CMI is within the scope of the order.

Country: Japan

A–588–028 Roller Chain, Other Than Bicycle

Kaga Chain Manufacturer (KCM)—Clarification to determine whether silent timing chain for use in automobiles is within the scope of the order.

A–588–405 Cellular Mobile Telephones and Subassemblies

Matsushita Communication Industrial Corporation of America—Clarification to determine whether a new subscriber unit (model number HS600) is within the scope of the order.

A–588–703 Certain Internal-Combustion Industrial Forklift Trucks

Nissan Motor Co., Ltd., and Nissan Forklift Corporation (collectively Nissan)—Clarification to determine whether model F05–70 is within the scope of the order.

A–588–802 3.5″ Microdisks

Maxell Corporation of America—Clarification to determine whether Maxell's OSD325–Floptical Disk is within the scope of the order.

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof

Koyo Seiko Co., Ltd.—Clarification to determine whether a cylindrical roller bearing, allegedly without a precision rating, for use as an axle bearing in cars and trucks is within the scope of the order.

A–588–813 Light-Scattering Instruments and Parts Thereof

Thermo Capillary Electrophoresis, Inc.—Clarification to determine whether diode array detectors and cell flow units are within the scope of the order.

A–588–824 Corrosion Resistant Carbon Steel Flat Products

Drive Automotive Industries—Clarification to determine whether 2000 millimeter wide, made to order, corrosion resistant carbon steel coils are within the scope of the order.

A–588–833 Stainless Steel Bar

Keystone Stainless Inc.—Clarification to determine whether ''Keystone 2000,'' a specialty stainless steel bar product, should be excluded from the scope of the order because the process of manufacture of the product substantially differentiates it from any other product available.

VI. Pending Anticircumvention Inquiries as of September 30, 1997

Country: Mexico

A–201–805 Certain Welded Non-Alloy Steel Pipe

Allied Tube & Conduit Corp., Sawhill Tubular Division of Tex-Tube Co., Century Tube Corp., Laclede Steel Co., LTV Tubular Products Co., Sharon Tube Co., Western Tube & Conduit Co., Wheatland Tube Co., and CSI Tubular Products, Inc. (Petitioners)—Anticircumvention inquiry to determine whether imports of (i) pipe certified to the American Petroleum Institute (API) 5L line pipe specifications (API 5L or line pipe) and (ii) pipe certified to both the API 5L line pipe specifications and the less stringent American Society for Testing and Materials (ASTM) A–53 standard pipe specifications (dual certified pipe), falling within the physical dimensions outlined in the scope of the order, are circumventing the antidumping duty order.

Country: United Kingdom

A–412–810; C–412–811 Lead and Bismuth Carbon Steel Products

Inland Steel Bar Company and USS/Kobe Steel Company (Petitioners)—Anticircumvention inquiry to determine whether British Steel PLC is circumventing the order by shipping leaded steel billets to the United States, where they are converted into the hot-rolled carbon steel products covered by the order.

Country: Germany

A–428–811; C–429–812 Lead and Bismuth Carbon Steel Products

Inland Steel Bar Company and USS/Kobe Steel Company (Petitioners)—Anticircumvention inquiry to determine whether Saarstahl A.G. and Thyssen s Stahl A.G. are circumventing the order by shipping leaded steel billets to the United States, where they are converted into the hot-rolled carbon steel products covered by the order.

Country: Korea

A–580–008 Color Television Receivers From Korea

International Brotherhood of Electrical Workers, the International Union of Electronic Electrical, Salaried, Machine & Furniture Workers, and the Industrial Union Department (the Unions)—Anticircumvention inquiry to determine whether Samsung Electronics Co., L.G. Electronics Inc., and Daewoo Electronics Co., are circumventing the order by shipping Korean-origin color picture tubes, printed circuit boards, color television kits, chassis, and other materials, parts and components to plants operated by related parties in Mexico where the parts are then assembled in CTVs and shipped to the United States. Additionally, an anticircumvention inquiry to determine whether Samsung is circumventing the order by shipping Korean-origin color picture tubes and other CTV parts to a related party in Thailand for assembly into complete CTVs prior to exportation to the United States.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: November 14, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 97–30703 Filed 11–20–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111797A]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisors, together with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Advisors, will hold a public meeting.

DATES: The meeting will be held on Thursday, December 11, 1997. The Summer Flounder Advisors will meet from 10:00 a.m. until noon, the Scup Advisors will meet from 1:00–3:00 p.m., and the Black Sea Bass Advisors will meet from 3:00–5:00 p.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA; telephone: 610–521–5900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the 1998 recreational measures for summer flounder, scup, and black sea bass.

Although other issues not contained in this agenda may come before these Advisors for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action by these Advisors will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 17, 1997.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–30617 Filed 11–20–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Consultations With the Government of Cambodia

November 17, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On October 29, 1997, under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Government of the United States requested consultations with the Government of Cambodia with respect to cotton and man-made fiber gloves and mittens in Categories 331/631, produced or manufactured in Cambodia.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Cambodia, the Government of the United States may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton textile products in Categories 331/631, produced or manufactured in Cambodia and exported during the twelve-month period which began on October 29, 1997 and extends through October 28, 1998, at a level of not less than 1,250,841 dozen pairs.

A statement of serious damage, actual threat of serious damage or the exacerbation of serious damage concerning Categories 331/631 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 331/631 or to comment on domestic production or availability of products included in

Categories 331/631 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Cambodia.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular commentary or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C.553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

The United States remains committed to finding a solution concerning Categories 331/631. Should such a solution be reached in consultations with the Government of Cambodia, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Summary of the Statement in Support of Request for Consultations Under Section 204 of the Agricultural Act of 1956

Cotton and Manmade Fiber Gloves and Mittens—Category 331/631

October 1997

Import Situation and Conclusion

U.S. imports of cotton and manmade fiber gloves and mittens, Category 331/631, from Cambodia surged to 1,250,841 dozen pair during the year ending July 1997, over seven times the 176,732 dozen pair imported in the year ending July 1996 and more than 15 times the 79,968 dozen pair imported in calendar year 1995. Imports from Cambodia were 2.6 percent of total U.S. imports of Category 331/631 in the year ending July 1997, and were equivalent to 4.9 percent of U.S. production of Category 331/631 in 1996.

U.S. imports of cotton and manmade fiber gloves and mittens, Category 331/631, from Cambodia entered the U.S. at an average landed duty-paid value of $3.12 per dozen pair during the first seven months of 1997, 42 percent below the average landed duty-paid value for all cotton and manmade fiber glove and mitten imports into the U.S., and 70 percent below the average U.S. producers' price for cotton and manmade fiber gloves and mittens.

The sharp and substantial increase of low-valued Category 331/631 imports from Cambodia threatens to cause disruption to the U.S. cotton and manmade fiber glove and mitten market and to the orderly flow of trade in these products. In several instances, Cambodia's import level for the year ending July 1997 exceeds the trade levels of WTO countries that have quota agreements with the United States.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton and manmade fiber gloves and mittens, Category 331/631, declined in 1996 falling to 25,424,000 dozen pair, 1 percent below the 1995 production level. Imports of Category 331/631 increased from 45,559,773 dozen pair in 1995 to 47,336,957 dozen pair in 1996, a 4 percent increase. Imports continued to increase reaching 48,220,877 dozen pair in the year ending July 1997, 7 percent above the same period a year earlier.

The ratio of imports to domestic production increased to 186 percent in 1996. The domestic manufacturers share of the U.S. market for cotton and manmade fiber gloves and mittens decreased to 33 percent in 1996.

[FR Doc. 97–30570 Filed 11–20–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange: Proposed Amendments to the Nonfat Dry Milk Futures Contract to Change the Contract From Physical Delivery to Cash Settlement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Coffee, Sugar & Cocoa Exchange (CSCE or Exchange) has submitted amendments to its nonfat dry milk futures contract that would change the contract from physical delivery to cash settlement. In accordance with Section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading (Commission) has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting public comment on the proposal.

DATES: Comments must be received on or before December 8, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CSCE nonfat dry milk futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, 20581, telephone (202) 418–5273. Facsimile number: (202) 418–5527. Electronic mail: flinse@cftc.gov.

SUPPLEMENTARY INFORMATION: The amendments provide for cash settlement of the nonfat dry milk (NDM) futures contract against the NDM ''West Mostly'' monthly average price as calculated and published by the United States Department of Agriculture (USDA). The USDA's NDM West Mostly price is published weekly and represents a survey of both buyers and sellers of NDM in western states. From this weekly price data, the USDA calculates the monthly average price. The value of the cash settled NDM contract would be 11,000 times the monthly average price.

The Exchange said that changing the NDM contract to one which is cash settled would significantly enhance the viability of this contract. The Exchange said that it has polled NDM industry participants who have reported that the USDA's West Mostly price is a fair and representative price, and that a majority of industry participants utilize it to price their product.

The amendments were submitted pursuant to the Commission's ast Track procedures for streamlining the review

of amendments to contract terms and conditions (62 Fed. Reg. 10434). Under those procedures, the amendments, absent any contrary action by the Commission, may be deemed approved on December 26, 1997, 45 days after receipt of the submission. In view of the limited review period provided under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the amended terms and conditions for 15 days, rather than 30 days as provided for amendments submitted under the regular review procedures. Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CSCE may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CSCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 18, 1997.

John R. Mielke,

Acting Director.

[FR Doc. 97–30676 Filed 11–20–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement (DEIS) for the Realignment of E–2 Squadrons From Naval Air Station (NAS) Miramar

SUMMARY: Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing the procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for the realignment of E–2 squadrons from NAS Miramar. The DEIS also has been prepared in accordance with the Defense Base Closure and Realignment Act of 1990 (DBCRA, P.L. 101–510) and the pertinent base closure and realignment decisions of the Defense Base Closure and Realignment Commission approved by the President and accepted by Congress in September 1993 and September 1995.

The proposed action is to relocate four E–2 aircraft squadrons (16 aircraft) and related support personnel, equipment and functions from NAS Miramar to one of three alternative naval air bases in California. The proposed action includes relocating the 16 E–2 aircraft, 988 associated personnel and their families, and expanding or constructing facilities to support aircraft and personnel, and to provide associated training functions. In addition to the increased staffing and equipment levels, there would be an increase in Navy training and an increase in flight operations at the receiving installation. The preferred alternative is realignment of the E–2 squadrons to Naval Air Weapons Station (NAWS) Point Mugu, CA. Two other alternative sites were evaluated in detail: (1) Naval Air Station (NAS) Lemoore, CA, and (2) Naval Air Facility (NAF) El Centro, CA. NAS North Island was initially considered as a potential alternative base, but was eliminated because of the need to support Clean Air requirements with regard to the BRAC-mandated Marine Corps realignment to MCAS Miramar.

A Notice of Intent (NOI) for the DEIS was published in the **Federal Register** on May 1, 1996. Public scoping meetings were held at the following locations: (1) On Tuesday, May 21, 1996, at the Oxnard Center for Performing Arts, Thousand Oaks/ Hueneme Room, 800 Hobson Way, Oxnard, CA; (2) On Thursday, May 23, 1996, at the Board of Supervisors Chambers, County Administration Center (Second Floor), 940 West Main Street, El Centro, CA; (3) On Tuesday, May 28, 1996, at Coronado High School Auditorium, 650 D Avenue, Coronado, CA; and (4) On Wednesday, May 29, 1996, at Lemoore Union High School Cafeteria, Back Room, 101 East Bush Street, Lemoore, CA.

The DEIS analyzes potential environmental impacts of the proposed action on biological resources, hydrology/surface water quality, land use and airspace, socioeconomics, traffic and circulation, air quality, noise, aesthetics and visual resources, utilities and services, cultural resources, public health and safety, and hazardous materials and wastes. Potentially significant, but mitigable, environmental impacts include impacts to air quality, schools, and cultural resources at NAWS Point Mugu; air quality and schools at NAS Lemmore; and biological resources, noise/land use compatibility, and conflict with existing aircraft operations at NAF El Centro.

No decision on the proposed action will be made until the NEPA process has been completed.

The DEIS has been distributed to various federal, state and local agencies, local groups, elected officers, special interest groups and individuals. The DEIS is available for review at the following libraries:

Near NAWS Point Mugu

—City of Camarillo Public Library, 3100 Ponderosa Drive, Camarillo, CA;
—City of Oxnard Public Library, 251 South A Street, Oxnard, CA;
—City of Port Hueneme Public Library, 510 Park Avenue, Port Hueneme, CA;
—City of Santa Barbara Public Library, 40 East Anapamu Street, Santa Barbara, CA;
—City of Ventura Public Library, 651 East Main Street, Ventura, CA; and
—Ventura City College Library, 4667 Telegraph Road, Ventura, CA.

Near NAF El Centro

—City of Brawley Public Library, 400 Main Street, Brawley, CA; and
—City of El Centro Public Library, 539 State Street, El Centro, CA.

Near NAS Lemoore

—City of Avenal Public Library, 919 Skyline Boulevard, Avenal, CA;
—City of Lemoore Public Library, 457 C Street, Lemoore, CA;
—City of Hanford Public Library, 400 North Douty, Hanford, CA; and
—City of Fresno Public Library, 2420 Mariposa Street, Fresno, CA.

Near NAS North Island

—City of Coronado Public Library, 640 Orange Avenue, Coronado, CA;

—National City Public Library, 200 East 12th Street, National City, CA;

—City of Imperial Beach Public Library, 810 Imperial Beach Blvd., Imperial Beach, CA; and

—City of San Diego Public Library, 820 E Street, San Diego, CA.

ADDRESSES: The Navy will conduct three public hearings to receive oral and written comments concerning the DEIS: (1) On Monday, December 8, 1997, at 7:00 p.m., at Imperial County Administration Center, Board of Supervisors Chambers, 940 Main Street, El Centro, CA; (2) On Tuesday, December 9, 1997, at 7:00 p.m., at Oxnard Center for Performing Arts, Thousand Oaks/Hueneme Room, 800 Hobson Way, Oxnard, CA; and (3) On Wednesday, December 10, 1997, at 7:00 p.m., at Lemoore Civic Auditorium, 435 C Street, Lemoore, CA.

A brief presentation will precede a request for public information and comments. Navy representatives will be available at these hearings to receive information and comments from agencies and the public regarding issues of concern. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearings. Oral comments will be heard and transcribed by a stenographer. To assure accuracy of the record, all comments should be submitted in writing. All comments, both oral and written, will become part of the public record in the study. In the interest of available time, each speaker will be asked to limit oral comments to four minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed below.

FOR FURTHER INFORMATION CONTACT: Please provide written comments by January 5, 1998, to Ms. Kelly Knight, Code 553.KK, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 92132–5190, telephone (619) 532–2456, fax (619) 532–1242.

Dated: November 18, 1997.

Darse E. Crandall,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–30673 Filed 11–20–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing for the Joint Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ DEIR) for the Disposal and Reuse of the Former Hunters Point Naval Shipyard, San Francisco, California

SUMMARY: Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500—1508), implementing the procedural provisions of the National Environmental Policy Act, and pursuant to the California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*), the Department of the Navy and the City of San Francisco have prepared and filed with the U.S. Environmental Protection Agency a joint Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ DEIR) for the disposal and reuse of the former Hunters Point Naval Shipyard, San Francisco, California.

A Notice of Intent (NOI) to prepare the DEIS/DEIR was published in the **Federal Register** on 27 June 1995. A public scoping meeting for the proposed project was held on 12 July 1995 at Southeast Community Center, San Francisco, California.

Hunters Point Naval Shipyard is closed, pursuant to the Defense Base Closure and Realignment Act (Pub. L. 101–510) as implemented by the 1993 base closure process. Under Section 2824 of Pub. L. 101–510, as amended, the Navy plans to convey the former Naval Shipyard to the City of San Francisco. The proposed federal action involves the disposal of land, buildings and infrastructure of former Hunters Point Naval Shipyard for subsequent reuse. The City of San Francisco and the San Francisco Redevelopment Agency have been involved in a process to determine the reuse plans of the Naval Shipyard.

The environmental effects of two conceptual land use development alternatives (reuse alternatives) and the ''No Action'' alternative have been evaluated in the DEIS/DEIR. Each of the reuse alternatives describes proposed uses for approximately 935 acres of shipyard property. Proposed reuse alternatives emphasize mixed land uses including residential, industrial, maritime industrial, cultural, institutional, research and development, and open space.

No decision on the proposed action will be made until the National Environmental Policy Act process has been completed.

The DEIS/DEIR has been distributed to various federal, state and local agencies, local groups, elected official, special interest groups and individuals. The DEIS/DEIR is also available for review at the following locations:

—San Francisco Planning Department, Planning Information Center, 1660 Mission Street.

—San Francisco Main Library, Civic Center, Larkin & Grove Streets.

—San Francisco Public Library, Anna E. Waden Branch, 5075 Third Street.

—San Francisco Redevelopment Agency, 770 Golden Gate Ave.

ADDRESSES: Two public hearings will be held for the purpose to receive oral and written comment on the DEIS/DEIR. The first hearing will be held on Wednesday, December 10, 1997, at 5:00 p.m., in Building 101, at Hunters Point Naval Shipyard, San Francisco. The second hearing will be held at a joint meeting of the San Francisco Planning Commission and the San Francisco Redevelopment Agency Commission on Thursday, December 11, 1997, at 1:30 p.m., in Room 404, War Memorial Veterans' Building, 401 Van Ness Avenue, San Francisco. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearing. Oral comments will be heard and transcribed by a stenographer. To assure accuracy of the record, all comments should be submitted in writing. All comments, both oral and written, will become part of the public record in the study. In the interest of available time, each speaker will be asked to limit oral comments to five minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed below.

FOR FURTHER INFORMATION CONTACT: Please provide written comments no later than January 5, 1998, to Ms. Mary Doyle, Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066, telephone (650) 244–3024, FAX (650) 244–3206 or Mr. Brian Kalahar, City of San Francisco Planning Department, Major Environmental Analysis Office, 1660 Mission Street, San Francisco, California 94103, telephone (415) 558–6359, FAX (415) 558–6426.

Dated: November 18, 1997.

Darse E. Carndall,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–30672 Filed 11–20–97; 8:45 am]

BILLING CODE 3810–FF–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 20, 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 PaperworkReduction 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 17, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.
Title: Application for the Upward Bound and Upward Bound Math and Science Centers Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 1,500.
Burden Hours: 51,000.
Abstract: The application form is needed to conduct a national competition for program year 98–99 for the Upward Bound and Upward Bound Math and Science Centers. These applications provide federal financial assistance in the form of grants to institutions of higher education, public and private agencies and organizations, combinations of institutions and agencies, and in exceptional cases, secondary schools to establish and operate projects designed to generate skills and motivation necessary for success in education beyond secondary school. The Math and Science Centers provide an intensive six-week summer math-science curriculum program.

[FR Doc. 97–30599 Filed 11–20–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–74–000]

ANR Pipeline Company v. Transcontinental Gas Pipe Line Corporation; Notice of Complaint

November 17, 1997.

Take notice that on November 7, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed with the Commission in Docket No. CP98–74–000 a complaint against Transcontinental Gas Pipe Line Company (Transco) P.O. Box 1396, Houston, Texas 77251 requesting that the Commission direct Transco to establish an interconnection that will enable ANR to make deliveries to Transco in Evangeline Parish, Louisiana, all as more fully set forth in the complaint on file with the Commission and open to public inspection.

ANR states that since January 1997, ANR and Transco have discussed the construction of an interconnection between their respective mainline facilities in Evangeline Parish, Louisiana that would allow ANR to make firm deliveries of up to 300 MMCF of gas per day to Transco to satisfy requests of certain shippers on the ANR system. ANR indicates that it has advised Transco that ANR will reimburse Transco for the cost of these facilities. ANR claims that in July 1997, Transco advised ANR that it would not consent to the construction of an interconnection that would allow gas to be delivered on a firm basis from ANR's mainline into Transco's mainline. ANR asserts that Transco informed ANR that, as an alternative, it would be willing to accept deliveries on behalf of ANR's shippers at an existing point of interconnection between ANR's facilities and a lateral pipeline owned by Transco and operated by Transco's affiliate, Williams Field Services, which is located at Enice, Louisiana. ANR states that ANR informed Transco that its alternate proposal for receiving gas from ANR was not acceptable because it did not satisfy the needs of ANR's shippers.

ANR claims that because Transco has declined to construct the facilities the dispute between ANR and Transco has reached an impasse. ANR requests that the Commission promptly resolve the dispute by ordering Transco to install the requested minor interconnection facilities.

Any person desiring to be heard or make a protest with reference to ANR's complaint should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions, together with the answer of Respondent to the complaint and motions, should be filed on or before December 17, 1997. Any person desiring 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. Answers to the complaint shall be due on or before December 17, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30634 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4603–000]

Boston Edison Company; Notice of Filing

November 17, 1997.

Take notice that on October 24, 1997, Boston Edison Company tendered for filing additional information to its September 15, 1997, 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 385.214). All such motions or protests should be filed on or before November 28, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30642 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4606–000]

Boston Edison Company; Notice of Filing

November 17, 1997.

Take notice that on October 24, 1997, Boston Edison Company tendered for filing additional information to its September 15, 1997, 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 385.214). All such motions or protests should be filed on or before November 28, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30643 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–154–001]

Central Illinois Public Service Corporation; Notice of Filing

November 13, 1997.

Take notice that on July 9, 1997, Central Illinois Public Service Corporation tendered for filing its non-rate terms and conditions 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 25, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30646 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–86–000]

Columbia Gas Transmission Corporation; Notice of Application

November 17, 1997.

Take notice that on November 12, 1997, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed an abbreviated application in Docket No. CP98–86–000, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Columbia to refunctionalize approximately 105.19 miles of gas pipeline and appurtenances from gathering to transmission, and approximately 1.20 miles of pipeline from gathering to storage, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to refunctionalize its Miley and Trumbull Systems. The Miley System is located in Holmes County, Ohio, and consists of approximately 28.39 miles of pipeline and appurtenances. Columbia proposes to refunctionalize 27.19 miles of Miley System pipeline (primarily 8, 10 and 12-inch diameter pipe) from gathering to transmission, and the remaining 1.20 miles of 3-inch diameter pipeline from gathering to storage. The Trumbull System is located in Trumbull, Mahoning, and Geauga Counties, Ohio, and consists of approximately 78.00 miles of pipeline (primarily 10 and 12-inch diameter pipe). Columbia proposes to refunctionalize all of this system from gathering to transmission.

Columbia states that it is not proposing any construction in connection with the proposed refunctionalization of these facilities, and that the refunctionalization will not alter the service being provided to any of Columbia's existing customers. Columbia adds that the subject facilities are situated between facilities being sold and facilities being retained by Columbia; thus, the refunctionalization will avoid the potential assessment (by Columbia) of a gathering charge.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 8, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30637 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4586–000]

De Pere Energy L.L.C.; Notice of Issuance of Order

November 17, 1997.

De Pere Energy L.L.C. (De Pere Energy) filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, De Pere Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by De Pere Energy. On October 31, 1997, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rater (Order), in the above-docketed proceeding.

The Commission's October 31, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (F), (G), and (I):

(F) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by De Pere Energy 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.

(G) Absent a request to be heard within the period set forth in Ordering Paragraph (F) above, De Pere Energy is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of De Pere Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of De Pere Energy's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 1, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30575 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4427–000]

Electric Lite, Inc.; Notice of Filing

November 17, 1997.

Take notice that on October 21, 1997, Electric Lite, Inc., tendered for filing additional information to its September 2, 1997, 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 918 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 28, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30644 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

[Docket No. CP98–75–000]

November 17, 1997.

Take notice that on November 7, 1997, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP98–075–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to upgrade an existing meter station in Lake County, Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The meter station is currently being used to deliver gas to TECO Peoples Gas (TECO), and the upgrade is necessary to accommodate an increase in hourly peak demands from 142 MMBtu to 272 MMBtu of natural gas, as indicated by FGT. Specifically, FGT proposes to upgrade the subject meter station by replacing the existing 4-inch meter bypass spool with an 4-inch Ansi Class 150 Senior meter tube at an estimated cost of $30,000 of which TECO would reimburse FGT. FGT states that the proposed upgrade would not increase contractual deliveries to TECO above the currently authorized levels of firm service.

Any person or the Commission's staff may, within 45 days after issuance of

the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30635 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4168–000]

Griffin Energy Marketing, L.L.C.; Notice of Issuance of Order

November 17, 1997.

Griffin Energy Marketing, L.L.C. (Griffin) filed an application for authorization to sell electric energy and capacity at market-based rates, and for certain waivers and authorizations. In particular, Griffin requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Griffin. On October 31, 1997, the Commission issued an Order Accepting for Filing Proposed Tariff for Market-Based Power Sales and Reassignment of Transmission Capacity (Order), in the above-docketed proceeding.

The Commission's October 31, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Griffin 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.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Griffin is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Griffin, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Griffin's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 1, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30574 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–78–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

November 17, 1997.

Take notice that on November 12, 1997, NorAm Gas Transmission Company (NGT), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP98–78–000 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 approval to operate certain facilities in Arkansas, under NGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT states that it specifically requests authority pursuant to Subpart G of Part 284 of the Commission's Regulations to operate an existing one-inch tap originally installed to provide service authorized under Section 311 of the Natural Gas Policy Act and Subpart B, Part 284 of the Commission's Regulations. NGT further states that the one-inch tap, valve and first-cut regulator are located on NGT's Line KT–9 in Section 35, Township 18 South, Range 16 West, Union County, Arkansas: NGT asserts that the estimated volumes to be delivered through the tap are approximately 170 MMBtu annually and 2 MMBtu on a peak day. NGT indicates that the tap was constructed in July, 1997, at an estimated cost of $2,544.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene 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 activities 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 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30636 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4231–000]

Rochester Gas & Electric Company; Notice of Filing

November 17, 1997.

Take notice that on October 6, 1997, Rochester Gas & Electric Company tendered for filing a notice of withdrawal of its August 15, 1997, 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 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 28, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30641 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–2850–002]

Sierra Pacific Power Company; Notice of Filing

November 17, 1997.

Take notice that on October 17, 1997, Sierra Pacific Power Company (Sierra) filed its compliance filing pursuant to the Commission's order dated September 26, 1997, in Docket No. ER96–2850–001, directing Sierra to file a service agreement placing itself under its open access transmission tariff for the power sale to the City of Fallon.

Copies of this filing were served upon the Public Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

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 Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 28, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30640 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–61–000]

Southern Natural Gas Company; Notice of Application

November 17, 1997.

Take notice that on October 31, 1997, as supplemented on November 7, 1997, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–61–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an existing receiving station in order to modify its operations at the receiving station all as more fully set forth in the application on file with the Commission and open to public inspection.

Southern seeks approval to abandon the FGT-Franklinton to Southern Receipt Meter located at Southern's interconnection with Florida Gas Transmission Company (FGT), in Washington Parish, Louisiana. Southern states that upon receiving abandonment authorization, Southern will reverse the ten-inch meter run to enable it to deliver natural gas to FGT at that location. Southern asserts that the installation of the proposed facilities will have no impact on its peak day or firm requirements. Southern plans to perform the modification of the delivery point under its blanket certificate of public convenience and necessity issued in Docket No. CP82–406–000 as an eligible facility pursuant to § 157.208(a) of the Commission's Regulations.

Any person desiring to be heard or to make protest with reference to said application should on or before December 8, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30633 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2462–001]

Unitil Resources, Inc.; Notice of Filing

November 17, 1997.

Take notice that on October 10, 1997, Unitil Resources, Inc. (Unitil Resources), 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 Resources indicates that it will prohibit sales to affiliates absent a separate section 205 filing. The Company also amends its code of conduct so as to prohibit disclosure of market power information to affiliates unless such information is simultaneously made available to the public.

Unitil Resources indicates that it has served a copy of this filing 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before

November 28, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30639 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–89–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

November 17, 1997.

Take notice that on November 13, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP98–89–000 a request pursuant to Section 7 of the Natural Gas Act, as amended, and Sections 157.205 and 157.216(b) for authorization to abandon the Jensen Farm Tap near Hinsdale, Montana, in accordance with the authority granted to Williston Basin issued in Docket No. CP82–487–000, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Williston Basin states that until recently, gas was transported through the Jensen Farm Tap for Montana-Dakota Utilities, Co., a local distribution company, for two of its residential customers. It is further stated that the tap is currently located in the yard of one of these residential customers and the customer has requested its removal. Williston Basin also states that the two customers previously served through this tap are being served through another existing Williston Basin tap at a different location.

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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30638 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

November 17, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Filing:* Interim Steelhead Protection Plan.

b. *Project No:* 2149–064.

c. *Date Filed:* October 9, 1997.

d. *Licensee:* Public Utility District No. 1 of Douglas County.

e. *Name of Project:* Wells Hydroelectric Project.

f. *Location:* The project is located on the Columbia River in Douglas County, Washington.

g. *Licensee Contact:* Garfield R. Jeffers, Stanley A. Bastian, Jeffers, Danielson, Sonn & Aylward, P.S., 317 North Mission, Wentachee, Washington 98807, Attorney for Public Utility District No. 1 of Douglas County.

h. *FERC Contact:* Jim Hastreiter (503) 326–5858.

i. *Comment Date:* December 18, 1997.

j. *Description of Filing:* The Public Utility District No. 1 of Douglas County (licensee) has filed, for Commission approval, an Interim Steelhead Protection Plan. The National Marine Fisheries Service has listed steelhead in the Upper Columbia River as endangered under the Endangered Species Act. The plan proposes continuation of studies to: (1) improve fish survival at the project and; (2) improve performance of hatchery-produced anadromous salmonids.

This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Motions to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30645 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice; Sunshine Act Meeting

November 18, 1997.

THE FOLLOWING NOTICE OF MEETING IS PUBLISHED PURSUANT TO SECTION 3(A) OF THE GOVERNMENT IN THE SUNSHINE ACT (PUB. L. NO. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION.

DATE AND TIME: NOVEMBER 25, 1997 10:00 a.m.

PLACE: ROOM 2C, 888 FIRST STREET, N.E., WASHINGTON, D.C. 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: AGENDA; *NOTE—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

CONTACT PERSON FOR MORE INFORMATION: LOIS D. CASHELL, SECRETARY, TELEPHONE, (202) 208–0400, FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208–1627.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

CONSENT AGENDA—HYDRO 686TH MEETING—NOVEMBER 25, 1997 REGULAR MEETING (10:00 A.M.)

CAH–1.
DOCKET# DI96–2, 001, THE COLLINSVILLE COMPANY
CAH–2.
DOCKET# P–2496, 011, EUGENE WATER & ELECTRIC BOARD

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET# ER98–220, 000, ALLEGHENY POWER SERVICE CORPORATION ON BEHALF OF MONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY
OTHER#S EL98–3, 000, PENNSYLVANIA PUBLIC UTILITY COMMISSION
EL98–4, 000, PENNSYLVANIA PUBLIC UTILITY COMMISSION
ER98–28, 000, PECO ENERGY COMPANY
ER98–41, 000, PJM INTERCONNECTION, L.L.C.
ER98–50, 000, DUQUESNE LIGHT COMPANY
ER98–64, 000, METROPOLITAN EDISON COMPANY AND PENN-SYLVANIA ELECTRIC COMPANY, PECO ENERGY COMPANY, PP&L, INC. AND UGI UTILITIES, INC.
ER98–162, 000, OHIO EDISON COMPANY
CAE–2.
DOCKET# ER97–4814, 000, WESTERN RESOURCES, INC.
CAE–3.
DOCKET# ER97–4468, 000, PUGET SOUND ENERGY, INC.
OTHER#S ER96–697, 000, PUGET SOUND ENERGY, INC.
ER96–1456, 000, PUGET SOUND ENERGY, INC.
OA96–161, 000, PUGET SOUND ENERGY, INC.
CAE–4.
DOCKET# ER98–33, 000, ENRON POWER MARKETING, INC.
OTHER#S EL98–9, 000, ENRON POWER MARKETING, INC.
CAE–5.
DOCKET# ER98–13, 000, ENRON ENERGY SERVICES POWER, INC.
CAE–6.
DOCKET# ER97–3057, 000, FLORIDA POWER CORPORATION
CAE–7.
DOCKET# OA96–15, 000, CENTRAL LOUISIANA ELECTRIC COMPANY, INC.
OTHER#S OA96–15, 003, CENTRAL LOUISIANA ELECTRIC COMPANY, INC.
CAE–8.
DOCKET# ER97–678, 000, NEW ENGLAND POWER COMPANY
OTHER#S ER97–680, 000, NEW ENGLAND POWER COMPANY
CAE–9.
DOCKET# TX97–9, 000, CINERGY SERVICES, INC.
CAE–10.
DOCKET# ER96–1320, 000, PUBLIC SERVICE ELECTRIC AND GAS COMPANY
CAE–11.
DOCKET# OA97–24, 000, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY AND PUBLIC SERVICE COMPANY OF OKLAHOMA, ET AL.
OTHER#S ER97–881, 000, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY AND PUBLIC SERVICE COMPANY OF OKLAHOMA, ET AL.
CAE–12.
OMITTED
CAE–13.
DOCKET# ER96–697, 002, PUGET SOUND ENERGY, INC.
OTHER#S ER96–714, 000, PUGET SOUND ENERGY, INC.
ER96–714, 001, PUGET SOUND ENERGY, INC.
ER96–1456, 002, PUGET SOUND ENERGY, INC.
CAE–14.
DOCKET# ER97–964, 001, CONSUMERS ENERGY COMPANY
CAE–15.
DOCKET# ER95–854, 001, KENTUCKY UTILITIES COMPANY
CAE–16.
DOCKET# ER95–836, 002, MAINE PUBLIC SERVICE COMPANY
OTHER#S ER95–851, 001, MAINE PUBLIC SERVICE COMPANY
CAE–17.
DOCKET# ER97–940, 001, MONTANA-DAKOTA UTILITIES COMPANY
OTHER#S ER97–2618, 001, MONTANA-DAKOTA UTILITIES COMPANY
CAE–18.
DOCKET# RM87–3, 030, ANNUAL CHARGES UNDER THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 (PHIBRO INC.)

CONSENT AGENDA—MISCELLANEOUS

CAM–1.
OMITTED

CONSENT AGENDA—GAS AND OIL

CAG–1.
OMITTED
CAG–2.
OMITTED
CAG–3.
DOCKET# RP98–16, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–4.
DOCKET# RP98–17, 000, DAUPHIN ISLAND GATHERING PARTNERS
CAG–5.
DOCKET# RP98–29, 000, FLORIDA GAS TRANSMISSION COMPANY
CAG–6.
DOCKET# RP98–30, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–7.
DOCKET# RP98–35, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–8.
DOCKET# RP98–20, 000, WYOMING INTERSTATE COMPANY, LTD.
CAG–9.
DOCKET# RP98–22, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–10.
OMITTED
CAG–11.
DOCKET# RP98–25, 000, WEST TEXAS GAS, INC.
OTHER#S RP98–25, 001 WEST TEXAS GAS, INC.
CAG–12.
DOCKET# RP98–26, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–13.
DOCKET# RP98–27, 000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–14.
DOCKET# RP98–28, 000, NORTHERN NATURAL GAS COMPANY
CAG–15.
DOCKET# RP98–31, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–16.
DOCKET# RP98–32, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–17.
OMITTED
CAG–18.
DOCKET# RP91–229, 024, PANHANDLE EASTERN PIPE LINE COMPANY
OTHER#S RP92–166, 017, PANHANDLE EASTERN PIPE LINE COMPANY
RS92–22, 015, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–19.
DOCKET# RP97–373, 003, KOCH GATEWAY PIPELINE COMPANY
CAG–20.
DOCKET# TM98–2–76, 000, WYOMING INTERSTATE COMPANY, LTD.
CAG–21.
DOCKET# RP96–367, 006, NORTHWEST PIPELINE CORPORATION
CAG–22.
OMITTED
CAG–23.
DOCKET# RP97–315, 006, NORTHWEST PIPELINE CORPORATION
CAG–24.
DOCKET# RP91–203, 067, TENNESSEE GAS PIPELINE COMPANY
CAG–25.
DOCKET# RP95–239, 001, RIVERSIDE PIPELINE COMPANY, L.P.
CAG–26.

DOCKET# RP97–469, 001, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–27.
OMITTED
CAG–28.
DOCKET# RP97–484, 002, WILLIAMS NATURAL GAS COMPANY
CAG–29.
DOCKET# RP97–29, 002, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–30.
DOCKET# RP97–171, 009, ANR PIPELINE COMPANY
CAG–31.
DOCKET# RP97–126, 005, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
OTHER#S RP97–333, 001, CONNECTICUT NATURAL GAS COMPANY, ET AL. V. IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–32.
DOCKET# RP97–366, 000, ANR PIPELINE COMPANY
CAG–33.
DOCKET# RP97–444, 000, HORSEHEAD RESOURCE DEVELOPMENT CO., INC. V. TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–34.
OMITTED
CAG–35.
DOCKET# MG98–1, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–36.
DOCKET# CP96–758, 003, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–37.
DOCKET# CP97–276, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–38.
DOCKET# CP95–500, 000, SOUTHERN NATURAL GAS COMPANY
OTHER#S CP95–500, 001, SOUTHERN NATURAL GAS COMPANY
CAG–39.
DOCKET# CP96–339, 000, TOTAL PEAKING SERVICES, L.L.C.
CAG–40.
DOCKET# CP97–156, 000, HOPKINTON LNG CORPORATION
CAG–41.
DOCKET# CP97–520, 000, WILLIAMS NATURAL GAS COMPANY
CAG–42.
DOCKET# CP97–631, 000, KOCH GATEWAY PIPELINE COMPANY
CAG–43.
OMITTED
CAG–44.
OMITTED
CAG–45.
DOCKET# TM98–2–20, 000, ALGONQUIN GAS TRANSMISSION COMPANY
CAG–46.
OMITTED
CAG–47.
DOCKET# CP96–152, 005, KANSAS PIPELINE COMPANY AND RIVERSIDE PIPELINE COMPANY, L.P.
OTHER#S CP97–738, 002, TRANSOK, INC.
PR94–3, 005, KANSOK PARTNERSHIP
RP95–212, 005, KANSOK PARTNERSHIP, KANSAS PIPELINE PARTNERSHIP AND RIVERSIDE PIPELINE COMPANY, L.P.
RP95–395, 005, WILLIAMS NATURAL GAS COMPANY V. KANSAS PIPELINE OPERATING COMPANY AND KANSAS PIPELINE PARTNERSHIP, ET AL.

HYDRO AGENDA

H–1.
DOCKET# P–2389, 012, EDWARDS MANUFACTURING COMPANY, INC. AND THE CITY OF AUGUSTA, MAINE. ORDER ON APPLICATION FOR NEW LICENSE.
H–2.
DOCKET# P–2325, 007, CENTRAL MAINE POWER COMPANY. ORDER ON APPLICATION FOR NEW LICENSE.
H–3.
DOCKET# P–2329, 005, CENTRAL MAINE POWER COMPANY. ORDER ON APPLICATION FOR NEW LICENSE.
H–4.
DOCKET# P–2552, 007, CENTRAL MAINE POWER COMPANY. ORDER ON APPLICATION FOR SUBSEQUENT LICENSE.
H–5.
DOCKET# P–2671, 002, KENNEBEC WATER POWER COMPANY. ORDER ON APPLICATION FOR NEW LICENSE.
H–6.
DOCKET# P–11433, 000, TOWN OF MADISON, DEPARTMENT OF ELECTRIC WORKS. ORDER ON APPLICATION FOR LICENSE.

ELECTRIC AGENDA

E–1.
DOCKET# RM95–8, 003, PROMOTING WHOLESALE COMPETITION THROUGH OPEN ACCESS NON-DISCRIMINATORY TRANSMISSION, ET AL.
OTHER#S RM94–7, 004, RECOVERY OF STRANDED COSTS BY PUBLIC UTILITIES AND TRANSMITTING UTILITIES. ORDER ON REHEARING OF ORDER NO. 888–A.
E–2.
DOCKET# RM95–9, 002, OPEN ACCESS SAME-TIME SYSTEM (FORMERLY REAL-TIME INFORMATION NETWORKS) AND STANDARDS OF CONDUCT.
ORDER NO. 889–B—THIS ORDER ADDRESSES THE REQUESTS FOR REHEARING OF ORDER NO. 889–A.
E–3.
DOCKET# OA97–261, 000, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION.
OTHER#S EC96–28, 002, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
EC96–29, 002, PECO ENERGY COMPANY.
EC97–38, 000, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
EL96–69, 002, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
EL97–44, 000, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION RESTRUCTURING.
ER96–2516, 002, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
ER96–2668, 002, PECO ENERGY COMPANY.
ER97–1082, 000, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION.
ER97–1082, 001, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION.
ER97–3189, 000, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
ER97–3273, 000, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION RESTRUCTURING.
OA97–261, 001, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION.
OA97–678, 000, PJM INTERCONNECTION, L.L.C. ORDER ON RESTRUCTURING OF THE PENNSYLVANIA-NEW JERSEY-MARYLAND POWER POOL.

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

Lois D. Cashell,

Secretary.

[FR Doc. 97–30825 Filed 11–19–97; 2:39 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Performance Review Board Members

November 18, 1997.

Section 4314(c) of Title 5, United States Code requires that notices of appointment of Performance Review Board members be published in the **Federal Register**. The following persons have been appointed to serve on the Performance Review Board standing register for the Federal Energy Regulatory Commission:

Shelton M. Cannon

Kevin P. Madden

Christie L. McGue

Rebecca F. Schaffer

Douglas W. Smith

Lois D. Cashell,

Secretary.

[FR Doc. 97–30632 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5926–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; ''Clean Water Act State Revolving Fund Program''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Clean Water Act State Revolving Fund Program, EPA ICR Number 1391.04, OMB Control Number 2040–118, and current expiration date of 02/28/98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 20, 1998.

ADDRESSES: Comments may be mailed to Clifford Yee, Office of Wastewater Management (4204), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC. 20460.

FOR FURTHER INFORMATION CONTACT: Clifford Yee (202) 260–5822; FAX: (202) 260-0116; E-Mail: yee.clifford@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are the fifty States, Puerto Rico, and the recipients of assistance in each of these jurisdictions.

Title: Clean Water Act State Revolving Fund Program; OMB Control No. 2040–0118; EPA ICR No. 1391.04; expiring 02/28/98.

Abstract: The Clean Water Act, as amended by ''The Water Quality Act of 1987'' (U.S.C. 1381–1387 et. Seq.), created a Title VI which authorizes grants to States for the establishment of State Water Pollution Control Revolving Funds (SRFs). The information activities are pursuant to Section 606 of the Act, and SRF Interim Final Rule (March 1990). The 1987 Act declares that water pollution control revolving loan funds shall be administered by an instrumentality of the State subject to the requirements of the act. This means that each State has a general responsibility for administering its revolving fund, and must take on certain specific responsibilities in carrying out its administrative duties. The information collection activities will occur primarily at the program level through the State Intended Use Plan and Annual Report. The information is needed annually to implement Section 606 of the Clean Water Act (CWA). The Act requires the information to ensure national accountability, adequate public comment and review, fiscal integrity and consistent management directed to achieve environmental objectives. The individual information collections are: (1) Capitalization Grant Application and Agreement/ State Intended Use Plan, (2) Annual Report, (3) State Audit, and (4) Application for SRF Financial Assistance.

(1) Capitalization Grant Application and Agreement / State Intended Use Plan: The State will prepare a capitalization grant application that includes an Intended Use Plan (IUP) outlining in detail how it will use all the funds available to the Fund. The grant agreement contains or incorporates by reference the IUP, application materials, payment schedule, and required assurances. The bulk of the information is provided in the IUP. The legal agreement which commits the State and EPA to execute their responsibilities under the Act.

(2) Annual Report: The State will agree to complete and submit an annual report that indicates how the State has met the goals and objectives of the previous fiscal year as stated in the IUP and grant agreement. The Report provides information on loan recipients, loan amounts, loan terms, project categories, and similar data on other forms of assistance. The Report describes the extent to which the existing SRF financial operating policies, alone or in combination with other State financial assistance programs, will provide for the long term fiscal health of the Fund and carry out other provisions specified in the grant operating agreement.

(3) Annual Audit: Most States have agreed to conduct or have conducted a separate financial audit of the capitalization grant which will provide opinions on the financial statements, and a report on the internal controls and compliance with program requirements. The remaining States will be covered by audits conducted under the requirements of the Single Audit Act and by EPA's Office of Inspector General.

(4) Applications for SRF Financing Assistance: Local communities and other eligible entities have to prepare and submit applications for SRF assistance to their respective State Agency which manages the SRF program. The State reviews the completed loan applications, and verifies that the proposed projects will comply with applicable Federal and State requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

BURDEN STATEMENT

(1) Capitalization Grant Application and Agreement/State Intended Use Plan

1998	51 States×400 Hours	=	20,400 Burden Hours.
1999	51 States×400 Hours	=	20,400 Burden Hours.

BURDEN STATEMENT—Continued

2000	51 States×400 Hours	=	20,400 Burden Hours.
	(2) Annual Report		
1998	51 States×275 Hours	=	14,025 Burden Hours.
1999	51 States×275 Hours	=	14,025 Burden Hours.
2000	51 States×275 Hours	=	14,025 Burden Hours.
	(3) State Annual Audit		
1998	51 States×80 Hours	=	4,080 Burden Hours.
1999	51 States×80 Hours	=	4,080 Burden Hours.
2000	51 States×80 Hours	=	4,080 Burden Hours.
	(4) Applications for SRF Financing Assistance		
1998	51 States×24 Applications×40 Hours	=	48,960 Hours.
1999	51 States×29 Applications×40 Hours	=	59,160 Hours.
2000	51 States×34 Applications×40 Hours	=	69,360 Hours.
1998	1,224 Communities×60 Hours	=	73,440 Burden Hours.
1999	1,479 Communities×60 Hours	=	88,740 Burden Hours.
2000	1,734 Communities×60 Hours	=	104,040 Burden Hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 14, 1997.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 97–30657 Filed 11–20–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5486–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed November 10, 1997 Through November 14, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970446, Draft EIS, BLM, MT, Golden Sunlight Mine Expansion, Implementation of Amendment 008 to Operating Permit No. 0065, COE Section 404 Permit, Whitehall, Jefferson County MT, Due: January 21, 1998, Contact: David Williams (406) 494–5059.

EIS No. 970447, Final EIS, AFS, SD, Anchor Hill Mine Expansion Project in Gilt Edge Mine, Plan-of-Operations, Approval, Black Hills National Forest, SD, Due: January 05, 1998, Contact: Don Murray (605) 578–2744.

EIS No. 970448, Draft EIS, USN, CA, Miramar Naval Air Station Realignment of E–2 Aircraft Squadrons, Three Installations are consider: Point Muga Naval Air Weapons Station, Lemoore Navel Air Station and El Centro, Ventura Fresno, King and Imperial Counties, CA, Due: January 05, 1998, Contact: Ms. Kelly Knight (619) 532–2456.

EIS No. 970449, Final EIS, USN, CA, Novato, California Department of Defense Housing Facility Disposal and Reuse, Implementation, City of Novato, Marin County, CA, Due: December 22, 1997, Contact: Gary J. Munekawa (650) 244–3022.

EIS No. 970450, Draft EIS, USN, HI, Fort Kamehameha Outfall Replacement for Wastewater Treatment Plant, Navy Public Works Center, Pearl Harbor, HI, Due: January 05, 1998, Contact: Gary Kasaoke (808) 471–9338.

EIS No. 970451, Draft EIS, DOE, CO, Rocky Flats Environmental Technology Site, Management of Certain Plutonium Residues and Scrub Alloy Stored for Disposal or other Disposition, Waste Isolation Pilot Plant, Golden, CO, Due: January 05, 1998, Contact: Charles Head (202) 586–5151.

Dated: November 18, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–30695 Filed 11–20–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5486–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 03, 1997 Through November 07, 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) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Final EISs

ERP No. F–COE–E40764–00, Fort Campbell Rail Connector, Construction between the Government-Owned Line Railroad and CSX Line, Hopkinsville and Clarkville, Christian Co., KY and Montgomery and Stewart Counties, TN.

Summary: EPA continued to express concern over the potential impacts of the preferred alternative, and suggested that Alternative 3 be selected instead in order to minimize long-term impacts to water and air quality.

ERP No. F–FHW–E54009–NC, US 117 Corridor Improvement Project, US 13/70 at Goldsboro, north to US 301 in Wilson, Funding and Section 404 Permit, Wayne and Wilson Counties, NC.

Summary: EPA continued to favor Alternative 1, the improvement of the present road, or Alternative 4, a new alignment outside the Little River critical watershed area. EPA is concerned that this project could directly or indirectly cause the degradation of the Little River and reduce the classified use of this river as a water supply. EPA would like to see commitments to long-term maintenance of measures to minimize the inflow of pollutants to the river.

ERP No. F–FHW–K50007–CA, Benicia-Martinez Bridge System Project, Construction/Reconstruction, Portions of I–680, I–780 and I–80 Corridors, Funding, U.S. CGD Bridge Permit and COE Section 10 and 404 Permits, Contra Costa and Solano Counties, CA.

Summary: EPA expressed continuing concerns on the placement of new toll booths in close proximity to an industrial facility using hazardous materials and requested FHWA to reconsider its decision. EPA also requested FHWA provide additional information on a contingency plan to guide travelers along the highway in the event of a chemical upset or accidental releases. EPA asked that the Record of Decision clarify what level of High Occupancy Vehicle (HOV) features would be part of the project, and strongly recommend that all feasible efforts to implement one or more dedicated HOV lanes for both north and southbound traffic in peak commute periods be part of the final project.

ERP No. F–NAS–A12041–00, X–33 Advanced Technology Demonstrator Vehicle Program, Final Design, Construction and Testing, Implementation, Approvals and Permits Issuance, CA, UT and WA.

Summary: EPA had no objection to proposed action.

ERP No. F–USN–L11031–WA, Puget Sound Naval Station, Sand Point, Disposal and Reuse, Implementation, King County, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FA–DOE–K03007–CA, Petroleum Production at Maximum Efficient Rate, updated Information for the Sale of Naval Petroleum Reserve No. 1 (NPR–1 also called ''Elk Hills'') Amendment for Kern County General Plan, Elk Hills, Kern County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: November 18, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–30696 Filed 11–20–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PF–778; FRL–5755–4]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–778, must be received on or before December 22, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Joanne Miller (PM 23) ...	Rm. 237, CM #2, 703–305–6224, e-mail:miller.joanne@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Kerry Leifer	Rm. 4W17, CS #1, 703–308–8811, e-mail: leifer.kerry@epamail.epa.gov.	2800 Crystal Drive, Arlington, VA

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–778] including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number PF-778 and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 10, 1997

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. BASF Corporation

PP 7F4848

EPA has received a pesticide petition (PP 7F4848) from BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709-3528 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of diflufenzopyr, (2-[1-[[[(3,5-difluorophenyl) amino]carbonyl]hydrazono] -ethyl]-3-pyridinecarboxylic acid), and its metabolites M1 (8-methylpyrido(2,3-d)pyridazin-5(6H)-one) and M5 (6-((3,5-Difluorophenyl-carbamoyl-8-methyl-pyrido (2,3-d)-5-pyridazinone) all as the M1 component in or on the raw agricultural commodities corn grain, corn forage and corn fodder at 0.05 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method*. The proposed analytical method involves extraction, partition, clean-up and detection of residues by gas chromatography/ nitrogen phosphorous detector (gc/npd).

2. *Magnitude of residues*. Over 20 residue trials were conducted in 16 states. Residues of diflufenzopyr, M5 and M1 were measured as M1 by gc/ npd. The method of detection had a limit of detection of 0.01 parts per million (ppm). Residues ranged from non detectable (majority) to 0.02 ppm rt text.

B. Toxicological Profile

1. *Acute toxicity*. A battery of acute toxicity tests were conducted which place diflufenzopyr in acute oral toxicity category IV, acute dermal toxicity category IV, acute inhalation toxicity category IV, primary eye irritation category III, and primary dermal irritation category IV. Diflufenzopyr is not a dermal sensitizer. Diflufenzopyr is not a neurotoxin in males and females at 2,000 mg/kg (limit test).

2. *Genotoxicity*. Diflufenzopyr was found to be negative for mutagenicity in a battery of mutagenicity tests (Ames Testing, Mouse Lymphoma testing *In vivo* micronucleus assay (mouse) and Unscheduled DNA synthesis).

3. *Reproductive and developmental toxicity—i. Developmental toxicity (rat)*. Sprague-Dawley rats were dosed with 0, 100, 300 and 1,000 mg/kg/day diflufenzopyr in the diet from days 6 through 15 of gestation. The maternal no observed adverse effect level (NOAEL) was determined to be 300 mg/kg/day and the maternal lowest effect level (LEL) was determined to be 1,000 mg/ kg/day based on reduced body weight gain, and reduced absolute and relative feed consumption during the dosing period. The developmental NOAEL was determined to be 300 mg/kg/day and the developmental LEL was determined to be 1,000 mg/kg/day based on reduced fetal body weight and reversible delays in sternal and caudal vertebral ossification.

ii. *Developmental toxicity (rabbit)*. New Zealand white rabbits were dosed with 0, 30, 100, and 300 mg/kg/day diflufenzopyr in the diet from days 6 through 19 of gestation. The maternal NOEL was determined to be 30 mg/kg/ day and the maternal LEL was determined to be 100 mg/kg/day based on increased incidence of abnormal feces and weight loss for the entire dosage period. The developmental NOEL was determined to be 100 mg/kg/ day and the developmental LEL was determined to be 300 mg/kg/day based on increased incidences of supernumerary thoracic ribs, a variation in fetal ossification that commonly occurs at maternally toxic dosages. Only at the 300 dose level deaths and abortions were accompanied by gastric trichobezoars. Diflufenzopyr was not teratogenic to rabbit fetuses even at the higher of two dosages (100 and 300 mg/ kg/day) that were toxic to the does.

iii. *Reproductive toxicity testing*. In a 2-Generation Reproduction study, Wistar rats were dosed with 0, 500, 2,000 and 8,000 ppm diflufenzopyr in the diet. The parental: systemic NOAEL/ reproductive-developmental NOEL was determined to be 2,000 ppm in both sexes (averaging 600 mg/kg/day in females during gestation). The parental LEL was determined to be 8,000 ppm (averaging 2,500 mg/kg/day in females during gestation) based on weight gain deficits in males and females during premating and pregnancy phases. The developmental NOEL was determined to be 2,000 ppm (averaging 400 mg/kg/day in dams during lactation) and the LEL determined to be 8,000 ppm (averaging 1,500 mg/kg/day in dams during lactation) based on slightly lower live birth (93%) and viability (90%) indices.

4. *Subchronic toxicity*— i. *21-Day dermal (rabbit)*. Rabbits were repeatedly dosed with diflufenzopyr at 0, 100, 300 and 1,000 mg/kg/day for 21 days. The NOAEL for systemic toxicity and dermal irritation was determined to be 1,000 mg/kg/day.

ii. *90-Day rodent (rat)*. Wistar rats were dosed with diflufenzopyr at 0, 1,000, 5,000, 10,000 and 20,000 ppm in the diet for 90 days. The NOEL was determined to be 5,000 ppm (350 mg/ kg/day) for males and 430 mg/kg/day in females. The LEL was determined to be 10,000 ppm (720 mg/kg/day) for males and 890 mg/kg/day in females based on reduced body weight gains, impaired food utilization; disturbances in hematology values in males, clinical chemistry values in both sexes, values for urinalysis in females; with histopathology seen in both sexes as increased foamy macrophages in the lungs.

iii. *90-Day mouse*. CD-1 mice were dosed with diflufenzopyr at 0, 350, 1,750, 3,500 and 7,000 ppm in the diet for 13 weeks. The NOEL was determined to be 7,000 ppm (1,225 mg/ kg/day) in males and (1,605 mg/kg/day) in females as no clear toxic effects were observed.

iv. *90-Day non-rodent (dog)*. Beagle dogs were dosed with diflufenzopyr at

0, 1,500, 10,000, and 30,000 ppm in the diet for 13 weeks. The NOEL was determined to be 1,500 ppm (58 mg/kg/day) in males and (59 mg/kg/day) in females. The LEL was determined to be 10,000 ppm (403 mg/kg/day) in males and (424 mg/kg/day) in females based on histopathological disturbances seen as erythreoid hyperplasia in the bone marrow and extramedullary hemopoiesis in the liver of a few dogs and hemosiderin deposits in Kupffer cells in 1 female dog.

v. *90-Day neurotoxicity (rat).* Rats were dosed with diflufenzopyr at 0, 25, 75, and 1,000 mg/kg/day in the diet for 13 weeks. At the 1,000 mg/kg/day treatment there was associated weight gain and impaired efficiency of food utilization. Therefore the no adverse effect level was set at 75 mg/kg/day. The NOAEL for subchronic neurotoxicity was determined to be 1,000 mg/kg/day based on the absence of changes indicative of neurotoxicity.

5. *Chronic toxicity*—i. *1-Year non-rodent (dog).* Beagle dogs were dosed with diflufenzopyr at 0, 750, 7,500 and 15,000 ppm in the diet for one year. The NOEL was determined to be 750 ppm (26 mg/kg/day) in males and (28 mg/kg/day) in females. The LOAEL was 7,500 ppm (299 mg/kg/day) in males and (301 mg/kg/day) in females. This is based on an erythropoietic response in bone marrow and increased hemosiderin deposits in spleen, liver and kidneys. Peripheral hematology investigations revealed mild to moderate reticulocytosis at the 7,500 and 15,000 ppm dose levels, in the absence of any signs of anemia. The erythropoietic response of bone marrow is thought to compensate probable toxic effects to erythrocytes. Because of a similarity of NOEL levels from this dog study and the rat chronic/oncogenicity study a suggested risk assessment reference dose (Rfd) is calculated by using 25 as a Noel level with a 100 fold safety factor ending with 0.25 mg/kg/day.

ii. *Combined rodent chronic toxicity/oncogenicity (rat).* Wistar rats were fed 0, 500, 1,500, 5,000 and 10,000 ppm diflufenzopyr in the diet for 104 weeks. The NOEL was determined to be 500 ppm (22 mg/kg/day) in males and (29 mg/kg/day) in females. The NOAEL was determined to be 1,500 ppm (69 mg/kg/day) in males and (93 mg/kg/day) in females based on reduced body weight gains of 8 % in males and 7% in females. The LEL was determined to be 5,000 ppm (235 mg/kg/day) in males and(323 mg/kg/day) in females based on 9% reduced weight gain in females and 11% in males plus males showed lower triglyceride and higher phosphate levels. Diflufenzopyr was not carcinogenic under the conditions of the test.

iii. *Oncogenicity in the rodent (mouse).* CD-1 mice were fed 0, 700, 3,500 and 7,000 ppm diflufenzopyr in the diet for 78 weeks. The NOAEL was determined to be 7,000 ppm (1037 mg/kg/day) in males and (1,004 mg/kg/day) in females. There were no changes or histopathological findings attributed to the dietary inclusion of test material in the 52 (interim) or 78 (terminal) week animals. Diflufenzopyr was not carcinogenic under the conditions of the test.

C. Aggregate Exposure

1. *Dietary exposure.* The potential aggregate dietary exposure is based on the Theoretical Maximum Residue Contribution (TMRC) from the tolerances for all crops on which diflufenzopyr is to be applied. The TMRC from the proposed use of diflufenzopyr of corn at the tolerance level of 0.05 ppm is 0.173168 ug/kg/day, and utilizes 0.069 percent of the RfD for the overall U.S. population. The exposure of the most highly exposed subgroup in the population, non-nursing infants, is 0.195424 ug/kg/day, and utilizes 0.078 percent of the RfD.

2. *Drinking water.* Based on the studies submitted to EPA for assessment of environmental risk, BASF does not anticipate exposure to residues of diflufenzopyr in drinking water. There is no established maximum concentration level for residues of diflufenzopyr in drinking water under the Safe Drinking Water Act.

3. *Non-dietary exposure.* BASF has not estimated non-occupational exposure for diflufenzopyr since the only pending registration for diflufenzopyr is limited to commercial crop production use. Diflufenzopyr products are not labeled for any residential uses therefore, eliminating the potential for residential exposure. The potential for non-occupational exposure to the general population is considered to be insignificant.

D. Cumulative Effects

BASF also considered the potential for cumulative effects of diflufenzopyr and other substances that have a common mechanism of toxicity. BASF has concluded that consideration of a common mechanism of toxicity is not appropriate at this time since there is no indication that toxic effects produced by diflufenzopyr would be cumulative with those of any other chemical compounds. Semicarbazone chemistry is new and diflufenzopyr has a novel mode of action compared to currently registered active ingredients.

E. Safety Determination

1. *U.S. population.* Dietary and occupational exposure will be the major routes of exposure to the U.S. population and ample margins of safety have been demonstrated for both situations. The TMRC from the proposed tolerance of 0.05 ppm is 0.173168 ug/kg/day and utilizes 0.0692 percent of the RfD for the overall U.S population. The MOEs for occupational exposure are greater than 7,000. Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is a reasonable certainty that no harm will result from the aggregate exposure of residues of diflufenzopyr including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children.* Dietary exposure of the most highly exposed subgroup in the population, non-nursing infants, is 0.195424 ug/kg/day. This accounts for only 0.078 percent of the RfD. There are no residential uses of diflufenzopyr and contamination of drinking water is extremely unlikely. All chronic, lifespan and multigenerational bioassays in mammals plus tests in aquatic organisms and wildlife failed to reveal any endocrine effects. Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of diflufenzopyr including all anticipated dietary exposure and all other non-occupational exposures.

F. International Tolerances

A maximum residue level has not been established for diflufenzopyr by the Codex Alimentarius Commission.

2. Novartis Crop Protection, Inc.

PP 7E3489

EPA has received a pesticide petition (PP 7E3489) from Novartis Crop Protection, Inc. (formerly Ciba Crop Protection), P.O. Box 18300, Greensboro, NC 27419. proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for combined residues of 4-(dichloroacetyl)-3,4-dihydro-3-methyl-2H-1,4-benzoxazine (benoxacor) when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor. The proposed analytical method is capillary gas

chromatography using Nitrogen/Phosphorous (N/P) detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant/Animal metabolism*. Novartis Crop Protection, Inc. (Novartis) notes that the metabolism in plants and animals (goat, hen, and rat) is well understood. Identified metabolic pathways are similar in plants and animals.

2. *Analytical method*. Novartis Analytical Method AG536(C) is available and involves extraction, filtering, dilution, partitioning, and cleanup. Samples are then analyzed by capillary gas chromatography using Nitrogen/Phosphorous (N/P) detection. The limit of quantitation (LOQ) is 0.01 ppm.

3. *Magnitude of residues*. More than 30 residue trials were conducted in 19 states on a variety of agricultural crops [corn (field and sweet); soybeans, potatoes, green beans, radishes, sorghum, peanuts, head lettuce, peas]. There were no detectable residues of benoxacor at the limit of quantitation (LOQ) of 0.01 ppm (many samples were analyzed at an LOQ of 0.005 ppm and no residues were detected) in any raw agricultural commodity or processed commodity. No transfer of residue to animals is expected through their diet. Benoxacor is stable for a minimum of 12 months at temperatures down to -15°C.

B. Toxicological Profile

1. *Acute toxicity*. A rat acute oral study with an LD_{50} > 5,000 mg/kg, a rabbit acute dermal study with an LD_{50} > 2,010 mg/kg, a rat inhalation study with an LC_{50} > 2,000 mg/liter, a primary eye irritation study in the rabbit showing moderate eye irritation, a primary dermal irritation study in the rabbit showing benoxacor is not a skin irritant, and a skin sensitization study which showed benoxacor to be a skin sensitizer in the Guinea pig. Results of a dermal absorption study show a maximum of 55.7% of benoxacor is absorbed by the rat following a 24 hour dermal exposure. Benoxacor was applied to the shaved skin of 5 male and 5 female New Zealand white rabbits at dose levels of 0, 1,500, or 1,010 mg/kg for at least 22 consecutive days. This study showed benoxacor is not dermally toxic at doses greater than the limit dose of 1,000 mg/kg/day.

2. *Genotoxicty*. Benoxacor did not induce point mutations *in vitro* at limit (cytotoxic) concentrations in a *Salmonella/mammalian* microsome test or show any mutagenic activity in the Chinese hamster V79 mammalian point mutation test and is neither clastogenic nor aneugenic in the Chinese hamster at doses up to the limit dose of 5,000 mg/kg. Benoxacor did not induce unscheduled DNA synthesis in isolated rat hepatocytes at cytotoxic concentrations up to 20 micrograms/ml.

3. *Reproductive and developmental toxicity*. A 2-generation reproduction study in the rat at approximate doses of 0, 0.5, 2.5, 25 or 50 mg/kg/day. No effects on fertility, reproductive performance or development were seen in the rat at a maximally-tolerated dose of 50 mg/kg/day. Treatment related effects on body weight at feeding levels of > 25 mg/kg/day were accompanied by marginally reduced food intake only in the high dose group. The parental NOEL ranged from 3.4 to 4.8 mg/kg/day while the developmental NOEL was approximately 10-fold greater. A developmental toxicity study in the rat at doses of 0, 1, 100, or 400 mg/kg/day by gavage with maternal and developmental NOEL's of 1 and 100 mg/kg/day, respectively. Maternal, embryo, and fetal toxicity were observed at doses > 100 mg/kg/day. A developmental toxicity study in the rabbit at doses of 0, 0.5, 2.5, 12.5 or 62.5 mg/kg/day. Slight evidence of maternal and fetal toxicity was observed at 62.5 mg/kg/day. The maternal and developmental NOEL's were 12.5 mg/kg/day.

4. *Subchronic toxicity*. Six groups of 15 male and 15 female Sprague Dawley rats were fed benoxacor at dietary concentrations of approximately 0, 0.5, 5, 15, 50 or 300 mg/kg/day for 13 weeks. The liver (pigmentation, karyomegaly, cytomegaly, bile duct proliferation, portal mononuclear cell infiltration) and stomach (pyloric gland degeneration and necrosis) were identified as target organs in the 300 mg/kg/day group. Based on a significant depression of body weight gain at 50 and 300 mg/kg/day as well as hematology, clinical chemistry and pathology findings, the NOEL was determined to be 15 mg/kg/day.

A 90-day feeding study in the dog at approximate doses of 0, 0.25, 1, 5, 50, 150, or 400 mg/kg/day. Liver, kidney, stomach, and thymus were identified as target organs. The NOEL was 50 mg/kg/day. The maximum tolerated dose was exceeded at > 150 mg/kg/day.

A 90-day feeding study in CD-1 mice at dietary concentrations of approximately 0, 6.25, 62.5, 250, or 750 mg/kg/day for 90 days. Effects on survival, clinical signs, body weight, food consumption, the hematological system, and liver and kidney were seen at 750 mg/kg/day and to a lesser extent at 250 mg/kg/day. The NOEL was 62.5 mg/kg/day.

5. *Chronic toxicity*. A 52-week feeding study in the dog at doses of 0, 1, 5, 40, or 80 mg/kg. Liver and kidney were identified as target organs and the NOEL was established at 5 mg/kg.

An 18-month oncogenicity study in the mouse at approximate doses of 0, 1.4, 4.2, 84, or 168 mg/kg/day with a NOEL of 4.2 mg/kg/day for both chronic toxicity and tumors. Target organs were the liver and forestomach. A carcinogenic response was noted in the forestomach and is likely to be linked to a non-genotoxic mode of action involving direct irritation to the epithelial lining of the forestomach and limiting ridge between the non-glandular and glandular stomach.

A 24-month chronic feeding and oncogenicity study in the rat at approximate doses of 0, 0.5, 2.5, 25, or 50 mg/kg/day. Liver and forestomach were identified as target organs. A carcinogenic response was seen in the forestomach and is likely linked to a non-genotoxic mode of action involving direct irritation to the epithelial lining of the forestomach and the limiting ridge. The NOEL for tumors was 25 mg/kg/day and the NOEL for chronic toxicity was 0.5 mg/kg/day.

Based on the available chronic toxicity data, EPA has established the RfD for benoxacor at 0.004 mg/kg/day. This RfD is based on the 2 year feeding study in rats with a NOEL of 0.4 mg/kg/day and an uncertainty factor of 100. The uncertainty factor of 100 was applied to account for inter-species extrapolation (10) and intra-species variability (10).

Using the Guidelines for Carcinogenic Risk Assessment published September 24, 1986 (51 FR 33992), Novartis believes the Agency will classify benoxacor as a Group C carcinogen (possible human carcinogen) based on findings of a carcinogenicity effect in the non-glandular stomach of both rats and mice. Because this carcinogenic response was only observed at high doses in the non-glandular stomach of the rodent, an anatomical structure not found in humans, it is likely this response occurred via a non-genotoxic, threshold based mechanism. Novartis believes exposure to benoxacor should be regulated using a margin of exposure approach where the carcinogenic NOEL established in the most sensitive species, the mouse, was 4.2 mg/kg/day.

C. Aggregate Exposure

1. *Dietary exposure— Food*. For purposes of assessing the potential dietary exposure under the proposed tolerances, Novartis has estimated aggregate exposure based on the theoretical maximum residue contribution (TMRC) from the benoxacor tolerance of 0.01 ppm in or on raw agricultural commodities for which tolerances have been established for metolachlor. In conducting this exposure assessment, Novartis has made very conservative assumptions--100% of all raw agricultural products for which tolerances have been established for metolachlor will contain benoxacor residues and those residues would be at the level of the tolerance (0.01 ppm) which result in an overestimate of human exposure.

2. *Drinking water*. Although benoxacor is mobile and hydrolyzes slowly at low pHs, it rapidly degrades in the soil (half-life of 49 days under aerobic conditions and 70 days anaerobically). Based on this data, Novartis does not anticipate exposure to residues of benoxacor in drinking water. This is supported by extensive experience with metolachlor, where in large scale ground water monitoring studies, metolachlor has been detected in less than 4% of the samples with the typical value being 1 ppb or less. Since benoxacor is formulated as a 1 to 30 ratio with metolachlor, (maximum of 0.2 pounds benoxacor per acre) the presence of benoxacor in groundwater is highly unlikely. The EPA has not established a Maximum Concentration Level for residues of benoxacor in drinking water.

3. *Non-dietary exposure*. Novartis has evaluated the estimated non-occupational exposure to benoxacor and based on its low use rate concludes that the potential for non-occupational exposure to the general population is unlikely except for the potential residues in food crops discussed above. Benoxacor is used only on agricultural crops and is not used in or around the home.

D. Cumulative Effects

Novartis also considered the potential for cumulative effects of benoxacor and other substances that have a common mechanism of toxicity. Novartis concluded that consideration of a common mechanism of toxicity is not appropriate at this time. Novartis does not have any reliable information to indicate that toxic effects seen at high doses of benoxacor (generalized liver toxicity, nephrotoxicity and the occurrence of forestomach tumors in an organ not present in humans) would be cumulative with those of any other chemical compounds; thus Novartis is considering only the potential risks of benoxacor in its aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data base for benoxacor, Novartis has calculated that aggregate exposure to benoxacor will utilize 4.7% of the RfD for the U.S. population based on chronic toxicity endpoints and only 0.4% based on a margin of exposure assessment and a carcinogenic NOEL of 4.2 mg/kg/day. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to benoxacor residues.

2. *Infants and children*. Using the same conservative exposure assumptions used for the determination in the general population, Novartis has concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of benoxacor is 5.3% for nursing infants less than 1 year old, 20.2% for non-nursing infants, 11.9% for children 1-6 years old and 7.7% for children 7-12 years old. These worst case estimates are likely at least 4 times greater than actual values when considering that benoxacor residues have not been detected at the limit of quantitation of 0.005 ppm (tolerance is 0.01 ppm) and using a more realistic market share of 50% rather than the conservative 100%. Therefore, based on the completeness and reliability of the toxicity data base and the conservative exposure assessment, Novartis concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to benoxacor residues.

F. International Tolerances

A maximum residue level has not been established for benoxacor by the Codex Alimentarius Commission.

[FR Doc. 97–30659 Filed 11–20–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5925–9]

Availability of Draft Document on Information for States on Developing Affordability Criteria for Drinking Water

AGENCY: Environmental Protection Agency.

ACTION: Notice of document availability.

SUMMARY: The Environmental Protection Agency is making available for public comment a draft document entitled Information for States on Developing Affordability Criteria for Drinking Water. The Safe Drinking Water Act Amendments of 1996 require the Agency to publish information to assist states in developing affordability criteria. To meet the statutory schedule, this information must be published by February 6, 1998. The draft document being made available today was developed by a diverse working group of stakeholders under the auspices of the National Drinking Water Advisory Council (NDWAC). The full NDWAC reviewed this draft and recommended it to EPA as a draft to be made available for public comment. EPA invites interested members of the public to submit comments on the draft document. EPA will consider public comments and publish a final document by the February 6, 1998, statutory deadline.

DATES: Submit comments on or before December 31, 1997.

ADDRESSES: Address all comments concerning this draft document to Peter E. Shanaghan, Small Systems Coordinator, Office of Ground Water and Drinking Water, Mail Code 4606, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Peter E. Shanaghan, 202–260–5813 or shanaghan.peter@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: A copy of the draft document may be obtained by calling the Safe Drinking Water Hotline at 1–800–426–4791. The hotline operates Monday through Friday, 9:00 a.m.–5:30 p.m. (EST). The document may also be downloaded from EPA's homepage, http://www.epa.gov/OGWDW.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–30660 Filed 11–20–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00218A; FRL–5757–5]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: This document corrects in the ''SUPPLEMENTARY INFORMATION'' section the Fax-On-Demand item numbers assigned to the support documents for the 12 chemicals discussed in the **Federal Register** issue of Thursday, October 30, 1997, concerning acute exposure guideline levels for these hazardous substances.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document corrects in the ''SUPPLEMENTARY INFORMATION'' section the Fax-On-Demand item numbers assigned to the support documents for the 12 chemicals discussed in the **Federal Register** issue of Thursday, October 30, 1997 (62 FR 58840) (FRL–5737–3).

In the **Federal Register** issue of October 30, 1997, on page 58840, in FR Doc. 97–28642, under ''SUPPLEMENTARY INFORMATION'' make the following corrections:

1. On page 58840, in the second column, under the heading ''Fax-On-Demand,'' line 2, the item number ''3800'' is corrected to read ''4800.''

2. On page 58841, in the third column, under IV., the table is corrected to read as follows:

CAS No.	Chemical name	Fax-On-Demand item no.
57–14–7 ...	1,1–Dimethylhydrazine	4852
60–34–4 ...	Methylhydrazine	4853
62–53–3 ...	Aniline	4854
75–21–8 ...	Ethylene oxide	4861
302–01–2	Hydrazine	4891
540–59–0	1,2–Dichloroethene	4895
540–73–8	1,2–Dimethylhydrazine	4852
7697–37–2	Nitric acid	4913
7782–41–4	Fluorine	4919
7782–50–5	Chlorine	4917
7784–42–1	Arsine	4922
7803–51–2	Phosphine	4924

List of Subjects

Environmental protection, Hazardous substances.

Dated: November 14, 1997.

Vanessa Vu,

Director, Risk Assessment Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–30658 Filed 11–20–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting Tuesday, November 25, 1997

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, November 25, 1997, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—Common Carrier—Title: Implementation of the Telecommunications Act of 1996 and Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers (CC Docket No. 96–238). Summary: The Commission will consider action concerning procedural rules to govern the resolution of formal complaints filed against common carriers in light of comments received.

2—Office of General Counsel and Mass Media—Title: Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Fixed Television Service Licenses; Reexamination of the Policy Statement on Comparative Broadcast Hearings (GC Docket No. 92–52) and Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases (GEN Docket No. 90–264). Summary: The Commission will consider action concerning the implementation of the provisions of the Balanced Budget Act of 1997, which amended the Commission's competitive bidding authority to include mutually exclusive initial license applications for certain types of broadcast stations, and also concerning the reexamination of the comparative criteria that the Commission has used to select among mutually exclusive applications for new broadcast facilities.

3—International—Title: Rules and Policies on Foreign Participation in the U.S. Telecommunications Market (IB Docket No. 97–142) and Market Entry and Regulation of Foreign-Affiliated Entities (IB Docket No. 95–22). Summary: The Commission will consider action concerning rules governing the entry and regulation of foreign-affiliated carriers in the U.S. market for basic telecommunications services.

4—International—Title: Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States (IB Docket No. 96–111); Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations (CC Docket No. 93–23, RM–7931) and COMMUNICATIONS SATELLITE CORPORATION -- Request for Waiver of Section 25.131(j)(1) of the Commission's Rules as it Applies to Services Provided via the INTELSAT K Satellite (File No. ISP–92–007). Summary: The Commission will consider action concerning rules governing the entry of foreign-licensed satellite providers into the U.S. market to provide domestic and international satellite services.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its—inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's

Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, DC metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Dated November 18, 1997.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–30850 Filed 11-19-97; 3:36 pm]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Report to the Committee on Banking and Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies.

SUMMARY: This report has been prepared by the FDIC pursuant to Section 37(c) of the Federal Deposit Insurance Act (12 U.S.C 1831n(c)). Section 37(c) requires each federal banking agency to report to the Committee on Banking and Financial Services of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate any differences between any accounting or capital standard used by such agency and any accounting or capital standard used by any other such agency. The report must also contain an explanation of the reasons for any discrepancy in such accounting and capital standards and must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, telephone (202) 898-8906.

SUPPLEMENTARY INFORMATION: The text of the report follows: Report to the Committee on Banking and Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies.

A. Introduction

This report has been prepared by the Federal Deposit Insurance Corporation (FDIC) pursuant to Section 37(c) of the Federal Deposit Insurance Act, which requires the agency to submit a report to specified Congressional Committee describing any differences in regulatory capital and accounting standards among the federal banking and thrift agencies, including an explanation of the reasons for these differences. Section 37(c) also requires the FDIC to publish this report in the **Federal Register**. This report covers differences existing during 1995 and 1996 and developments affecting these differences.

The FDIC, the Board of Governors of the Federal Reserve System (FRB), and the Office of the Comptroller of the Currency (OCC) (hereafter, the banking agencies) have substantially similar leverage and risk-based capital standards. While the Office of Thrift Supervision (OTS) employs a regulatory capital framework that also includes leverage and risk-based capital requirements, it differs in several respects from that of the banking agencies. Nevertheless, the agencies view the leverage and risk-based capital requirements as minimum standards and most institutions are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk.

The banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed uniform Reports of Condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the banking agencies through December 31, 1996, have been substantially consistent with generally accepted accounting principles (GAAP). In the limited number of cases where the bank Call Report standards differed from (GAAP), the regulatory reporting requirements were intended to be more conservative than GAAP. The OTS requires each savings association to file the Thrift Financial Report (TFR), the reporting standards for which are consistent with GAAP. Thus, the reporting standards applicable to the bank Call Report have differed in some respect from the reporting standards applicable to the TFR.

On November 3, 1995, the FFIEC announced that it had approved the adoption of GAAP as the reporting basis for the balance sheet, income statement, and related schedules in the Call Report, effective with the March 31, 1997, report date. On December 31, 1996, the FFIEC notified banks about the Call Report revisions for 1997, including the previously announced move to GAAP. Adopting GAAP as the reporting basis for recognition and measurement purposes in the basic schedules of the Call Report was designed to eliminate existing differences between bank regulatory reporting standards and GAAP, thereby producing greater consistency in the information collected in bank Call Reports and general purpose financial statements and reducing regulatory burden. In addition, the move to GAAP for Call Report purposes in 1997 should for the most part eliminate the differences in accounting standards among the agencies.

Section 303 of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) of 1994 (12 U.S.C. 4803) requires the banking agencies and the OTS to conduct a systematic review of the regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate inconsistencies. It also directs the four agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The results of these efforts must be ''consistent with the principles of safety and soundness, statutory law and policy, and the public interest.'' The four agencies' efforts to eliminate existing differences among their regulatory capital standards as part of the Section 303 review are discussed in the following section.

B. Differences in Capital Standards Among the Federal Banking and Thrift Agencies

B.1. Minimum Leverage Capital

The banking agencies have established leverage capital standards based upon the definition of tier 1 (or core) capital contained in their risk-based capital standards. These standards require the most highly-rated banks (i.e., those with a composite rating of ''1'' under the Uniform Financial Institutions Rating System) to maintain a minimum leverage capital ratio of at least 3 percent if they are not anticipating or experiencing any significant growth and meet certain

other conditions. All other banks must maintain a minimum leverage capital ratio that is at least 100 to 200 basis points above this minimum (i.e., an absolute minimum leverage ration of not less than 4 percent).

The OTS has a 3 percent core capital and a 1.5 percent tangible capital leverage requirement for savings associations. Consistent with the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the OTS has proposed revisions to its leverage standards for savings associations so that its minimum leverage standard will be at least as stringent as the revised leverage standard that the OCC applies to national banks. However, from a practical standpoint, the 4 percent leverage requirement to be ''adequately capitalized'' under the OTS' Prompt Correction Action rule is the controlling standard for savings associations.

As a result of the Section 303 review of the four agencies' regulatory capital standards, the agencies are considering adopting a uniform leverage requirement that would subject institutions rated a composite 1 under the Uniform Financial Institutions Rating System to a minimum 3 percent leverage ratio and all other institutions to a minimum 4 percent leverage ratio. This change would simplify and streamline the banking agencies' leverage rules and would make all four agencies' rules in this area uniform. On February 4, 1997, the FDIC Board of Directors approved the publication for public comment of a proposed amendment to the FDIC's leverage capital standards that would implement this change. This proposal is to be published jointly with the other agencies.

B.2. Interest Rate Risk

Section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) mandates that the agencies' risk-based capital standards take adequate account of interest rate risk. The banking agencies requested comment in August 1992 and September 1993 on proposals to incorporate interest rate risk into their risk-based capital standards. In August 1995, each of the banking agencies amended its capital standards to specifically include an assessment of a bank's interest rate risk, as measured by its exposure to declines in the economic value of its capital due to changes in interest rates, in the evaluation of bank capital adequacy. At the same time, the banking agencies issued a proposed joint policy statement describing the process the agencies would use to measure and assess the exposer of the economic value of a bank's capital. After considering the comments on the proposed policy statement, the banking agencies issued a Joint Agency Policy Statement on Interest Rate Risk in June 1996 which provides guidance on sound practices for managing interest rate risk. This policy statement does not establish a standardized measure of interest rate risk nor does it create an explicit capital charge for interest create risk. Instead, the policy statement identifies the standards upon which the agencies will evaluate the adequacy and effectiveness of a bank's interest rate risk management.

In 1993, the OTS adopted a final rule which adds an interest rate risk component to its risk-based capital standards. Under this rule, savings associations with a greater than normal interest rate exposure must take a deduction from the total capital available to meet their risk-based capital requirement. The deduction is equal to one half of the difference between the institution's actual measured exposure and the normal level of exposure. The OTS has partially implemented this rule by formalizing the review of interest rate risk; however, no deductions from capital are being made. As described above, the approach adopted by the banking agencies differs from that of the OTS.

B.3. Subsidiaries

The banking agencies generally consolidate all significant majority-owned subsidiaries of the parent organization for regulatory capital purposes. The purpose of this practice is to assure that capital requirements are related to all of the risks to which the bank ins exposed. For subsidiaries which are not consolidated on a line-for-line basis, their balance sheets may be consolidated on a pro-rata basis, bank investments in such subsidiaries may be deducted entirely form capital, or the investments may be risk-weighted at 100 percent, depending upon the circumstances. These options for handling subsidiaries for purposes of determining the capital adequacy of the parent organization provide the banking agencies with the flexibility necessary to ensure that institutions maintain capital levels that are commensurate with the actual risks involved.

Under OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries engaged in activities that are permissible for national banks and subsidiaries engaged in ''impermissible'' activies for national banks. For regulatory capital purposes, subsidiaries of savings associations that engage only in permissible activities are consolidated on a line-for-line basis, if majority-owned, and on a pro rata basis, if ownership is between 5 percent and 50 percent. As a general rule, investments in, and loans to, subsidiaries that engage in impermissible activities are deducted when determing the capital adequacy of the parent. However, for subsidiaries which were engaged in impermissible activities prior to April 12, 1989, investments in, and loans to, such subsidiaries that were outstanding as of that date were grandfathered and were phased out of capital over a five-year transition period that expired on July 1, 1994. During this transition period, investments in subsidiaries engaged in impermissible activities which had not been phased out of capital were consolidated on a pro rata basis. The phase-out provisions were amended by the Housing and Community Development Act of 1992 with respect to impermissible and activities. The OTS was permitted to extend the transition period until July 1, 1996, on a case-by-case basis if certain conditions were met.

B.4. Intangible Assets

The banking agencies' rules permit purchased credit card relationships and mortgage servicing rights to count toward capital requirements, subject to certain limits. Both forms of intangible assets are in the aggregate limited to 50 percent of Tier 1 capital. In addition, purchased credit card relationships alone are restricted to no more than 25 percent of an institution's Tier 1 capital. Any mortgage servicing rights and purchased credit card relationships that exceed these limits, as well as all other intangible assets such as goodwill and core deposit intangibles, are deducted from capital and assets in calculating an institution's Tier 1 capital.

In February 1994, the OTS issued a final rule making its capital treatment of intangible assets generally consistent with the banking agencies' rules. However, the OTS rule grandfathers preexisting core deposit intangibles up to 25 percent of core capital and all purchased mortgage servicing rights acquired before February 1990.

B.5. Capital Requirements for Recourse Arrangements

B.5.a. Leverage Capital Requirements—Through December 31, 1996, the banking agencies required full leverage capital charges on most assets sold with recourse, even when the recourse is limited. This included transactions where the recourse arises

because the seller, as servicer, must absorb credit losses on the assets being serviced. Two exceptions to this general rule pertained to certain pools of first lien one-to-four family residential mortgages and to certain agricultural mortgage loans. As required by Section 208 of the RCDRIA, an additional exception took effect in 1995 for small business loans and leases sold with recourse by ''qualified insured depository institutions.'' Banks had to maintain leverage capital against most assets sold with recourse because the banking agencies' regulatory reporting rules that were in effect through December 31, 1996, generally did not permit assets sold with recourse to be removed from a bank's balance sheet (see ''Sales of Assets With Recourse'' in Section C.1. below for further details). As a result, such assets continued to be included in the asset base which was used to calculate a bank's leverage capital ratio.

Because the regulatory reporting rules for thrifts enable them to remove assets sold with recourse from their balance sheets when such transactions qualify as sales under GAAP, the OTS capital rules do not require thrifts to hold leverage capital against such assets.

As a result of the adoption of GAAP as the reporting basis for bank Call Reports in 1997, banks will no longer be precluded from removing assets transferred with recourse from their balance sheets if the transfers qualify for sale treatment under GAAP. Thus, this capital difference disappears in 1997.

B.5.b. Low Level Recourse Transactions—The banking agencies and the OTS generally require a full risk-based capital charge against assets sold with recourse. However, in the case of assets sold with limited recourse, the OTS has limited the capital charge to the lesser of the amount of the recourse or the actual amount of capital that would otherwise be required against that asset, i.e., the full effective risk-based capital charge. This is known as the ''low level recourse'' rule.

The banking agencies proposed in May 1994 to adopt the low level recourse rule that the OTS already had in place. Such action was mandated four months later by Section 350 of the RCDRIA. The FDIC adopted the low level recourse rule in March 1995, and the other banking agencies have taken similar action. Hence, this difference in capital standards has been eliminated.

B.5.c. Senior-Subordinated Structures—Some securitized asset arrangements involve the creation of senior and subordinated classes of securities. When a bank originates such a transaction and retains the subordinated interest, the banking agencies require that capital be maintained against the entire amount of the asset pool. However, when a bank acquires a subordinated interest in a pool of assets that it did not own, the banking agencies assign the investment in the subordinated security to the 100 percent risk weight category.

In general, the OTS requires a thrift that holds the subordinated interest in a senior-subordinated structure to maintain capital against the entire amount of the underlying asset pool regardless of whether the subordinated interest has been retained or has been purchased.

In May 1994, the banking agencies proposed to require banking organizations that purchase subordinated interests which absorb the first dollars of losses from the underlying assets to hold capital against the subordinated interest plus all more senior interests. This proposal was part of a larger proposal issued jointly by the four agencies to address the risk-based capital treatment of recourse and direct credit substitutes (i.e., guarantees on a third party's assets). The four agencies have considered the comments on the entire proposal and have been developing a revised proposal on recourse and direct credit substitutes that will also encompass the risk-based capital treatment of asset securitization transactions.

B.5.d. Recourse Servicing—The right to service loans and other assets may be retained when the assets are sold. This right also may be acquired from another entity. Regardless of whether servicing rights are retained or acquired, recourse is present whenever the servicer must absorb credit losses on the assets being serviced. The banking agencies and the OTS require risk-based capital to be maintained against the full amount of assets upon which a selling institution, as servicer, must absorb credit losses. Additionally, the OTS applies a capital charge to the full amount of assets being serviced by a thrift that has purchased the servicing from another party and is required to absorb credit losses on the assets being serviced.

The agencies' aforementioned May 1994 proposal also would require banking organizations that purchase certain loan servicing rights which provide loss protection to the owners of the loans serviced to hold capital against those loans. The treatment of purchased recourse servicing is also being addressed in the revised proposal on recourse and direct credit substitutes that the agencies are developing.

B.6. Collateralized Transactions

The FRB and the OCC have lowered from 20 percent to zero percent the risk weight accorded collaterialized claims for which a positive margin of protection is maintained on a daily basis by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government or the central governments of countries that are members of the Organization of Economic Cooperation and Development (OECD).

The FDIC and the OTS still assign a 20 percent risk weight to claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government or OECD central governments.

As part of their Section 303 review of capital standards, the banking and thrift agencies issued a joint proposal in August 1996 that would permit collateralized claims that meet criteria that are uniform among all four agencies to be eligible for a zero percent risk weight. In general, this proposal would allow less capital to be held by institutions supervised by the FDIC and the OTS for transactions collateralized by cash or U.S. or OECD government securities. The proposal would eliminate the differences among the agencies regarding the capital treatment of collateralized transactions.

B.7. Limitation on Subordinated Debt and Limited-Life Preferred Stock

Consistent with the Basle Accord, the banking agencies limit the amount of subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital to an amount not to exceed 50 percent of Tier 1 capital. In addition, all maturing capital instruments must be discounted by 20 percent in each of the last five years before maturity. The banking agencies adopted this approach in order to emphasize equity versus debt in the assessment of capital adequacy.

The OTS has no limitation on the ratio of maturing capital instruments as part of Tier 2 capital. Also, for all maturing instruments issued on or after November 7, 1989 (those issued before are grandfathered with respect to the discounting requirement), thrifts have the option of using either (a) the discounting approach used by the banking regulators, or (b) an approach which allows for the full inclusion of all such instruments provided that the amount maturing in any one year does not exceed 20 percent of the thrift's total capital.

B.8. Presold Residential Construction Loans

The four agencies assign a 50 percent risk weight to loans that a builder has obtained to finance the construction of one-to-four family residential properties. These properties must be presold, and the lending relationships must meet certain other criteria. The OTS and OCC rules indicate that the property must be presold before the construction loan is made in order for the loan to qualify for the 50 percent risk weight. The FDIC and FRB permit loans to builders for residential construction to qualify for the 50 percent risk weight once the property is presold, even if that event occurs after the construction loan has been made.

As a result of the Section 303 review of the four agencies' regulatory capital standards, the OTS and OCC are considering adopting the treatment of presold residential construction loans followed by the FDIC and the FRB, thereby making the agencies' rules in this area uniform. This would not require an amendment of the FDIC's risk-based capital standards.

B.9. Nonresidential Construction and Land Loans

The banking agencies assign loans for nonresidential real estate development and construction purposes to the 100 percent risk weight category. The OTS generally assigns these loans to the same 100 percent risk category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, the excess portion is deducted from capital.

B.10. Privately-Issued Mortgage-Backed Securities

The banking agencies, in general, place privately-issued mortgage-backed securities in either the 50 percent or 100 percent risk-weight category, depending upon the appropriate risk category of the underlying assets. However, privately-issued mortgage-backed securities, if collateralized by government agency or government-sponsored agency securities, are generally assigned to the 20 percent risk weight category.

The OTS assigns privately-issued high-quality mortgage-related securities to the 20 percent risk weight category. These are, generally, privately-issued mortgage-backed securities with AA or better investment ratings.

B.11. Other Mortgage-Backed Securities

The banking agencies and the OTS automatically assign to the 100 percent risk weight category certain mortgage-backed securities, including interest-only strips, principal-only strips, and residuals. However, once the OTS' interest rate risk amendments to its risk-based capital standards take effect, stripped mortgage-backed securities will be reassigned to the 20 percent or 50 percent risk weight category, depending upon these securities' characteristics. Residuals will remain in the 100 percent risk weight category.

B.12. Junior Liens on One-to-Four Family Residential Properties

In some cases, a bank may make two loans on a single residential property, one secured by a first lien, the other by a second lien. In this situation, the FRB and the OTS view both loans as a single extension of credit secured by a first lien and assign the combined loan amount a 50 percent risk weight if this amount represents a prudent loan-to-value ratio. If the combined amount exceeds a prudent loan-to-value ratio, the loans are assigned to the 100 percent risk weight category. The FDIC also combines the first and second liens to determine the appropriateness of the loan-to-value ratio, but it applies the risk weights differently than the FRB and the OTS. If the combined loan amount represents a prudent loan-to-value ratio, the FDIC risk weights the first lien at 50 percent and the second lien at 100 percent; otherwise, both liens are risk-weighted at 100 percent. This combining of first and second liens is intended to avoid possible circumvention of the capital requirement and to capture the risks associated with the combined loans.

The OCC treats all first and second liens separately. It assigns the loan secured by the first lien to the 50 percent risk weight category and the loan secured by the second lien to the 100 percent risk weight category.

As a result of the Section 303 review of the four agencies' regulatory capital standards, the agencies are considering adopting the OCC's treatment of junior liens on one-to-four family residential properties in order to eliminate this difference among the agencies' risk-based capital guidelines. On February 4, 1997, the FDIC Board of Directors approved the publication for public comment of a proposed amendment to the FDIC'S guidelines that would treat first and junior liens separately with qualifying first liens risk-weighted at 50 percent and all junior liens risk-weighted at 100 percent. This amendment, which is to be published jointly with the other agencies, will simplify the risk-based capital standards and treat all junior liens consistently.

B.13. Mutual Funds

Rather than looking to a mutual fund's actual holdings, the banking agencies assign all of a bank's holdings in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its operating rules. Thus, the banking agencies take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund because the composition and risk characteristics of its future holdings cannot be known in advance. In no case, however, may a risk-weight of less than 20 percent be assigned to an investment in a mutual fund.

The OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time, but not less than 20 percent. In addition, both the OTS and the OCC guidelines also permit, on a case-by-case basis, investments in mutual funds to be allocated on a pro rata basis. However, the OTS and the OCC apply the pro rata allocation differently. While the OTS applies the allocation based on the actual holdings of the mutual fund, the OCC applies it based on the highest amount of holdings the fund is permitted to hold as set forth in its prospectus.

The four agencies' Section 303 review of their regulatory capital standards has led them to consider adopting the OCC's pro rata allocation alternative for risk weighting investments in mutual funds, thereby making their risk-based capital rules in this area uniform. On February 4, 1997, the FDIC Board of Directors approved the publication for public comment of a proposed amendment to the FDIC's risk-based capital standards that would allow banks to apply a pro rata allocation of risk weights to a mutual fund based on the limits set forth in the prospectus. This proposal is to be published jointly with the other agencies.

B.14. "Covered Assets"

The banking agencies generally place assets subject to guarantee arrangements by the FDIC or the former Federal Savings and Loan Insurance Corporation in the 20 percent risk weight category. The OTS places these ''covered assets'' in the zero percent risk-weight category.

B.15. Pledged Deposits and Nonwithdrawable Accounts

Instruments such as pledged deposits, nonwithdrawable accounts, Income Capital Certificates, and Mutal Capital Certificates do not exist in the banking industry and are not addressed in the capital guidelines of the three banking agencies.

The capital guidelines of the OTS permit savings associations to include pledged deposits and nonwithdrawable accounts that meet OTS criteria, Income Capital Certificates, and Mutal Capital Certificates in capital.

B.16. Agricultural Loan Loss Amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 may defer and amortize certain losses related to agricultural lending that were incurred on or before December 31, 1991. These losses must be amortized over seven years. The unamortized portion of these losses is included as an element of Tier 2 capital under the banking agencies' risk-based capital standards.

Thrifts were not eligible to participate in the agricultural loan loss amortization program established by this statute.

C. Differences in Reporting Standards Among the Federal Banking and Thrift Agencies

C.1. Sales of Assets with Recourse

In accordance with FASB Statement No. 77, a transfer of receivables with recourse before January 1, 1997, is recognized as a sale if: (1) the transferor surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

Through December 31, 1996, the practice of the banking agencies generally has been to allow banks to report transfers of receivables as sales only when the transferring institution: (1) retains no risk of loss from the assets transferred and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, except for the types of transfers noted below, transfers of assets with recourse could not normally be reported as sales on the Call Report. However, this general rule did not apply to the transfer of first lien one-to-four family residential mortgage loans and agricultural mortgage loans under one of the government programs (Government National Mortgage Association, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and Federal Agricultural Mortgage Corporation). Transfers of mortgages under these programs were treated as sales for Call Report purposes, provided the transfers would be reported as sales under GAAP. Furthermore, private transfers of first lien one-to-four family residential mortgages also were reported as sales if the transferring institution retained only an insignificant risk of loss on the assets transferred. However, under the risk-based capital framework, transfers of mortgage loans with recourse under the government programs or in private transfers that qualify as sales for Call Report purposes are viewed as off-balance sheet items that are assigned a 100 percent credit conversion factor. Thus, for risk-based capital purposes, capital is generally required to be held for the full amount outstanding of mortgages sold with recourse in such transactions, subject to the low-level recourse rule discussed earlier in this report.

Through year-end 1996, the OTS accounting policy has been to follow FASB Statement No. 77. However, in the calculation of risk-based capital under the OTS guidelines, assets sold with recourse that have been removed from the balance sheet in accordance with Statement No. 77 are converted at 100 percent and also are subject to the low-level recourse rule. This effectively negates that sale treatment recognized on a GAAP basis for risk-based capital purposes, but not for leverage capital purposes.

Another exception to the banking agencies' general rule for reporting transfers with recourse applies to sales of small business loans and leases with recourse by ''qualified insured depository institutions.'' Section 208 of the RCDRIA specifies that the regulatory reporting requirements applicable to these recourse transactions must be consistent with GAAP. Section 208 also requires the banking agencies and the OTS to adopt more favorable risk-based capital requirements for these recourse exposures than those described above. During August and September 1995, the FRB published a final rule and the FDIC, the OCC, and the OTS published interim rules (with requests for comment) which implemented Section 208 in a uniform manner.

C.2. Futures and Forward Contracts

Through December 31, 1996, the banking agencies have not, as a general rule, permitted the deferral of losses on futures and forward contracts used for hedging purposes. All changes in market value of futures and forward contracts are reported in current period income. The banking agencies adopted this reporting standard prior to the issuance of FASB Statement No. 80, which permits hedge or deferral accounting under certain circumstances. Hedge accounting in accordance with FASB Statement No. 80 is permitted by the banking agencies only for futures and forward contracts used in mortgage banking operations.

The OTS practice is to follow GAAP for futures and forward contracts. In accordance with FASB Statement No. 80, when hedging criteria are satisfied, the accounting for a contract is related to the accounting for the hedged item. Changes in the market value of the contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in the deferral of losses which are reflected as basis adjustments to assets and liabilities on the balance sheet.

C.3. Excess Servicing Fees

As a general rule, through December 31, 1996, the banking agencies did not follow GAAP for excess servicing fees, but required a more conservative treatment. For loan sales that occurred prior to 1997, excess servicing arose when loans were sold with servicing retained and the stated servicing fee rate exceeded a normal servicing fee rate. Except for sales of pools of first lien one-to-four family residential mortgages for which the banking agencies' approach was consistent with the provisions of FASB Statement No. 65 that were in effect through year-end 1996, excess servicing fee income in banks was to be reported as realized over the life of the transferred asset.

In contrast, for loan sales that occurred prior to 1997, the OTS allowed the present value of the future excess servicing fee to be treated as an adjustment to the sales price for purposes of recognizing gain or loss on the sale. This approach was consistent with the then applicable provisions of FASB Statement No. 65.

C.4. Offsetting of Assets and Liabilities

FASB Interpretation No. 39, ''Offsetting of Amounts Related to Certain Contracts,'' became effective in 1994. Interpretation No. 39 interprets the longstanding accounting principle that ''the offsetting of assets and liabilities in the balance sheet is improper except where a right of setoff exists.'' Under Interpretation No. 39, four conditions must be met in order to demonstrate that a right of setoff exists. Then, a debtor with ''a valid right of setoff may offset the related asset and liability and report the net amount.'' The banking agencies allow banks to apply Interpretation No. 39 for Call Report purposes solely as it relates to on-balance sheet amounts associated with off-balance sheet conditional and

exchange contracts (e.g., forwards, interest rate swaps, and options). Under the Call Report instructions in effect through December 31, 1996, the netting of other assets and liabilities is not permitted unless specifically required by the instructions.

The OTS practice has been to follow GAAP as it relates to offsetting in the balance sheet.

C.5. Push Down Accounting

Push down accounting is the establishment of a new accounting basis for a depository institution in its separate financial statements as a result of a substantive change in control. Under push down accounting, when a depository institution is acquired, yet retains its separate corporate existence, the assets and liabilities of the acquired institution are restated to their fair values as of the acquisition date. These values, including any goodwill, are reflected in the separate financial statements of the acquired institution as well as in any consolidated financial statements of the institution's parent.

The banking agencies require push down accounting when there is at least a 95 percent change in ownership. This approach is generally consistent with accounting interpretations issued by the staff of the Securities and Exchange Commission.

The OTS requires push down accounting when there is at least a 90 percent change in ownership.

C.6. Negative Goodwill

Under Accounting Principles Board Opinion No. 16, ''Business Combinations,'' negative goodwill arises when the fair value of the net assets acquired in a purchase business combination exceeds the cost of the acquisition and a portion of this excess remains after the values otherwise assignable to the acquired noncurrent assets have been reduced to a zero value.

The banking agencies require negative goodwill to be reported as a liability on the balance sheet and do not permit it to be netted against goodwill that is included as an asset. This ensures that all goodwill assets are deducted in regulatory capital calculations consistent with the internationally agreed-upon Basle Accord.

The OTS permits negative goodwill to offset goodwill assets on the balance sheet.

C.7. In-Substance Defeasance of Debt

In-substance defeasance involves a debtor irrevocably placing risk-free monetary assets in a trust established solely for satisfying the debt. According to FASB Statement No. 76, the liability is considered extinguished for financial reporting purposes if the possibility that the debtor would be required to make further payments on the debt, beyond the funds placed in the trust, is remote. With defeasance, the debt is netted against the assets placed in the trust, a gain or loss results in the current period, and both the assets placed in the trust and the liability are removed from the balance sheet.

For Call Report purposes through December 31, 1996, the banking agencies did not permit banks to report the defeasance of their liabilities in accordance with Statement No. 76. Instead, banks were to continue reporting any defeased debt as a liability and the securities contributed to the trust as assets. No netting was permitted, nor was any recognition of gains or losses on the transaction allowed. The banking agencies did not adopt Statement No. 76 because of uncertainty regarding the irrevocability of trusts established for defeasance purposes. Furthermore, defeasance would not relieve the bank of its contractual obligation to pay depositors or other creditors. In June 1996, the FASB issued a new accounting standard (FASB Statement No. 125) that supersedes Statement No. 76 for defeasance transactions occurring after 1996, thereby bringing GAAP in line with the Call Report treatment for these transactions.

The OTS practice has been to follow GAAP for defeasance transactions.

Dated at Washington, D.C., this 17th day of November, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–30560 Filed 11–20–97; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Notice of Opportunity to Submit Amicus Curiae Briefs in an Unfair Labor Practice Proceeding Pending Before the Federal Labor Relations Authority; FLRA Case No. WA–CA–40743

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file amicus curiae briefs in a case pending before the Federal Labor Relations Authority. In the subject case, the Authority is determining whether section 2(d) of Executive Order 12871 constitutes an agency election to bargain on matters set forth in section 7106(b)(1) of the Federal Service Labor-Management Relations Statute (5 U.S.C. 7106(b)(1)), and whether such an election can be enforced in Authority unfair labor practice and subsequent court review proceedings.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested persons to file briefs as amici curiae on a significant issue arising in a case pending before the Authority. The issue is common to a number of other cases also pending before the Authority. The Authority is considering the cases pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (1994 & Supp. II 1996) (Statute). The issue concerns an agency's obligation to negotiate on subjects set forth in section 7106(b)(1) of the Statute in light of the provisions of sections 2(d) and 3 of Executive Order 12871. Section 2(d) of Executive Order 12871 provides in relevant part that agency heads subject to Chapter 71 of title 5, United States Code shall ''negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same[.]'' Section 3 of Executive Order 12871 provides in relevant part that it ''is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, [or] its agencies * * *.''

DATES: Briefs submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Case Control Office by 5 p.m. on Thursday, December 18, 1997. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.

ADDRESSES: Mail or deliver briefs to Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW., Room 415, Washington, D.C. 20424–0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, (202) 482–6540.

SUPPLEMENTARY INFORMATION: The case presenting the issue on which amicus briefs are being solicited is before the Authority on exceptions to a recommended decision and order of an Administrative Law Judge (Judge) resolving unfair labor practice allegations. The following summary is offered.

In its partial decision in *U.S. Department of Commerce, Patent and Trademark Office,* Case No. WA–CA–40743 (*PTO*), the Authority concluded, in agreement with the Judge, that the agency violated sections 7116(a)(1) and (5) of the Statute by failing to bargain with the union over the impact and implementation of its decision to use term appointments to fill certain bargaining unit positions. The Authority also determined that the agency's decision to use term appointments concerns a matter encompassed by section 7106(b)(1) of the Statute. However, the Authority did not rule on the General Counsel's allegation that the agency violated the Statute by failing to bargain over the substance of its decision to use the term appointments. The Authority in *PTO* decided that resolving this remaining allegation requires examining provisions of the Statute and Executive Order 12871, as well as relevant precedent.

The Authority determined that the record before it in *PTO* did not adequately address issues critical to completing the analysis required to decide this remaining allegation. In particular, the Authority stated that the parties in *PTO,* as well as parties in other pending cases in which the General Counsel had similarly alleged that agencies had violated the Statute by refusing to bargain over matters encompassed by section 7106(b)(1), have not fully addressed long-established precedent regarding bargaining obligations under section 7106(b)(1).

Accordingly, with respect to the remaining allegation concerning the agency's obligation under section 7106(b)(1) to bargain over its decision to use term appointments, the Authority described in Section IV.C. through E. of its partial decision in *PTO,* applicable precedent and questions that arise from the parties' arguments. The Authority directed the parties in *PTO* and the other listed cases to submit briefs on the questions developed in its partial decision. The questions are set forth below.

Additionally, parties in the other listed cases were directed to address whether there are facts or issues in their cases that are distinguishable from those in *PTO* on the particular allegation that the respondent was obligated to bargain under section 7106(b)(1).

Finally, the Authority provided the parties to the various cases the opportunity to request oral argument before the Authority. However, the Authority determined that participation in any oral argument would be confined to the parties to the various pending cases, in the absence of a demonstration that the interests of a person desiring to participate in the oral argument will not adequately be represented by these parties.

In addition to *PTO,* the other pending cases are:

1. *Department of the Air Force, 647th Air Base Group, Hanscom Air Force Base, Massachusetts (and National Association of Government Employees, SEIU, AFL–CIO, Local R1–8),* Case No. BN–CA–41011;

2. *U.S. Department of Justice, Immigration and Naturalization Service (and American Federation of Government Employees, National Border Patrol Council, AFL–CIO),* Case No. WA–CA–50048;

3. *Social Security Administration, Santa Rosa District Office, Santa Rosa, California (and American Federation of Government Employees, Council 147, AFL–CIO),* Case No. SF–CA–50155; and

4. *U.S. Department of Veterans Affairs Medial Center, Lexington, Kentucky (and National Association of Government Employees),* Case No. CH–CA–50399.

Although the questions set forth below were asked of the parties in *PTO* and the other cases listed above, the matters addressed in the questions posed are likely to be of concern to the Federal sector labor-management relations community in general. Therefore, the Authority finds it appropriate to provide for the filing of amicus curiae briefs responding to the following questions, and addressing any other matters deemed relevant to resolving the questions raised in this and the other cases listed above concerning the respondent's obligation to bargain under section 7106(b)(1) of the Statute. Responses should address, at a minimum, the Statute, legislative history, Executive Order 12871, Authority and judicial precedent, as discussed in the Authority's partial decision in *PTO.* If it is contended that this precedent is distinguishable or was wrongly decided, the responses should provide the basis for this contention.

1. Under what circumstances, if any, does an election to bargain under section 7106(b)(1) of the Statute create rights and obligations that are enforceable through unfair labor practice proceedings?

2. If there are circumstances when an election to bargain is enforceable under the Statute, are those circumstances present in *PTO,* or in any of the other cases listed above? For example, if an ''irrevocable'' election can be made, has such an election been made by *PTO*?

3. Does section 2(d) of Executive Order 12871 constitute an agency election, within the meaning of section 7106(b)(1) of the Statute, to bargain on proposals on matters set out in section 7106(b)(1)?

4. If an election to bargain creates rights and obligations that are enforceable under any circumstances, what is the extent of the bargaining required to satisfy the obligations? For example, does the obligation to bargain extend to impasse, or is it satisfied by some other ''amount'' of bargaining?

5. In view of the fact that the President's issuance of Executive Order 12871 is the only basis asserted for finding that an election to bargain has been made that is binding on the agency, is enforcing the election barred by Section 3 of the Executive Order?

6. If the Authority were to find that there are circumstances when an election to bargain is enforceable under the Statute, and that such circumstances are present in *PTO* or in any of the other cases listed above, should a violation be found in *PTO* or in any of those other cases? If so, what is the appropriate remedy to enforce the election?

All briefs shall be captioned ''*U.S. Department of Commerce, Patent and Trademark Office,* Case No. WA–CA–40743, *Amicus Brief*'' and shall contain separate, numbered headings for each issue discussed. Briefs must include a signed and dated statement of service that complies with the Authority's regulations (5 CFR 2429.27(a) and (c)) showing service of one copy of the brief on all counsel of record or other designated representatives in *PTO* and the other cases listed above. Copies of the Authority's partial decision in *PTO,* dated November 17, 1997, and a list of the designated representatives for that and the other cases may be obtained in the Authority's Case Control Office at the address set forth above. Copies of these materials will be forwarded (by mail or by facsimile) to any person who so requests by contacting Peter Constantine at the same address. An original and four (4) copies of each amicus brief must be submitted, with any enclosures, on 8½×11 inch paper.

(Authority: 5 U.S.C. 7105(a)(2)(G) & (I))

Dated: November 17, 1997.

For the Authority.

Peter Constantine,

Director, Case Control Office, Federal Labor Relations Authority.

[FR Doc. 97–30688 Filed 11–20–97; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions by of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-30156) published on page 61506 of the issue for November 18, 1997.

Under the Federal Reserve Bank of Minneapolis heading, the entry for Angeline R. Mixner, Worthington, Minnesota, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Angeline R. Mixner, Worthington, Minnesota; to acquire additional voting shares of Madison Agency, Inc., Sioux Falls, South Dakota, and thereby indirectly acquire First Security Bank - Sanborn, Sanborn, Minnesota.

Comments on this application must be received by November 26, 1997.

Board of Governors of the Federal Reserve System, November 18 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30698 Filed 11–20–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 8, 1997.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. L & W Holding Company, Oklahoma City, Oklahoma, a Qualified Family Partnership; to acquire voting shares of First Fidelity Bancorporation, Oklahoma City, Oklahoma, and thereby indirectly acquire First Fidelity Bank, N.A., Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, November 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30699 Filed 11–20–97; 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 18, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Community Bancshares of Mississippi, Inc., Forest, Mississippi; to acquire 100 percent of the voting shares of Community Bank, Southaven, Mississippi.

2. Hogan Investments, Inc., and Hogan Investments Limited, both of Forsyth, Georgia; and Laurens Bancshares, Inc., Dudley, Georgia; to become bank holding companies by acquiring 100 percent of the voting shares of Bank of Dudley, Dudley, Georgia.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. F & M Bancorporation, Inc., Kaukauna, Wisconsin; to acquire 100 percent of the voting shares of Bank of South Wayne, South Wayne, Wisconsin.

2. First Busey Corporation, Urbana, Illinois; to acquire 100 percent of the voting shares of Busey Business Bank (in organization), Indianapolis, Indiana.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Eastwood Financial Corporation Employees' Profit Sharing and Stock Ownership Plan, Rochester, Minnesota; to become a bank holding company by acquiring 30 percent of the voting shares of Eastwood Financial Corporation, Rochester, Minnesota, and thereby indirectly acquire Eastwood Bank, St. Charles, Minnesota.

Board of Governors of the Federal Reserve System, November 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30697 Filed 11–20–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, November 26, 1997.

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. Proposed 1998 Federal Reserve Bank officer salary structure adjustments. (This item was originally announced for a closed meeting on November 17, 1997.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: 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 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30769 Filed 11–19–97; 10:57 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Availability of Funds for Grants for the Minority Community Health Coalition Demonstration Program

AGENCY: Office of the Secretary, Office of Minority Health.

ACTION: Notice of availability of funds and request for applications for the Minority Community Health Coalition Demonstration Grant Program.

Authority

This program is authorized under section 1707(d)(1) of the Public Health Service Act, as amended by Public Law 101–527, the Disadvantaged Minority Improvement Act of 1990.

Purpose

The purpose of this Fiscal Year 1998 Minority Community Health Coalition Demonstration Program is to issue grants to improve the health status of targeted minority populations through health promotion and disease risk reduction intervention programs. This program is intended to demonstrate the effectiveness of community-based coalitions in:

(1) Developing, implementing and conducting demonstration projects which coordinate integrated community-based screening and outreach services, and include linkages for access and treatment to minorities in high-risk, low-income communities; and

(2) Addressing sociocultural and linguistic barriers to health care.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. Potential applicants may obtain a copy of the Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 Midcourse Review and 1995 Revisions (Stock No. 017–001–00526–6) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 or telephone (202) 783–8238.

Background

This program is based on the hypothesis that the community coalition approach to health promotion and risk reduction can be effective in reaching minority target populations—especially those most at risk or hard to reach. Among the merits of using coalitions is the higher likelihood that: (1) the intervention will be culturally sensitive, credible and more acceptable to the target population; (2) the project will address the health problem(s) within the context of related socio-economic issues; and (3) the effort will contribute to overall community empowerment by strengthening indigenous leadership and organizations. The OMH is continuing, through this announcement, to promote the utilization of community coalitions to develop and implement health promotion/disease risk reduction programs.

In FY 1998 the Minority Community Health Coalition Demonstration Program continues to focus on health problem areas identified in the 1995 OMH Report to Congress. These health areas are commonly referred to as the ''7+4'' health issue areas: (1) cancer; (2) cardiovascular disease and stroke; (3) chemical dependency; (4) diabetes; (5) homicide, suicide and unintentional injuries; (6) infant mortality; and (7) HIV/AIDS; plus, access to health care; health professions personnel development; improved data collection and analysis; and cultural competency. Flexibility for communities to define their own health problem priorities (e.g., asthma, sexually transmitted diseases [STDs], tuberculosis, female genital mutilation, immunization and tobacco use) is also encouraged.

Eligible Applicants

Public and private, nonprofit minority community-based organizations which represent an established community coalition of at least three discrete organizations. (See Definitions of Minority Community-Based Organizations and Community Coalition found in this announcement.) The minority community-based organization will: serve as the lead agency for the grant; be responsible for management of the project; and serve as the fiscal agent for the Federal grant awarded. The coalition must include a health care facility such as a community health center, migrant health center, health department or medical center to provide follow-up treatment services. The coalition membership must be documented as specified under the project requirements described in this announcement.

National organizations are not eligible to apply, however, local affiliates of such organizations which meet the definition of minority community-based organization are eligible. Currently funded OMH Bilingual/Bicultural Service Demonstration Program (Managed Care) grantees are not eligible to apply. Organizations are not eligible to receive funding from more than one OMH grant program.

Deadline

To receive consideration, grant applications must be received by the Office of Minority Health (OMH) Grants Management Office by January 20, 1998. Applications will be considered as meeting the deadline if they are: (1) received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

Addresses/Contacts

Applications must be prepared using Form PHS 5161–1 (Revised July 1992 and approved by OMB under control Number 0937–0189). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0758. Completed applications are to be submitted to the same address.

Questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed to Ms. Cynthia H. Amis, Director, Division of Program Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0769.

Technical assistance is also available through the OMH Regional Minority Health Consultants (RMHCs). A listing

of the RMHCs and how they may be contacted will be provided in the grant application kit. Additionally, applicants can contact the OMH Resource Center (OMH–RC) at 1–800–444–6472 for health information.

Availiability of Funds

Approximately $2.5 million is expected to be available for award in FY 1998. It is projected that awards of up to $150,000 total costs (direct and indirect) for a 12 month period will be made to approximately 16 to 18 competing applicants. Of the total amount obligated, at least $750,000 will be awarded to projects that include HIV/AIDS as one of the targeted health problem areas.

Period of Support

The start date for the Minority Community Health Coalition Demonstration Program grants is July 1, 1998. Support may be requested for a total project period not to exceed 3 years. Noncompeting continuation awards of up to $150,000 will be made subject to satisfactory performance and availability of funds.

Project Requirements

Each applicant to this demonstration grant program must:

(1) Address at least one, but no more than three (3) health problem areas which significantly impact the local targeted community. At least one must be from Part A (''7+4'') of the definition of health problem area found in this announcement.

(2) Have an established coalition capable of ensuring that the target population is provided with a continuum of appropriate health care services and support. The coalition must have the capacity to plan and coordinate services which reduce existing sociocultural and/or linguistic barriers to health care and carry out screening, outreach and enabling services to ensure that clients follow up with treatment and treatment referrals.

(3) Detail/specify the roles and resources that each coalition member will bring to the project, and state the duration and terms of the agreement, as confirmed by a signed agreement between the applicant organization and each coalition member. The document must be signed by individuals with the authority to represent the organization (e.g., president, chief executive officer, executive director).

Use of Grant Funds

Budgets of up to $150,000 total cost (direct and indirect) per year may be requested to cover costs of: personnel, consultants, supplies (including screening and outreach supplies), equipment, and grant related travel. Funds may not be used for medical treatment, construction, building alterations, or renovations. All budget requests must be fully justified in terms of the proposed goals and objectives and include a computational explanation of how costs were determined.

Criteria for Evaluating Applications

Review of Application

Applications will be screened upon receipt. Those that are judged to be incomplete, nonresponsive to the announcement or nonconforming will be returned without comment. Each organization may submit no more than one proposal under this announcement. If an organization submits more than one proposal, all will be deemed ineligible and returned without comment. Accepted applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Panel chosen for their expertise in minority health, experience relevant to this program, and their understanding and knowledge of the health problems and risk factors confronting racial and ethnic minorities in the United States.

Applications are advised to pay close attention to the specific program guidelines and general instructions provided in the application kit.

Application Review Criteria

The technical review of applications will consider the following generic factors, which are listed in descending order of priority.

Factor 1: Methodology (35%)

Appropriateness of proposed approach and specific activities for each objective. Logic and sequencing of the planned approaches in relation to the objectives and program evaluation. Extent to which the applicant demonstrates access to the target population. Soundness of the established linkages.

Factor 2: Evaluation (20%)

Thoroughness, feasibility and appropriateness of the evaluation design, and data collection and analysis procedures. Potential for replication of the project for similar target populations and communities.

Factor 3: Background (15%)

Adequacy of demonstrated knowledge of the problem at the local level; demonstrated need within the proposed community and target population; demonstrated support and established linkages in order to conduct proposed model; and extent and documented outcome of past efforts/activities with the target population.

Factor 4: Goals and Objectives (15%)

Merit of the objectives, their relevance to the program purpose and stated problem, and their attainability in the stated time frames.

Factor 5: Management Plan (15%)

Applicant organization's capability to manage and evaluate the project as determined by: the qualifications of proposed staff or requirements for ''to be hired'' staff; proposed staff level of effort; management experience of the lead agency; and experience of each coalition member as it relates to its defined roles and the project.

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health, Office of Minority Health and will take under consideration: recommendations/ratings of the review panels; geographic and racial/ethnic distribution; and health problem areas having the greatest impact on minority populations. Consideration will also be given to projects proposed to be implemented in Empowerment Zones and Enterprise Communities.

Definitions

For purposes of this grant announcement, the following definitions are provided:

Community-Based Organization—Public and private, non-profit organizations which are representative of communities or significant segments of communities, and which address health and human services.

Community Coalition—At least three (3) discrete organizations and institutions in a community which on specific community concerns, resolution of those concerns through a formalized relationship documented by written memoranda of understanding/agreement signed by individuals with the authority to represent the organizations (e.g., president, chief executive officer, executive director).

Cultural Competency—A set of interpersonal skills that allow individuals to increase their understanding and appreciation of cultural differences and similarities within, among and between groups. This requires a willingness and ability to draw on community-based values, traditions and customs, and to work with knowledgeable persons of and

from the community in developing focused interventions, communications and other supports. (Orlandi, Mario A., 1992)

Health Care Facility—A public nonprofit facility that has an established record for providing comprehensive health care services to a targeted, racial/ethnic minority community. Facilities providing only screening and referral activities are not included in this definition. A health care facility may be a hospital, outpatient medical facility, community health center, migrant health center, or a mental health center.

Health Problem Area—(a) One of the ''7 + 4'' health areas: cancer, cardiovascular disease and stroke; chemical dependency; diabetes; homicide, suicide and unintentional injuries; infant mortality; HIV/AIDS; access to health care; health professional personnel development; improved data collection and analysis; and cultural competency; or (b) a disease or health condition which has a demonstrated impact on morbidity rates among the minority population, for example, asthma, sexually transmitted diseases (STDs), tuberculosis, female genital mutilation, immunization and tobacco use.

Intervention—A combination of clinical preventive services (e.g., blood pressure screening), information dissemination, environmental modifications, educational activities, and coordinated networking activities among health and human service related programs (e.g., referral for child care services, job placement, literacy programs) designed to alter or modify a condition or outcome, or to change behavior to reduce the likelihood of a preventable health problem occurring or progressing further.

Minority Community-Based Organizations—Public and private nonprofit community-based minority organization or a local affiliate of a national minority organization that has: a governing board composed of 51 percent or more racial/ethnic minority members, a significant number of minorities in key program positions, and an established record of service to a racial/ethnic minority community.

Minority Populations—American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander. (OMB Statistical Policy Directive No. 15)

Risk Factor—The environmental and behavioral influences capable of causing ill health with or without predisposition.

Sociocultural Barriers—Policies, practices, behaviors and beliefs that create obstacles to health care access and service delivery (*e.g.*, immunization requirements, cultural differences between individuals and institutions, cultural differences of beliefs about health and illness, customs and lifestyles, cultural differences in languages or nonverbal communication styles).

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) semi-annual progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the Office of Minority Health, in accordance with provisions of the general regulations which apply under CFR 74.50–74.52, with the exception of State and local governments to which 45 CFR Part 92, Subpart C reporting requirements apply.

Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS Grants

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) a copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) a description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Minority Health's Grants Management Officer. The Office of Minority Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs'' Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements).

OMB Catalog of Federal Domestic Assistance

The OMB Catalog of Federal Domestic Assistance number for the Minority Community Health Coalition Demonstration Program is 93–137.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 97–30565 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request; Extension

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging is announcing an opportunity for public comment on the continued collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish in the **Federal Register** concerning each collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the requirements relating to the submission, by AoA grantees, of semiannual financial reports on all Title III grants. The information contained in the OMB 269 and its supplemental forms reports currently being collected concurrently.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Form to the Financial Status Report for all AoA Title II Grantees.

Description: Supplemental Form to the Financial Status Report provide an understanding of how projects funded by the Older Americans Act are being administered by grantees, in conformance with legislative requirements, pertinent federal regulations, and other applicable instructions and guidelines issued by the Administration on Aging (AoA). This information will be used for federal oversight of Title III Projects.

Respondents: State Agencies on Aging.

Number of Respondents: 57.

Average Number of Responses per Respondent: 2.

Average Burden Hours: ½ hour per State Agency.

Additional Information

Copies of the collection may be obtained by writing to the Administration on Aging, Office of the Executive Secretariat, 330 Independence Avenue, SW, Washington, DC 20201, Attn: AoA Reports Clearance Officer.

OMB Comment

OMB is required to make a decision, concerning the collection of information, between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 10 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following address: Administration on Aging, Wilbur J. Cohen Federal Building, 330 Independence Avenue, SW, Washington, D.C. 20201 ATTN: Margaret A. Tolson.

Dated: November 14, 1997.

William F. Benson,

Acting Principal Deputy Assistant Secretary on Aging.

[FR Doc. 97–30567 Filed 11–20–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Promulgation for Fiscal Year 1999

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of allocation of title XX—social services block grant allotments for fiscal year 1999.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal Year 1999, pursuant to title XX of the Social Security Act, as amended (Act). The allotments to the States published herein are based upon the authorization set forth in section 2003 of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: Frank A. Burns, (202) 401–5536.

SUPPLEMENTARY INFORMATION: Section 2003 of the Act authorizes $2.380 billion for Fiscal Year 1999 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receives an amount which bears the same ratio to $2.380 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the $2.380 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 1999, the allotments are based upon the Bureau of Census population statistics contained in its report ''Estimates of the Population of the U.S. Regions, and States by Selected Age Groups and Sex: 1990 to 1996 (CB97–64, released April 21, 1997), and ''1990 Census of Population and Housing'' (CPH–6–AS and CPH–6–CNMI) published April 1992, which are the most recent data available from the Department of Commerce at this time as to the population of each State and each Territory.

EFFECTIVE DATE: The allotments shall be effective October 1, 1998.

FISCAL YEAR 1999 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS

Total	$2,380,000,000
ALABAMA	38,121,040
ALASKA	5,415,275
AMERICAN SAMOA	88,560
ARIZONA	39,503,853
ARKANSAS	22,392,654
CALIFORNIA	284,395,631
COLORADO	34,106,421
CONNECTICUT	29,208,585
DELAWARE	6,467,998
DIST. OF COLUMBIA	4,844,307
FLORIDA	128,467,816
GEORGIA	65,598,878
GUAM	410,345
HAWAII	10,562,909
IDAHO	10,607,516
ILLINOIS	105,691,543
INDIANA	52,109,758
IOWA	25,443,765
KANSAS	22,945,779
KENTUCKY	34,650,625
LOUISIANA	38,816,907
MAINE	11,089,270
MARYLAND	45,249,220
MASSACHUSETTS	54,349,023
MICHIGAN	85,591,682
MINNESOTA	41,555,770
MISSISSIPPI	24,230,457
MISSOURI	47,809,654
MONTANA	7,841,890
NEBRASKA	14,738,113
NEVADA	14,300,966
NEW HAMPSHIRE	10,366,639
NEW JERSEY	71,263,952
NEW MEXICO	15,282,317
NEW YORK	162,235,224
NORTH CAROLINA	65,331,237

FISCAL YEAR 1999 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS—Continued

NORTH DAKOTA	5,745,366
NO. MARIANA ISLANDS	82,069
OHIO	99,678,535
OKLAHOMA	29,449,462
OREGON	28,584,089
PENNSYLVANIA	107,556,110
PUERTO RICO	12,310,345
RHODE ISLAND	8,832,162
SOUTH CAROLINA	33,000,170
SOUTH DAKOTA	6,530,447
TENNESSEE	47,461,721
TEXAS	170,648,082
UTAH	17,842,752
VERMONT	5,254,691
VIRGIN ISLANDS	410,345
VIRGINIA	59,550,185
WASHINGTON	49,361,974
WEST VIRGINIA	16,290,433
WISCONSIN	46,034,301
WYOMING	4,291,182

Dated: November 5, 1997.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 97–30686 Filed 11–20–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0446]

Determination That Desmopressin Acetate Nasal Solution 0.01% (for Refrigerated Storage) Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that desmopressin acetate (DDAVP Nasal Spray) nasal solution 0.01% (for refrigerated storage) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for desmopressin acetate nasal solution 0.01% (for refrigerated storage).

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments) that authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

In accordance with § 314.161(a)(1) and (e), the agency initiated procedures to determine whether desmopressin acetate nasal solution 0.01% (for refrigerated storage) was withdrawn from sale for reasons of safety or effectiveness. Desmopressin acetate (DDAVP Nasal Spray) nasal solution 0.01% is the subject of approved NDA 17–922 held by Rhone-Poulenc Rorer Pharmaceuticals, Inc. The original formulation of desmopressin acetate nasal solution 0.01% (NDA 17–922) provided for refrigerated storage of the product. On August 7, 1996, FDA approved Rhone-Poulenc Rorer Pharmaceutical, Inc.'s supplemental application providing for reformulation of desmopressin acetate nasal solution 0.01% for room temperature storage. Rhone-Poulenc Rorer Pharmaceutical, Inc., later withdrew the original formulation, citing easier storage and convenience with the reformulated product.

FDA has reviewed its records and, under § 314.161, has determined that desmopressin acetate nasal solution 0.01% (for refrigerated storage) was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will maintain desmopressin acetate nasal solution 0.01% (for refrigerated storage) in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to desmopressin acetate nasal solution 0.01% (for refrigerated storage) may be approved by the agency.

Dated: November 14, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–30614 Filed 11-20-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0289]

Content and Format of Labeling for Human Prescription Drugs; Pregnancy Labeling; Public Hearing; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period following its September 12, 1997, public hearing until January 12, 1998. This public hearing, which was announced in the **Federal Register** of July 31, 1997 (62 FR 41061), focused on requirements for the content and format of the pregnancy subsection of labeling for human prescription drugs. The comment period closed on November 12, 1997. This action is being taken in response to the request of the Pharmaceutical Research and Manufacturers of America for additional time to prepare comments because of the complexity and importance of the issues raised by pregnancy labeling.

DATES: Written comments by January 12, 1998.

ADDRESSES: Submit 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: Rose E. Cunningham, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 31, 1997 (62 FR 41061), FDA announced that it would be holding a public hearing on September 12, 1997, concerning the requirements for the content and format of the pregnancy subsection of labeling for human prescription drugs. The public hearing was intended to elicit comments on the practical utility, effects, and limitations of the current pregnancy labeling categories in order to help the agency identify the range of problems associated with the categories and to identify and evaluate options that might address identified problems. Interested persons were given until November 12, 1997, to submit written comments on these issues. Because of the complexity and importance of the issues raised by pregnancy labeling, the Pharmaceutical Research and Manufacturers of America has requested an additional 60 days to prepare comments.

Interested persons may, on or before January 12, 1998, submit to the Dockets Management Branch (address above) written comments on this subject. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with Docket No. 97N–0289. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 13, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–30561 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Subcommittee 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: Subcommittee meeting of the Antiviral Drugs Advisory Committee on immunosuppressive drugs.

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 January 14, 1998, 8:30 a.m. to 5 p.m.

Location: Quality Suites, Potomac Ballroom, Three Research Ct., Rockville, MD.

Contact Person: Rhonda W. Stover or John B. Schupp, 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 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 14, 1998, the subcommittee will discuss new drug application (NDA) 50–722, CellCept® (mycophenolate mofetil), Syntex, USA, Inc., for immunosuppression following cardiac transplantation.

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 January 7, 1998. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 7, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 14, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30705 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products 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: Blood Products 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 11, 1997, 8 a.m. to 6 p.m., and December 12, 1997, 8 a.m. to 3:30 p.m.

Location: DoubleTree Hotel, Plazas I, II, and III, 1750 Rockville Pike, Rockville, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 11, 1997, the committee will discuss and provide recommendations on the issue of FDA's donor deferral policy regarding men who have had sex with another man even one time since 1977.

On the morning of December 12, 1997, the committee will sit as a medical device panel and make recommendations on the issue of in vitro diagnostic detection of human immunodeficiency virus (HIV) viral load, sponsor, Roche Molecular Systems. In the afternoon, the Committee will hear an informational presentation on hepatitis C virus (HCV) risk in sexual partners of positive individuals.

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 1 p.m. and 4:30 p.m., on December 11, 1997, and between approximately 10 a.m. and 11 a.m. and 2 p.m. and 3 p.m., on December 12, 1997. 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 14, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30615 Filed 11-20-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices 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 10, 1997, 9:30 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Sharon K. Lappalainen, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, ext. 144, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12514. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will provide advice and recommendations to the agency regarding a premarket approval application for a salivary estriol enzyme immunoassay that is to be used as a risk assessment marker for spontaneous preterm labor and preterm delivery.

Procedure: On December 10, 1997, from 10 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 3, 1997. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 3, 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.

Closed Committee Deliberations: On December 10, 1997, from 9:30 a.m. to 10 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). FDA staff will present to the committee confidential information regarding pending or future submissions.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 17, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30707 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy 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: Pulmonary-Allergy 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 15, 1997, 8 a.m. to 5 p.m.

Location: Ramada Inn, Embassy Ballroom, 8400 Wisconsin Ave., Bethesda, MD.

Contact Person: Leander B. Madoo, 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 12545. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Committee will discuss the safety and efficacy of new drug application (NDA) 20–793, Cafcit™ (caffeine citrate injection, 10 milligram/milliliter), Roxane Laboratories, Inc., for intravenous or oral use in the treatment of apnea of prematurity.

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 5, 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 5, 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 14, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30616 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products 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, 12:30 p.m. to 3:30 p.m.

Location: Food and Drug Administration, Bldg. 29, conference

room 121, 8800 Wisconsin Ave., Bethesda, MD. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting.

Contact Person: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the intramural scientific program of the Laboratory of Enteric and Sexually Transmitted Diseases.

Procedure: On December 4, 1997, from 12:30 p.m. to 1:15 p.m., and 2:30 p.m. to 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 26, 1997. Oral presentations from the public will be scheduled between approximately 2:30 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 26, 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.

Closed Committee Deliberations: On December 4, 1997, from 1:15 p.m. to 2:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The meeting will be closed to discuss personal information concerning individuals associated with the research program.

FDA regrets that it was unable to publish this notice 15 days prior to the December 4, 1997, Vaccines and Related Biological Products Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Vaccines and Related Biological Products Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 17, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30613 Filed 11-20-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccine and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products 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 11, 1997, 10:30 a.m. to 5:45 p.m., and December 12, 1997, 8 a.m. to 5 p.m.

Location: Holiday Inn Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 11, 1997, the committee will meet in closed session to discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications or pending product licensing applications. On December 12, 1997, in open session, the committee will consider the safety and efficacy of a new vaccine for the prevention of Rotavirus Diarrhea in children. The vaccine, RotaShield™, is made for infant indication by Wyeth-Lederle Vaccines and Pediatrics.

Procedure: On December 12, 1997, from 9:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 3, 1997. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 3, 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.

Closed Committee Deliberations: On December 11, 1997, from 10:30 a.m. to 5:45 p.m., and on December 12, 1997, from 8 a.m. to 9:30 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information. These portions of the meeting will be closed to discuss pending investigational new drug applications or pending product licensing applications (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 17, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30708 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO–151–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Second Quarter 1997

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published during April, May, and June of 1997 that relate to the Medicare and Medicaid programs. It also identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that may be potentially covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of

Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this time frame.

FOR FURTHER INFORMATION CONTACT:

Bridget Wilhite, (410) 786–5248 (For Medicare instruction information).
Betty Stanton, (410) 786–3247 (For Medicaid instruction information).
Sharon Hippler, (410) 786–4633 (For Food and Drug Administration-approved investigational device exemption information).
Pam Gulliver, (410) 786–4659 (For all other information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 38 million Medicare beneficiaries and 36 million Medicaid recipients. Administration of these programs involves (1) providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public, and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we list in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published during April through June 1997.

II. How to Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or Food and Drug Administration-approved investigational device exemptions published during the time frame to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I lists the publication dates of the most recent quarterly listings of program issuances.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the parts of the Code of Federal Regulations (CFR) that have changed (if applicable), the agency file code number, the title of the regulation, the ending date of the comment period (if applicable), and the effective date (if applicable).

On September 19, 1995, we published a final rule (60 FR 48417) establishing in regulations at 42 CFR 405.201 *et seq.* that certain devices with an investigational device exemption approved by the Food and Drug Administration and certain services related to those devices may be covered under Medicare. It is HCFA's practice to announce in this quarterly notice all investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. Addendum V includes listings of the Food and Drug Administration-approved investigational device exemption numbers that have been approved or revised during the quarter covered by this notice. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B, and identified by the investigational device exemption number).

III. How to Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, TTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or
National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, all manuals are available at the following Internet address: http//www.hcfa.gov/pubforms/progman.htm.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through GPO Access. The

online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish Rulings on an infrequent basis. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We have, on occasion, published Rulings in the **Federal Register**. In addition, Rulings, beginning with those released in 1995, are available online, through the HCFA Home Page. The Internet address is http://www.hcfa.gov/regs/rulings.htm.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1995. The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future, and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Intermediary Manual, Part 2—Audits, Reimbursement Program Administration (HCFA Pub. 13–2) transmittal entitled ''Maximum Payment Per Visit For Rural Health Clinics,'' use the Superintendent of Documents No. HE 22.8/6–2 and the HCFA transmittal number 409.

V. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addendum III may be addressed to Bridget Wilhite, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, Telephone (410) 786–5248.

Questions concerning Medicaid items in Addendum III may be addressed to Betty Stanton, Center for Medicaid State Operations, Policy Coordination and Planning Group, Health Care Financing Administration, C4–25–02, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–3247.

Questions concerning Food and Drug Administration-approved investigational device exemptions may be addressed to Sharon Hippler, Office of Clinical Standards and Quality, Coverage Analysis Group, Health Care Financing Administration, C4–11–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–4633.

Questions concerning all other information may be addressed to Pam Gulliver, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–4659.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: October 31, 1997.

Pamela J. Gentry,

Director, Office of Communications and Operations Support.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

June 26, 1996 (61 FR 33119)
December 18, 1996 (61 FR 66676)
April 21, 1997 (62 FR 19328)
May 12, 1997 (62 FR 25957)
November 3, 1997 (62 FR 59358)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[April 1997 through June 1997]

Trans. No.		Manual/Subject/Publication No.
		Intermediary Manual Part 2—Audits, Reimbursement Program Administration (HCFA Pub. 13–2) (Superintendent of Documents No. HE 22.8/6–2)
409	•	Maximum Payment Per Visit For Rural Health Clinics.
	•	Maximum Payment Per Visit For Freestanding Federally Qualified Health Centers.
410	•	List of MR Codes, Categories, and Conversion Factors.
		Intermediary Manual Part 3—Claims Process (HCFA Pub. 13–3) (Superintendent of Documents No. HE 22.8/6)
1709	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines.
1710	•	Review of Form HCFA–1450 For Inpatient and Outpatient Bills. Self-Administered Drugs and Biologicals. Oral Cancer Drugs. Self-Administered Antiemetic Drugs. Mammography Quality Standards Act. Self-Administered Drug Administered In An Emergency Situation. Hospital Outpatient Partial Hospitalization Services.
1711	•	Special Consideration When Processing ESRD Bills Under Method I. Special Consideration When Processing ESRD Bills Under Method II. Medical—Subject to Waiver.
1712	•	Drugs and Biologicals.
1713	•	Pneumoccal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.
1714	•	Laboratory Test for Hemodialysis, Intermittent Peritoneal Dialysis, Continuous Cycling Peritoneal Dialysis, and Hemofiltration.
		Carriers Manual Part 3—Claims Process (HCFA Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)
1564	•	Coverage of Supplies and Accessories. New Supplier Effective Billing Date.
1565	•	Assignment of a Partially Paid Bill.
1566	•	Method for Computing Fee Schedule Amount. Bundled Services/Supplies. Supervising Physicians in Teaching Settings. Anesthesia Claims Modifiers. Services of Portable X-ray Suppliers. Special Situations. Interpretation of Diagnostic Tests.
1567	•	Completing Quarterly Report on Provider Enrollment.
1568	•	Screening Mammography Examinations. Identifying a Screening Mammography Claim. Adjudicating the Claim.
1569	•	Bill Review of Laboratory Services.
1570	•	Self-Administered Drug and Biologicals.
1571	•	Paper Remittance Notice.
1572	•	Bill Review of Laboratory Services.
		Program Memorandum Intermediaries (HCFA Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–97–4	•	Two Month Extension for Implementation of Filing Electronically Prepared Cost Reports for Skilled Nursing Facilities and Home Health Agencies.
		Program Memorandum Intermediaries/Carriers (HCFA Pub. 60A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–97–6	•	Current Status of Medicare Program Memorandums And Letters Issued Before Calendar Year 1997.
AB–97–7	•	Revision on Program Memorandum Transmittal No. AB–97–5, New Panels Approved by CPT.
AB–97–8	•	Hematocrit Levels for Erythropoietin.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 1997 through June 1997]

Trans. No.		Manual/Subject/Publication No.
AB–97–9	•	New Code for HIV–1 Viral Load Testing.
		Program Memorandum Medicaid State Agencies (HCFA Pub. 17) (Superintendent of Documents No. HE 22.8/6–5)
97–1	•	Current Status of Medicaid Program Memorandums and Action Transmittals Issues Before Calendar Year 1997.
		Program Memorandum Regional Offices (HCFA Pub. 54) (Superintendent of Documents No. HE 22.28/5:90–1)
97–1	•	Civil Money Penalty Collection Procedures.
		State Operations Manual Provider Certification (HCFA Pub. 7) (Superintendent of Documents No. HE 22.8/12)
281	•	Interpretive Guidelines—Home Health Agencies.
282	•	Model Letter to Provider. Model Letter Notifying Provider of Results of Revisit. Model Letter to Provider (Imposition of Remedies). (Immediate Jeopardy Exists). Informal Dispute Resolution.
		Regional Office Manual Standards and Certification (HCFA Pub. 23–4) (Superintendent of Documents No. HE 22.8/8–3)
63	•	OPO Designation Procedures in Service Areas With Competing Applications.
		Hospital Manual (HCFA Pub. 10) (Superintendent of Documents No. HE 22.8/2)
712	•	Self-Administered Drugs and Biologicals. Oral Cancer Drugs. Self-Administered Antiemetic Drugs. Self-Administered Drug Administered In An Emergency Situation. Billing for Hospital Outpatient Partial Hospitalization Services. Completion of Form HCFA–1450 For Inpatient And/Or Outpatient Billing.
713	•	Review of Hospital Admissions of Patients Who Have Elected Hospice Care.
714	•	Outpatient Therapeutic Services.
715	•	Laboratory Test for Hemodialysis, Intermittent Peritoneal Dialysis, and Continuous Cycling Peritoneal Dialysis Included in Composite Rate.
		Rural Health Clinic Manual and Federally Qualified Health Centers Manual (HCFA Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
25	•	Rural Health Clinics. Federally Qualified Health Centers.
26	•	Billing of Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines By Rural Health Clinics and Federally Qualified Health Centers.
		Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA Pub. 29) (Superintendent of Documents No. HE 22.8/13)
78	•	Pneumoccal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.
79	•	Completion of Form HCFA–1450 by Independent Facilities for Home Dialysis Items and Services Billed Under the Composite Rate (Method I).
80	•	Epoetin.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 1997 through June 1997]

Trans. No.		Manual/Subject/Publication No.
81	•	Laboratory Test for Hemodialysis, Intermittent Peritoneal Dialysis, and Continuous Cycling Peritoneal Dialysis.
		Coverage Issues Manual (HCFA Pub. 6) (Superintendent of Documents No. HE 22.8/14)
94	•	Artificial Hearts and Related Devices.
95	•	Electrostimulation in the Treatment of Wounds. Intrapulmonary Percussive Ventilator.
96	•	Breast Reconstruction Following Mastectomy Obsolete or Unreliable Diagnostic Test.
97	•	Urinary Drainage Bags.
98	•	–Electrostimulation in the Treatment of Wounds Intrapulmonary Percussive Ventilator.
99	•	Laser Procedures. Refractive Keratoplasty. Magnetic Resonance Angiography.
100	•	Electrostimulation in the Treatment of Wounds. Intrapulmonary Percussive Ventilator.
101	•	Laboratory Test-CRD Patients.
		Provider Reimbursement Manual Part 1—(HCFA Pub.15–1) (Superintendent of Documents No. HE 22.8/4)
399	•	Regional Medicare Swing-Bed SNF Rates. Changing Cost Finding Methods. Changing Bases for Allocating Costs Centers or Order in Which Cost Centers Are Allocated.
		Provider Reimbursement Manual Part 1—(HCFA Pub.15–1–27) (Superintendent of Documents No. HE 22.8/4)
27	•	Separately Billable ESRD Laboratory Services.
28	•	Epoetin.
		Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (HCFA Pub. 15–II–AF) (Superintendent of Documents No. HE 22.8/4)
5	•	Electronic Reporting Specifications for Form HCFA 1728–94.
		Medicare Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (HCFA Pub. 15–11–AI) (Superintendent of Documents No. HE 22. 8/4)
2	•	Cost Center Coding. Electronic Reporting Specifications for Form HCFA 2540–96.
		Medicare/Medicaid Sanction—Reinstatement Report (HCFA Pub. 69)
97–5	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—March 1997.
97–6	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—April 1997.

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR Vol. 62 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
04/08/97	16894–16976	144, 146, 148 ...	BPD–890–IFC	Interim Rules for Health Insurance Portability for Group Health Plans.	07/07/97	06/07/97
04/08/97	16985–17004	148	BPD–882–IFC	Individual Market Health Insurance Reform: Portability From Group to Individual Coverage; Federal Rules for Access in the Individual Market; State Alternative Mechanisms to Federal Rules.	07/07/97	04/08/97

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR Vol. 62 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
04/08/97	17004		BPD–882–CN BPD–890–CN	Interim Rules for Health Insurance Portability for Group Health Plans and Individual Market Health Insurance Reform: Portability from Group to Individual Coverage; and Federal Rules for Access in the Individual Market; State Alternative Mechanisms to Federal Rules; Correction.		04/08/97
04/17/97	18776–18777		ORD–098–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: February 1997.		
04/21/97	19326–19328		BPD–894–NC	Medicare and Medicaid Programs; Announcement of Additional Applications From Hospitals Requesting Waivers for Organ Procurement Service Area.	06/20/97	
04/21/97	19328–19337		BPO–141–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Third Quarter 1996.		
04/28/97	22995	413	BPD–808–P	Medicare and Medicaid Programs; Salary Equivalency Guidelines for Physical Therapy, Respiratory Therapy, Speech Language Pathology, and Occupational Therapy Services; Correction.		
04/29/97	23251–23253		HSQ–232–N	Medicare Program; Initiative Involving Facilities That Furnish Hemodialysis Treatments.		10/28/96
04/29/97	23140	433	MB–112–F	Medicaid Program; Third Party Liability (TPL) Cost-Effectiveness Waivers; Correcting Amendment.		09/08/95
04/30/97	23368–23376	417	OMC–025–FC	Medicare Program; Establishment of an Expedited Review Process for Medicare Beneficiaries Enrolled in Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans.	06/30/97	06/30/97
05/05/97	24483–24491		BPD–816–N	Medicare Program; Update of the Reasonable Compensation Equivalent Limits for Services Furnished by Physicians.		05/05/97
05/12/97	25844–25855	405, 417, 473	BPD–453–FC	Medicare Programs; Medicare Appeals of Individual Claims.	07/11/97	07/11/97
05/12/97	25855–25858	493	HSQ–237–FC	Medicare, Medicaid and CLIA Programs; Clinical Laboratory Requirements— Extension of Certain Effective Dates for Clinical Laboratory Requirements Under CLIA.	07/11/97	05/12/97
05/12/97	25957		ORD–099–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: March 1997.		
05/12/97	25957–25964		BPO–148–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances; Fourth Quarter 1996.		
05/14/97	26545–26550		MB–103–NC	Medicaid Program; Allocation of Enhanced Federal Matching Funds for Increased Administrative Costs Resulting From Welfare Reform.	06/13/97	05/14/97
05/19/97	27262–27265		HSQ–242–N	Approval of the Commission on Office Laboratory Accreditation for Immunohematology.		05/19/97–11/1/97
05/19/97	27210	413	BPD–788-CN	Medicare Program; Electronic Cost Reporting for Skilled Nursing Facilities and Home Health Agencies; Correction.		05/19/97
05/30/97	29355–29356		OPL–015–N	Medicare Program; June 16, 1997, Meeting of the Practicing Physicians Advisory Council.		

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR Vol. 62 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
06/02/97	29902–30037	412, 413, 489	BPD–878–P	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates.	08/01/97	
06/04/97	30604–30605		ORD–100–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: April 1997.		
06/10/97	31669–31670	144, 146	BPD–890–CN	Interim Rules for Health Insurance Portability for Group Health Plans; Correction.		
06/17/97	32715–32733	410, 424	BPD–813–P	Medicare Program; Ambulance Services.	08/18/97	
06/18/97	33158–33305	400, 405, 410, 414.	BPD–884–P	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998.	08/18/97	
06/19/97	33459		MB–103–NC	Medicaid Program; Allocation of Enhanced Federal Matching Funds for Increased Administrative Costs Resulting From Welfare Reform; Correction.		

Categorization of Food and Drug Administration-Approved Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist HCFA, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following information presents the device number, category (in this case, A), and criterion code.

G960260 A1
G970007 A2
G970015 A2
G970018 A2
G970022 A2
G970068 A2
G970069 A2
G970076 A2
G970093 A2
G970121 A2

The following information presents the device number, category (in this case, B), and criterion code.

G960033 B4
G960209 B4
G960222 B2
G960233 B4
G960240 B5
G960261 B2
G970033 B4
G970043 B4
G970049 B3
G970060 B3
G970062 B1
G970063 B4
G970064 B2
G970065 B3
G970066 B4
G970067 B2
G970072 B2
G970077 B1
G970079 B2
G970080 B4
G970083 B4
G970085 B2
G970090 B4
G970091 B3
G970092 B2
G970098 B4
G970104 B2
G970105 B2
G970108 B1
G970109 B3
G970113 B4
G970115 B4
G970117 B4

[FR Doc. 97–30568 Filed 11–20–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–56]

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 22, 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 name and telephone number 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 13, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Insurance for Home Equity Conversion Mortgages—Residential Loan Application for Reverse Mortgages.

Office: Housing.

OMB Approval Number: None.

Description of the Need for the Information and its Proposed use: The Housing and Community Development Act of 1987 established a Federal Mortgage Insurance Program, Section 255 of the National Housing Act, to insure Home Equity Conversion Mortgages (HECMs). In order to obtain a HECM loan, the borrower is required to complete a loan application and the HUD/VA Addendum to the Uniform Residential Loan Application. The Uniform Residential Loan Application (URLA) is completed by the borrower as part of the application loan process. The data collected is necessary to determine if the borrower will qualify for the HECM loan. The relevant ''qualification'' issues are the ages of the borrowers, the ownership status of the property, and any outstanding liens on the property.

Form Number: HUD–92900–A/B and URLA.

Respondents: Individuals or Households, Business or Other For-Profit and the Federal Government.

Frequency of Submission: On Occasion, Annually, and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Residential Loan Application	5,000		1		1		5,000

Total Estimated Burden Hours: 5,000.

Status: New.

Contact: Diane Labasso, HUD, (202) 708–2600 x2191; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–30593 Filed 11–20–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–57]

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 22, 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: Gloria Diggs, Acting 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. Diggs.

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 13, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Flexible Subsidy/Capital Improvement Loan Program.

Office: Housing.

OMB Approval Number: 2502–0395.

Description of the Need for the Information and its Proposed Use: This information collection is necessary to the Department to determine which projects will best benefit from flexible subsidy loans in order to improve financial soundness, improve management, and maintain affordability. In addition, this information provides the Department with a means to account for, on a project specific basis, the use of flexible subsidy dollars and the progress being made by each project toward its physical, financial, and management improvement goals.

Form Number: HUD–9823A, 9824A, 9835, and 9835A/B.

Respondents: State, Local, or Tribal Government, Business or Other For-Profit, and Not-For-Profit Institutions.

Frequency of Submission: Quarterly and Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–9823A	30		12		1		360
HUD–9824A	30		4		20		2,400
HUD–9835/A	30		1		8		240
HUD–9835B	30		1		1		30

Total Estimated Burden Hours: 3,030.

Status: Reinstatement, with changes.

Contact: Michael E. Diggs, HUD, (202) 708–0558x2514; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–30594 Filed 11–20–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT:

Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; 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 the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 14, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–30595 Filed 11–20–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Notice of Intent To Negotiate a Contract Among Wasatch County Special Service Area #1, Central Utah Water Conservancy District, and Department of the Interior for Carriage of Non-Project Water Through the Wasatch Canal as Part of the Wasatch County Water Efficiency Project and Daniel Replacement Project of the Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate a contract among Wasatch County Special Service Area #1 (WCSSA), Central Utah Water Conservancy District (District), and Department of the Interior for carriage of non-project water through the Wasatch Canal as part of the Wasatch County Water Efficiency Project and Daniel Replacement Project (WCWEP and DRP) under the Central Utah Project Completion Act.

SUMMARY: Public law 102–575, Central Utah Project Completion Act, Sections 202(a)(3), 207(e), and 303(b), allows for the construction of the WCWEP and DRP as part of the Central Utah Project. The WCWEP and DRP Projects provide for increasing irrigation efficiency in the Heber Valley, conserving water, and eliminating the diversion of water from the upper Strawberry River tributaries to Heber Valley. As part of these projects, the United States plans to acquire, and the District intends to improve, the Wasatch Canal, a feature which has historically been used to convey Provo River water to irrigators. The canal will be used to convey project water and non-project water for irrigation purposes.

The purpose of the negotiation sessions will be to determine the amount of non-project water which will be conveyed through the Wasatch Canal and the price to be paid by WCSSA to the Department for conveying the non-project water.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1237, E-Mail address: rmurray@uc.usbr.gov

Dated: November 17, 1997.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 97–30604 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Notice of Intent To Negotiate Agreements Between the Wasatch County Special Service Area #1, and Department of the Interior for the Purchase of the Timpanogos and Wasatch Canals as Part of the Wasatch County Water Efficiency Project and Daniel Replacement Project of the Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate agreements between Wasatch County Special Service Area #1 (WCSSA), and Department of the Interior for the purchase of the Timpanogos and Wasatch Canals as part of the Wasatch County Water Efficiency Project and Daniel Replacement Project (WCWEP and DRP) under the Central Utah Project Completion Act.

SUMMARY: Public Law 102–575, Central Utah Project Completion Act, Sections 202(a)(3), 207(e), and 303(b), allows for the construction of the WCWEP and

DRP as part of the Central Utah Project. The WCWEP and DRP Projects provide for increasing irrigation efficiency in the Heber Valley, conserving water, and eliminating the diversion of water from the upper Strawberry River tributaries to Heber Valley. As part of these projects, the United States plans to acquire the Timpanogos and Wasatch Canals from WCSSA. These two canals are features which have historically been used to convey Provo River water to Heber Valley irrigators. The canals will be used to convey project water and non-project water for irrigation purposes.

The purpose of the negotiation sessions will be to agree upon the price and the details for the United States to purchase Timpanogos and Wasatch Canals from WCSSA.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, UT 84606–6154, Telephone: (801) 379–1237, E-Mail address: rmurray@uc.usbr.gov

Dated: November 17, 1997.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 97–30605 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. 835433

Applicant: California Army National Guard, San Luis Obispo, California.

The applicant requests a permit to take (harass by survey; capture and release; collect and sacrifice voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with presence or absence surveys in vernal pools throughout the species range in California for the purpose of enhancing their survival.

Permit No. 790167

Applicant: Kevin Lafferty, Santa Barbara, California.

The applicant requests an amendment to his permit to extend the area authorized to take (harass by survey, capture and release) the tidewater goby (*Eucyglobius newberryi*) in conjunction with presence or absence surveys and population monitoring throughout the species range in California for the purpose of enhancing its survival.

Permit No. 835549

Applicant: Charles Black, San Diego, California.

The applicant requests a permit to take (harass by survey, capture and release) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*), and remove and reduce to possession the San Diego mesa mint (*Pogogyne abramsii*) and the San Diego button celery (*Eryngium aristulatum* ssp. *pavishii*) for the purpose of enhancing their survival, in conjunction with research in vernal pools on Miramar Naval Air Station, San Diego, California.

Permit No. 804203

Applicant: Stephen Myers, Riverside, California.

The applicant requests an amendment of his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys in Riverside, Orange, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. 835918

Applicant: Jutta C. Burger, Riverside, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys in Riverside, Orange, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. 836517

Applicant: Chet McGaugh, Riverside, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys in Riverside, Orange, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. 836419

Applicant: Mike Wilcox, Riverside, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in Riverside, Orange, and San Diego Counties, California, and take (harass by survey) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in San Bernardino and Riverside Counties, California, in conjunction with presence or absence surveys for the purpose of enhancing their survival.

Permit No. 836521

Applicant: Dan Holland, Fallbrook, California.

The applicant requests a permit to take (capture, handle, measure, apply Passive Integrated Transponders, and radio-tag) the arroyo southwestern toad (*Bufo microscaphus californicus*) in conjunction with ecological research in San Diego, Orange, and Los Angeles Counties, California, for the purpose of enhancing its survival.

Permit No. 836518

Applicant: The Environmental Trust, La Mesa, California.

The applicant requests a permit to: take (locate and monitor nests, capture, band, color-band, and release) the least Bell's vireo (*Vireo bellii pusillus*); take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (harass by survey, capture and release, collect and sacrifice voucher specimens) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*); take (capture and release) the Stephen's kangaroo rat (*Dipodomys stephensi*); and take (capture and release, conduct egg counts) the arroyo southwestern toad (*Bufo microscaphus californicus*) in conjunction with population monitoring and ecological research in Southern California for the purpose of enhancing their survival.

Permit No. 777965

Applicant: LSA Associates, Irvine, California.

The applicant requests a permit to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in San Diego, Orange, Riverside, Los Angeles, San Bernardino, Ventura, Santa Barbara, and Kern Counties, California, in conjunction with presence or absence

surveys and population monitoring for the purpose of enhancing its survival.

Permit No. 836079

Applicant: Richard E. Hill, Fair Oaks, California.

The applicant requests a permit to take (harass by survey, capture and release, collect and sacrifice voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with presence or absence surveys and ecological research in vernal pools, throughout the species range in California for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received on or before December 22, 1997.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; fax (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: 503–231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: November 17, 1997.

Don Weathers,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–30610 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement for Issuance of an Incidental Take Permit to the Rellim Redwood Company, Del Norte County, CA

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce; California Department of Forestry and Fire Protection.

ACTION: Notice of intent.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (collectively ''the Services''), and the California Department of Forestry and Fire Protection intend to prepare a joint National Environmental Policy Act Environmental Impact Statement addressing approval and implementation of a Multi-Species Habitat Conservation Plan (Plan) submitted by the Rellim Redwood Company (Rellim) as part of an application for an incidental take permit, pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (Act). The Plan will cover forest management activities on Rellim's forestlands in Del Norte County, California. Rellim intends to request an incidental take permit for the northern spotted owl *(Strix occidentalis caurina),* marbled murrelet *(Brachyramphus marmoratus marmoratus)* and coho salmon *(Oncorhynchus kisutch);* these species listed as threatened or endangered under the Act. Rellim is also seeking coverage under specific provisions of the permit for approximately 40 currently unlisted species (including those with State, proposed Federal or State, or other special status) should these species be listed under the Act in the future. The Fish and Wildlife Service, the National Marine Fisheries Service, and the California Department of Forestry and Fire Protection are acting as joint lead agencies on the project. Under the California Environmental Quality Act and the state Z'Berg Nejedly Forest Practice Act, the California Department of Forestry and Fire Protection must conduct its own environmental assessment, and has determined that a Program Timberland Environmental Impact Report will be prepared. In accordance with Federal and State regulations, a joint Environmental Impact Statement/Program Timberland Environmental Impact Report will be prepared.

Public Involvement

This notice is being furnished pursuant to the Council on Environmental Quality Regulations for implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR sections 1501.7 and 1508.22) to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be considered in preparation of the Environmental Impact Statement.

DATES: Comments must be received on or before December 24, 1997. Public scoping meetings, at which oral and written comments can be submitted, are scheduled for Monday, November 24, 1997, 2:00–4:00 p.m., at the Cultural Center Atrium, 1001 Front Street, Crescent City, California, and from 7:00–9:00 p.m. at the Eagles Hall, 1005 J Street, Arcata, California.

ADDRESSES: Comments regarding the scope of the Environmental Impact Statement should be addressed to Mr. Ken Hoffman, Coastal California Fish and Wildlife Office, 1125 16th Street, Room 209, Arcata, California 95521. Written comments may also be sent by facsimile to (707) 822–8411. Comments received will be available for public inspection, by appointment, during normal business hours (Monday through Friday; 8:00 a.m. to 5:00 p.m.) at the above address. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Hoffman, at the address above, or telephone (707) 822–7201.

SUPPLEMENTARY INFORMATION: Rellim manages approximately 30,000 acres in Del Norte County, California, as commercial forestlands that will be considered for inclusion in the Plan. Rellim is developing a comprehensive 50-year multi-species Plan, covering both listed and certain unlisted species. Rellim's Plan is expected to combine several mitigation strategies to ensure species protection.

Rellim's multi-species planning approach is anticipated to include the northern spotted owl, marbled murrelet, and coho salmon, which are listed as threatened or endangered under the Act. In addition, about 40 currently unlisted species (including those with State, proposed Federal or State, or other special status) are being considered for inclusion in the Plan.

Once completed, it is expected that Rellim will submit the Plan as part of the incidental take permit application

process, as required under the provisions of section 10(a) of the Act. The Services will evaluate the incidental take permit application and associated Plan in accordance with section 10(a) of the Act and its implementing regulations. The environmental review of the permit application and the Plan will be conducted in accordance with the requirements of the National Environmental Policy Act and its implementing regulations. A No Action alternative will be considered consistent with the requirements of the National Environmental Policy Act. Another possible alternative is a ''Listed Species Only'' alternative. A revised Plan under this alternative would only address the habitat needs of the northern spotted owl, marbled murrelet, and coho salmon; there would be no permit coverage for species currently not listed under the Act. Further consideration of a reasonable range of project alternatives will be given during and subsequent to this scoping process.

Dated: November 14, 1997.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–30609 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Application Notice Announcing the Opening Date for Transmittal of Applications Under Three FGDC National Spatial Data Infrastructure (NSDI) Partnership Funding Programs for Fiscal Year (FY) 1998 Under the Catalog of Federal Domestic Assistance No. 15.809 National Spatial Data Infrastructure Competitive Cooperative Agreements Program

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice inviting applications for the NSDI Cooperative Agreements Program awards, the NSDI Benefits Program awards, and the NSDI Framework Demonstration Projects Program awards, for fiscal year 1998, with performance to begin in September 1998.

SUMMARY: The purpose of the FGDC National Spatial Data Infrastructure (NSDI) Partnership Funding Programs is to facilitate and foster partnerships and alliances within and among various public and private entities to assist in building the NSDI. The NSDI consists of policies, standards, agreements, and partnerships among a variety of sectors and disciplines that promotes more cost-effective production, ready availability, and greater use of high quality geospatial data. Three separate but related programs constitute the FGDC Partnership Funding Programs: the NSDI Cooperative Agreements Program, the NSDI Benefits Program, and the NSDI Framework Demonstration Projects Program.

The Cooperative Agreements Program funds projects focused on promoting metadata collection and creating clearinghouses of geographic data linked to the Internet, developing NSDI standards, advancing the NSDI through education, and organizing and strengthening State-wide or regional programs for geographic data sharing.

The Benefits Program funds projects that assess the qualitative or quantitative benefits of using a shared data resource to solve particular problems over a given geographic area.

The Framework Demonstration Projects Program funds projects that demonstrate technical, operational and business capabilities to collaboratively create and maintain certain categories of commonly needed ''Framework'' data. Activities initiated under each of the three mentioned programs will promote development and maintenance of and access to data sets that are needed for national, regional, State, and local analyses.

Applications must involve partnering between two or more organizations. Applications may be submitted by Federal agencies, State and local government agencies, educational institutions, private firms, private foundations, and Federally acknowledged or State-recognized Native American tribes or groups. Applications from Federal agencies will not be competed against applications from other sources. Participants are expected to cost share in the project. Authority for this program is contained in the Organic Act of March 3, 1879, 43 U.S.C. 31 and Executive Order 12906.

DATES: The program announcements and application forms for each of the three aforementioned programs are expected to be available on or about November 29, 1997. Applications must be received on or before February 28, 1998.

ADDRESSES: Copies of Program Announcement #1434–HQ–98–PA–00044 for the NSDI Cooperative Agreements Program, Program Announcement #1434–HQ–98–PA–00046 for the NSDI Benefits Program, and Program Announcement #1434–HQ–98–PA–00045 for the NSDI Framework Demonstration Projects Program may be obtained by writing to Ms. Karen Staubs, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–7372, fax (703) 648–7901. Also, copies of each Program Announcement will be available through the Internet at <www.usgs.gov\contracts\index.html>.

FOR FURTHER INFORMATION CONTACT: For the NSDI Cooperative Agreements Program contact Ms. Kathleen Craig, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192; (703) 648–7357, fax (703) 648–7901.

For the NSDI Benefits Program contact Ms. Deborah Walsh, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192; (703) 648–7384, fax (703) 648–7901.

For the NSDI Framework Demonstration Projects Program contact Ms. Tammy Fanning, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192; (703) 648–7363, fax (703) 648–7901.

SUPPLEMENTARY INFORMATION: Under the NSDI Cooperative Agreements Program proposals are to be directed towards any of four components of the NSDI. The first is the establishment of a National Geospatial Data Clearinghouse for finding and accessing geospatial data. Second is the development and promulgation of standards in data collection, documentation, transfer, and search and query. Third is the development and implementation of educational outreach programs to increase the awareness and understanding of the NSDI vision and concepts. Fourth is the building and strengthening of relationships among organizations to support digital geographic data coordination.

Under the NSDI Benefits Program, proposals are to be directed towards projects that assess the benefits of using shared geographic data, or spatially referenced information, to aid a public decision-making process within a particular geographic area. Assessment of the benefits of data sharing can be by quantitative or qualitative measures. No restriction is placed on the primary issue or problem being addressed. The problem may be environmental, economic, social, or cultural. Defined

geographic areas might include watersheds, ecosystems, counties, municipalities, regions, and so forth.

Under the NSDI Framework Demonstration Projects Program, proposals are to be directed towards projects that demonstrate or operationalize the framework concept. Projects can address initial or advanced technical, operational, and business aspects/capabilities to collaboratively create and maintain certain categories of commonly needed ''Framework'' data, or deal with specific framework topics such as coding permanent feature identifiers, data integration, generalization, transactions and feature maintenance, feature level metadata, and data certification. Framework data are defined as geodetic control, cadastral, digital orthoimagery, elevation, bathymetry, transportation, hydrography, and governmental units.

Dated: November 12, 1997.

Jack Fischer,

Associate Chief, Operations.

[FR Doc. 97–30580 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs,

Saginaw Chippewa Tribe Liquor Ordinance

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, as interpreted by the Supreme Court in, *Rice* v. *Rehner*, 463 U.S. 713 (1983). I certify that the Saginaw Chippewa Tribe of Michigan Liquor Ordinance was duly adopted by Resolution No. 97–067 of the Saginaw Chippewa Tribe of Michigan Tribal Council on June 26, 1997. The ordinance provides for the regulation, sale, possession and use of alcoholic liquor within the Tribe's jurisdiction.

DATES: This ordinance is effective as of November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry Cordova, Office of Tribal Services, 1849 C Street, N.W., MS 4641 MIB, Washington, D.C. 20240–4401; telephone (202) 208–4401.

SUPPLEMENTARY INFORMATION: The Saginaw Chippewa Tribe of Michigan Liquor Ordinance shall read as follows:

Chapter 8.7 Liquor Control Act

8.7.1 Legislative Findings. The Saginaw Chippewa Tribal Council hereby finds as follows:

8.7.1.1 The Council has authority to adopt this Act pursuant to powers vested in it by Article VI, sections 1(e), (i), (j), (k), (n), (o), and Article VI, section 2 of the Amended Tribal Constitution, said Constitution and Bylaws having been ratified by the Tribe on March 27, 1937, and approved by the Secretary of Interior on May 6, 1937, with revised amendments approved on November 4, 1986. Further, the Supreme Court held in *United States* v. *Mazurie*, 419 U.S. 544 (1975), that Congress through 18 U.S.C. 1161 delegated to Indian tribes authority to control the introduction, distribution, and use of alcoholic beverages into Indian country.

8.7.1.2 The importation, distribution, manufacture, and sale of alcoholic liquor for commercial purposes on the Isabella Reservation (''Reservation'') is a matter of special concern to the Tribe.

8.7.1.3 Federal law as embodied in 18 U.S.C. 1161 provides that certain sections of the United States Code, commonly referred to as Federal Indian Liquor Laws, shall not apply to any act or transaction within any area of Indian country, provided such act or transaction is in conformity with both the laws of the state in which such act or transaction occurs, and with an act duly adopted by the tribe having jurisdiction over such area of Indian country.

8.7.2 Declaration of Policy.

8.7.2.1 The Council hereby declares that the policy of the Tribe is to eliminate the problems associated with unlicensed, unregulated, and unlawful importation, distribution, manufacture, and sale of alcoholic liquor for commercial purposes on the Reservation, and to promote temperance in the use and consumption of alcoholic liquor by increasing tribal control over such activities on the Reservation.

8.7.2.2 The importation, distribution, manufacture, and sale of alcoholic liquor for commercial purposes on the Reservation shall be lawful, provided that such activity is conducted by the Tribe or by an authorized tribal enterprise, and is in conformity with this Act. Such conditions are necessary to increase the Tribe's ability to control and regulate the distribution, sale, and possession of alcoholic liquor, while at the same time provide an important and necessary source of revenue for continued operation of the tribal government and delivery of tribal governmental services.

8.7.3 Short Title. This Act shall be known and cited as the ''Saginaw Chippewa Liquor Control Act.''

8.7.4 Purpose. The purpose of this Act is to prohibit the importation, manufacture, distribution, and sale of alcoholic liquor for commercial purposes on the Reservation except pursuant to a license issued by the Council under the provisions of this Act and other tribal laws.

8.7.5 Application of 18 U.S.C. 1161. The importation, manufacture, distribution, and sale of alcoholic liquor for commercial purposes on the Reservation shall be ''in conformity with'' this Act and the laws of the State of Michigan as that phrase is used in 18 U.S.C. 1161.

8.7.6 Incorporation by Reference of Michigan Laws.

8.7.6.1 In accordance with 18 U.S.C. 1161, the Tribe hereby adopts and applies as tribal law those Michigan laws, as amended, relating to the sale and regulation of alcoholic beverages encompassing the following areas: Sale to a minor; sale to a visibly intoxicated individual; sale of adulterated or misbranded liquor; hours of operation; and similar substantive provisions, including such other laws prohibiting the sale of alcoholic beverages to certain categories of individuals. Said tribal laws which are defined by reference to the substantive areas of Michigan laws referred to in this section shall apply in the same manner and to the same extent as such laws apply elsewhere in Michigan to off-Reservation transactions unless otherwise agreed by the Tribe and State; provided, that nothing in this Act shall be construed as a consent by the Tribe to the jurisdiction of the State of Michigan or any of its courts or subordinate political subdivisions or municipalities within the Reservation over any activity arising under or related to the subject of this Act nor shall anything in this Act constitute an express or implied waiver of the sovereign immunity of the Tribe.

8.7.6.2 The Tribe, for resale by the Tribe, shall purchase spirits from the Michigan Liquor Control Commission, and beer and wine from distributors licensed by the Michigan Liquor Control Commission, at the same price and on the same basis that such beverages are purchased by similar licensees.

8.7.6.3 In the event of any conflict or inconsistency between ''adopted and applied'' Michigan laws and this Act, the provisions of this Act shall govern.

8.7.6.4 Whenever such Michigan laws are incorporated herein by reference, amendments thereto shall

also be deemed to be incorporated upon their effective date in the State of Michigan without further action by the Council.

8.7.7 Administration of Act. The Council, under its powers vested under the Constitution and Bylaws and this Act, shall exercise all of the powers and accomplish all of the purposes as set forth in this Act, which may include the following actions:

(a) Adopt and enforce rules and regulations for the purpose of effectuating this Act, which includes the setting of fees;

(b) Execute all necessary documents; and

(c) Perform all matters and things incidental to and necessary to conduct its business and carry out its duties and functions under this Act.

8.7.8 Sovereign Immunity Preserved.

8.7.8.1 The Tribe, and all of its constituent parts, which includes but is not limited to tribal enterprises, subordinate organizations, boards, committees, officers, employees and agents, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived in writing by the Tribe.

8.7.8.2 Nothing in this Act, and no enforcement action taken pursuant to this Act or otherwise, including without limitation the filing of suit by the Tribal Council to enforce any provision of this Act or other tribal law, shall constitute a waiver of such sovereign immunity, either as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence, or in any other respect.

8.7.9 Applicability Within the Reservation. This Act shall apply to all persons within the exterior boundaries of the Reservation, consistent with applicable federal laws.

8.7.10 Interpretation and Findings. The Council in the first instance may interpret any ambiguities contained in this Act.

8.7.11 Liberal Construction. The provisions of this Act shall be liberally construed to achieve the purposes set forth, whether clearly stated or apparent from the context of the language used herein.

8.7.12 Savings Clause. In the event any provision of this Act shall be found or declared to be invalid by a court of competent jurisdiction, all of the remaining provisions of this Act shall be unaffected and shall remain in full force and effect.

8.7.13 Effective Date. The effective date of this Act is the date that the Secretary of the Interior publishes the same in the **Federal Register**.

8.7.14 Prior Inconsistent Acts. Except as provided otherwise under applicable federal law, this Act shall be the exclusive tribal law governing the introduction, distribution, sale and regulation of alcoholic beverages within the Isabella Reservation. This Act shall supersede any and all tribal laws that are inconsistent with the provisions of this Act, and such laws are hereby rescinded and repealed.

8.7.15 Computation of Time. Unless otherwise provided in this Act, in computing any period of time prescribed or allowed by this Act, the day of the act, event or default from which the designated period time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. For the purposes of this Act, the term ''legal holiday'' shall mean all legal holidays under tribal law.

8.7.16 Definitions. In construing the provisions of this Act, the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise:

(a) *Alcohol* means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

(b) *Alcoholic liquor* or ''alcoholic beverage'' means any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing ½ of 1% or more of alcohol by volume which is fit for use for beverage purposes. The following eight subclassifications comprise the entire universe of alcoholic liquor: beer, wine, spirits, alcohol, sacramental wine, brandy, mixed wine drink, and mixed spirit drink. Alcoholic liquor or alcoholic beverage does not include the exceptions set forth in Mich. Comp. Laws § 436.4 (Mich. Stat. Ann. § 18.974).

(c) *Applicant* means any person who submits an application to the Tribe for a liquor license and who has not yet received such a license.

(d) *Beer* means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, or other cereal in potable water.

(e) *Brandy* means an alcoholic liquor as defined in the federal regulations, 27 CFR § 5.22(d) (1980).

(f) *Constitution* and *Tribal Constitution,* as used throughout this Code and elsewhere under tribal law, means the Constitution and Bylaws of the Saginaw Chippewa Indian Tribe of Michigan, approved by the Secretary of the Interior on May 6, 1937, amended on November 4, 1986, under the authority of Section 4 of the Saginaw Chippewa Indian Tribe Distribution of Judgment Funds Act, Public Law 99–346, 100 Stat. 676 (June 30, 1986), including all subsequent amendments ratified and approved pursuant to tribal and federal law.

(g) *Council* means the elected Tribal Council of the Saginaw Chippewa Indian Tribe of Michigan acting as the governing body of the Tribe pursuant to the Tribe's Constitution.

(h) *License* means a liquor license issued by the Saginaw Chippewa Tribal Council under the provisions of this Act authorizing the importation, manufacture, distribution, or sale of alcoholic liquor for commercial purposes on or within the Reservation consistent with federal law.

(i) *Licensee* means any holder of a liquor license issued by the Tribe and includes any employee or agent of the Licensee.

(j) *Manufacturer* means any person engaged in the manufacture of alcoholic liquor.

(k) *Mixed wine drink* means a drink or similar product marketed as a wine cooler and containing less than 7% alcohol by volume, consisting of wine and plain, sparkling, or carbonated water and containing any one (1) or more of the following: Nonalcoholic beverages; flavoring; coloring materials; fruit juices; fruit adjuncts; sugar; carbon dioxide; or preservatives.

(l) *Mixed spirit drink* means a drink produced and packaged or sold by a mixed spirit drink manufacturer or an out-of-state seller of mixed spirit drink which contains 10% or less alcohol by volume consisting of distilled spirits mixed with nonalcoholic beverages or flavoring or coloring materials and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives.

(m) *Person* means any individual, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust estate, tribe, firm, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise, and any other Indian tribe, band, or group, whether recognized by the United States or otherwise. The term shall also include any tribal enterprise and licensee.

(n) *Reservation* Unless otherwise provided by applicable federal law, the Isabella Reservation includes five full and two one-half adjoining townships located in Isabella County, Michigan that were withdrawn and reserved for the benefit of the Tribe by Executive Order of President Pierce dated May 14, 1855, and selected by the Indians pursuant to the Treaty of August 2, 1855, 11 Stat. 633, and described with specificity and reaffirmed in Article II of the Treaty of October 18, 1864, 14 Stat. 657, as the north half of township 14 [Chippewa Township], and townships 15 [Denver Township] and 16 [Wise Township] north, range 3 west; the north half of township 14 [Union Township] and township 15 [Isabella Township] north, range 4 west; and townships 14 [Deerfield Township] and 15 [Nottowa Township] north, range 5 west, within Isabella County, Michigan, and all other lands added to the Reservation by executive order, act of Congress, proclamation or declaration of the Secretary of the Interior or other authorized federal official, or otherwise under federal law, including, without limitation, lands in Isabella County and Arenac County, Michigan that were added to the Isabella Reservation and described by declaration of the Secretary of the Interior on September 9, 1983, 48 FR 176 (1983), and shall include, without limitation, all lands, whether held in fee or trust and regardless of ownership, title, or patent, without regard to date of issuance; and all waters, waterways, streams and rivers; all highways and roadways, public or private; rights of way and easements, without regard to ownership or title of the land; and all airspace in a column above all such lands and territory.

(o) *Sacramental wine* means wine containing not more than 24% of alcohol by volume which is used for sacramental purposes.

(p) *Sale* means the exchange, barter, traffic, furnishing, or giving away for commercial purposes any alcoholic liquor.

(q) *Spirits* means any beverage which contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcoholic content of more than 21% by volume, except sacramental wine and mixed spirit drink.

(r) *Tribal Court* means the Tribal Court of the Saginaw Chippewa Indian Tribe of Michigan.

(s) *Tribal enterprise* means the Tribe or any activity or business owned, managed, or controlled by the Tribe or any agency, subordinate organization, or other entity of the Tribe, where the organic documents establishing such enterprise expressly allow for the sale of alcoholic liquor.

(t) *Tribal law* means the Tribal Constitution and all laws, acts, codes, resolutions, and regulations now and hereafter duly enacted by the Tribal Council.

(u) *Tribe* means, and ''tribal'' refers to, the Saginaw Chippewa Indian Tribe of Michigan.

(v) *Wine* means the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than 21% of alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks.

8.7.17 Prohibition of Unlicensed Sale of Liquor. This Act prohibits the importation, manufacture, distribution, or sale of alcoholic liquor for commercial purposes other than where conducted by a tribal enterprise in accordance with this Act. No license shall be issued to any person or entity other than a tribal enterprise. The federal liquor laws are intended to remain applicable to any act or transaction that is not authorized by this Act, and violators shall be subject to federal law.

8.7.18 Authorization to Sell Liquor. Any tribal enterprise applying for and obtaining a license under the provisions of this Act shall have the right to engage only in those alcoholic liquor transactions expressly authorized by such license and only at those specific places or areas designated in said license.

8.7.19 Classes of Licenses. The Council shall have the authority to issue any one or more of the following classes of liquor licenses within the Reservation:

(a) ''Retail on-sale general license'' means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes hotels where alcoholic beverages may be sold for consumption on the premises and in the rooms of bona fide registered guests.

(b) ''Retail on-sale beer and wine license'' means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes hotels where beer and/or wine may be sold for consumption on the premises and in the rooms of bona fide registered guests.

(c) ''Retail off-sale general license'' means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

(d) ''Retail off-sale beer and wine license'' means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

(e) ''Manufacturer's license'' means a license authorizing the applicant to manufacture alcoholic beverages for the purpose of sale on the Reservation.

(f) ''Temporary license'' means a license authorizing the sale of alcoholic liquor on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, or similar occasion.

The Council may, by appropriate Council action, limit or restrict the number of licenses issued or in effect in its sole discretion.

8.7.20 Application Form and Content. An application for a license shall be made to the Council and shall contain the following information:

(a) The name and address of the licensee, including the names and addresses of all of the principal officers and directors, and other employees with primary management responsibility related to the sale of alcoholic liquor;

(b) The specific area, location, and/or premise(s) for which the license is applied for;

(c) The class of liquor transaction applied for (*e.g.*, retail on-sale general license, etc.);

(d) Whether the applicant has a state liquor license;

(e) A sworn statement by the applicant to the effect that none of the applicant's officers and directors, and employees with primary management responsibility related to the sale of alcoholic liquor, were ever convicted of a felony under any law, and have not violated and will not violate or cause or permit to be violated any of the provisions of this Act; and

(f) The application shall be verified under oath and notarized by a duly authorized representative.

8.7.21 Transfer of License. Each license issued or renewed under this Act is separate and distinct and is transferable from one licensee to another and/or from one premises to another only with the approval of the Tribal Council. The Tribal Council shall have the authority to approve, deny, or approve with conditions any application for the transfer of any license. The transfer application shall contain all of the information required

of an original applicant under section I.G.19 of this Act and shall be signed by both the licensee and transferee. In the case of a transfer to a new premises, the application shall contain an exact description of the location where the alcoholic liquor is proposed to be sold.

8.7.22 Term and Renewal of License. All licenses shall be issued on a calendar year basis and shall be renewed annually. The applicant shall renew a license by, prior to the license's expiration date, submitting a written renewal application to the Tribal Council on the provided form, and paying the annual license fee for the next year.

8.7.23 Investigation. Upon receipt of an application for the issuance, renewal, or transfer of a license, the Tribal Council shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of this Act have been complied with, and shall investigate all matters connected therewith which may affect the public health, welfare, and morals.

8.7.24 Public Hearing. Upon receipt of an application for issuance, renewal, or transfer of a license, and the payment of all fees required under this Act, the Tribal Council shall set the matter for a public hearing. Notice of the time and place of the hearing shall be given to the applicant and the public at least twenty (20) calendar days before the hearing. Notice shall be given to the applicant by United States mail, postage prepaid, at the address listed in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on the Reservation. The notice published in the newspaper shall include the name of the applicant, whether the action involves a new issuance, renewal, or transfer, the class of license applied for, and a general description of the area where the alcoholic liquor will be or has been sold. At the hearing, the Tribal Council shall hear from any person who wishes to speak for or against the application. The Tribal Council shall have the authority to place time limits on each speaker and to limit or prohibit repetitive testimony.

8.7.25 Tribal Council Action on the Application. The Tribal Council shall act on the matter within thirty (30) days of the conclusion of the public hearing. The Tribal Council shall have the authority to deny, approve, or approve with conditions the application. Upon approval of an application, the Council shall issue a license to the applicant in a form to be approved from time to time by Tribal Council resolution.

8.7.26 Denial of License, Renewal, or Transfer. An application for a new license, license renewal, or license transfer may be denied for one or more of the following reasons. Solely for purposes of this section and section I.G.26, ''applicant'' means licensee in the event of a renewal, and licensee and/or transferee in the event of a transfer.

(a) The applicant has materially misrepresented facts contained in the application;

(b) The applicant is presently not in compliance with tribal or federal laws;

(c) Granting of the license (or renewal or transfer thereof) would create a threat to the peace, safety, morals, health, or welfare of the Tribe;

(d) The applicant has failed to complete the application properly or has failed to tender the appropriate fee; or

(e) A plea, verdict, or judgment of guilty, or the plea of *nolo contendere* by an applicant's officer or director, or an employee with primary management responsibility related to the sale of alcoholic liquor, to any offense under any federal or state law prohibiting or regulating the sale, use, possession, or giving away of alcoholic liquor.

8.7.27 Temporary Denial. If the application is denied solely on the basis of subsection I.G.25(d), the Tribal Council shall, within fourteen (14) days of receipt of the application, issue a written notice of temporary denial to the applicant. Such notice shall set forth the reasons for denial and shall state that the denial will become permanent if the problem(s) is not corrected within fifteen (15) days following receipt of the notice.

8.7.28 Multiple Locations. Each license shall be issued to a specific licensee. Separate licenses shall be issued for each of the premises of any business establishment having more than one address. In the case of the sale of alcoholic beverages on boats, a separate license shall be issued for each boat regardless of the fact that the boats are moored at one location or owned by one person.

8.7.29 Posting of License. Every licensee shall post and keep posted its license(s) in a conspicuous place(s) on the licensed premises.

8.7.30 Suspension or Revocation of License. Whenever it is brought to the attention of the Tribal Council that a licensee, through action or inaction:

(a) has materially misrepresented facts contained in any license application;

(b) is not in compliance with tribal or federal laws;

(c) failed to comply with any condition of a license, including failure to pay a required fee;

(d) has had a plea, verdict, or judgment of guilty, or a plea of *nolo contendere* entered against one of its officers or directors, or managers with primary responsibility over the sale of alcoholic liquor, to any offense under federal or state law prohibiting or regulating the sale, use, or possession, of alcoholic liquor;

(e) failed to take reasonable steps to correct objectionable conditions constituting a nuisance on the licensed premises or any adjacent area within a reasonable time after receipt of a notice to make such corrections has been received from the Tribal Council or its authorized representative; or

(f) suspension or revocation of the licensee's Michigan liquor license.

8.7.31 Initiation of Suspension or Revocation Proceedings. Suspension or revocation proceedings are initiated either: by the Tribal Council, on its own motion and through the adoption of an appropriate resolution meeting the requirements of this section; or by any person who files an accusation with the Tribal Council. The accusation shall be in writing and signed by the maker. Both the accusation and resolution shall state facts showing that there are specific grounds under this Act which would authorize the Tribal Council to suspend or revoke the license(s). The Tribal Council shall cause the matter to be set for a hearing before the Tribal Council on a date no later than thirty (30) days from the Tribal Council's receipt of an accusation or adoption of the resolution. Notice of the time, date, and place of the hearing shall be given the licensee and the public in the same manner as set forth in subsection I.G.23. The notice shall state that the licensee has the right to file a written response to the accusation or resolution, verified under oath and signed by the licensee, ten (10) days prior to the hearing date.

8.7.32 Hearing. Any hearing held on any accusation shall be held before a majority of the Council under such rules of procedure as it may adopt. Both the licensee and the person filing the accusation shall have the right to present witnesses to testify and to present written documents in support of their positions to the Tribal Council. The Tribal Council shall render its decision within sixty (60) days after the date of the hearing. The decision of the Tribal Council shall be final.

8.7.33 Delivery of License. Upon suspension or revocation of a license, the enterprise shall return the license to the Tribal Council. In cases involving suspension, the Tribal Council shall

return the license to the enterprise at the expiration or termination of the suspension period, with a memorandum of the suspension written or stamped upon the face thereof in red ink.

8.7.34 General Penalties. Any person adjudged to be in violation of this Act, including any lawful regulation promulgated pursuant thereto, shall be subject to a civil fine of not more than five hundred dollars ($500.00) for each such violation. The Tribal Council may adopt by resolution a separate schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general health and welfare. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the five hundred dollar ($500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties which may be imposed under applicable law.

8.7.35 Initiation of Action. Any violation of this Act shall constitute a public nuisance. The Tribal Council, on behalf of and in the name of the Tribe, may initiate and maintain an action in Tribal Court or any court of competent jurisdiction to abate and permanently enjoin any nuisance declared under this Act. Any action taken under this section shall be in addition to any other penalties provided for in this Act. The plaintiff shall not be required to give bond in this action.

8.7.36 Inspection. All licensed premises used in the storage or sale of liquor, or any premises or parts of premises used or in any way connected physically or otherwise, with the licensed enterprise, shall at all times be opened to inspection by any tribal inspector.

8.7.37 Contraband; Seizure; Forfeiture.

8.7.37.1 All alcoholic liquor within the Reservation held, owned, or possessed by any person or licensee operating in violation of this Act is hereby declared to be contraband and subject to forfeiture to the Tribe.

8.7.37.2 Within three (3) weeks following the seizure of the contraband, a hearing shall be held by the Tribal Council, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities.

8.7.37.3 Notice of the hearing shall be given to the person from whom the property was seized, if known prior to hearing. If the person is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at other public places on the Reservation. The notice shall describe the property seized, and the time, place, and cause of seizure and give the name and place of residence, if known, of the person from whom the property was seized.

8.7.37.4 If upon hearing, the evidence warrants, or if no person appears as a claimant, the Tribal Council shall thereupon enter a determination of forfeiture and order such contraband sold or destroyed forthwith.

Dated: November 10, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–30597 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–02–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–08–7122–00, AZ–070–98–01]

Arizona, Temporary Closure of Selected; Public Lands in La Paz County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of selected public lands in La Paz County, Arizona, during the operation of the 1997 Whiplash Parker 400 Desert Race.

SUMMARY: The Lake Havasu Field Office Manager announces the temporary closure of selected public lands under its administration. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official permitted running of the 1997 Whiplash Parker 400 Desert Race.

DATES: December 4, 1997 through December 6, 1997.

SUPPLEMENTARY REGULATIONS: Specific restrictions and closure periods are as follows:

Designated Course

1. The portion of the course comprised of BLM lands, roads and ways south of the Bill Williams River, East and north of AZ Highway 72 and west of Wenden Road is closed to public vehicle use from 9:00 a.m. Thursday, December 4, 1997, to 9:00 p.m. Saturday December 6, 1997 (Mountain Standard Time).

2. Vehicles are prohibited from the following four Wilderness Areas and one Wilderness Study area (WSA):

a. AZ–070–12 (Gibraltar Mountain).
b. AZ–070–15A (Swansea).
c. AZ–070–71 (Buckskin Mountains).
d. AZ–070–17 (East Cactus Plain).
e. AZ–070–14A/B (Cactus Plain WSA).

3. The entire area encompassed by the designated course and all areas within 1 mile outside the designated course are closed to all vehicles except authorized and emergency vehicles. Access routes leading to the course are closed to vehicles.

4. Vehicle parking or stopping along Bouse Road, Shea Road, and Swansea Road is prohibited except for the designated spectator areas.

5. Spectator viewing is limited to two designated spectator areas located at:

a. South and North of Shea Road as signed, approximately 7 miles east of Parker, Arizona.

b. Bouse Road, also known as Swansea Road as signed, approximately, 2 miles and 5 miles north of Bouse, Arizona.

6. A fee will be collected from the public entering the public land closure from Shea Road, east of Parker, Arizona. The primary purpose of the fee implementation is to offset management, and operation costs of spectator area services and facilities. The fee implementation is to improve public safely while helping provide natural resource protection through improved management of the permitted event.

7. The following regulations will be in effect for the duration of the closure: Unless otherwise authorized, no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course, including all portions of Osborne Wash.

c. Spectate of otherwise be located outside of the designated spectator areas.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Be in possession of any alcoholic beverage unless that person has reached the age of 21 years.

f. Possess, discharge, or use firearms, other weapons, or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator areas.

h. Operate any vehicle, including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit areas.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard or endanger any person, property

or feature. Vehicles so parked are subject to citation, removal and impoundment at the owner's expense.

j. Take any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier.

k. Fail to keep their site free of trash and litter during the period of occupancy or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10 p.m. and 6 a.m. Mountain Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time. Signs and maps directing the public to the designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona or to La Paz County. Vehicles under permit for operation by event participants must follow the race permit stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all La Paz County and BLM roads and ways.

Authority for closure of public lands is found in 43 CFR 8340, subpart 8341; 43 CFR 8360, Subpart 8364.1, and 43 CFR 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $100,000 and/or imprisoned for not more than 12 months.

FOR FURTHER INFORMATION CONTACT: Mark Harris, BLM Ranger, or Myron McCoy, Outdoor Recreation Planner, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406 at (520) 505–1200.

Dated: November 12, 1997.

Robert M. Henderson,

Acting Field Manager.

[FR Doc. 97–30589 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–037–08–1200–00–264a]

Public Land Closure To Use of Firearms

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 43 CFR 8364.1(a) and 8365.2–5(a), in order to protect persons, property and resources, notice is hereby given that the Pocatello Resource Area, Bureau of Land Management, prohibits the discharge or use of firearms, other weapons and fireworks within the Formation Cave/Springs Research Natural Area/Area of Critical Environmental Concern (RNA/ACEC), located within the following boundaries of public lands:

T. 08 S., R. 42 E., Boise Meridian, Caribou County,
Sec. 28: E½SW¼.

DATES: Effective immediately, this prohibition will remain in effect until revoked.

FOR FURTHER INFORMATION CONTACT: Jeff Steele, Pocatello Resource Area Manager, Bureau of Land Management, 1111 N. 8th St., Pocatello, Idaho, 83201 (208) 236–6860.

SUPPLEMENTARY INFORMATION: This prohibition on the use of firearms, other weapons or fireworks within the Formation Cave/Springs RNA/ACEC will serve to protect the safety and health of individuals and groups visiting and hiking the network of trails located within the lands described above. Signs will be posted in strategic locations to provide notice of this restriction.

Dated: November 13, 1997.

Jeff S. Steele,

Area Manager.

[FR Doc. 97–30581 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM/MT/PL–98/003+1990; DES 97–38]

Draft Environmental Impact Statement for the Golden Sunlight Mines, Inc.; Amendment 008 and Mine Life Extension

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and the Montana Environmental Policy Act, the Bureau of Land Management (BLM) and the Montana Department of Environmental Quality (DEQ), as lead agencies, have prepared, through a third party contractor, a Draft EIS on the impacts of the Golden Sunlight Mines, Inc., implementation of Amendment 008 and the extension of the mine life through 2006. The Draft EIS presents a preferred alternative derived from seven alternatives including the company proposed action. The preferred alternative is the agencies' attempt to reduce or avoid the potential environmental impacts of the proposed action. The Draft EIS discloses the possible environmental consequences associated with each alternative.

DATES: Written comments on the Draft EIS will be accepted for 60 days following the date the Environmental Protection Agency publishes the Notice of Filing of the draft in the **Federal Register.**

Comments can also be presented at a public hearing to be arranged. Interested parties will be notified of the date, time, and location. This meeting will also be the forum for the U.S. Army Corps of Engineers to collect public comments on the Golden Sunlight Mines, Inc., 404 permit application for the Golden Sunlight Mines Amendment 008 and mine life extension.

ADDRESSES: Written comments should be addressed to Merle Good, Headwaters Resource Area Manager, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702.

Copies of the Draft EIS will be available from the Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702, telephone 406–494–5059; or the Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 50620–0901, telephone 406–444–3276.

Public reading copies will be available for review at the following locations: (1) Bureau of Land Management, Office of External Affairs, Main Interior Building, Room 5600, 18th and C Streets NW., Washington, DC; (2) Bureau of Land Management, External Affairs Office, Montana State Office, 222 North 32nd Street, Billings, Montana; (3) Bureau of Land Management, Butte District Office, 106 North Parkmont Street; Butte, Montana and (4) State of Montana, Department of Environmental Quality, 1520 East Sixth Avenue, Helena, Montana.

FOR FURTHER INFORMATION CONTACT: Greg Hallsten, Team Leader, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620–0901, telephone 406–444–3276 or David Williams, Team Leader, Bureau of Land Management, Box 3388, P.O. Butte, Montana 59702, telephone 406–494–5059.

SUPPLEMENTARY INFORMATION: The Golden Sunlight Mine (GSM) began large-scale operations to mine and process gold-bearing ore in 1982 following completion of an Environmental Impact Statement by the Montana Department of State Lands (DSL) in 1981. Several minor

amendments were processed by the DSL and BLM between 1983 and 1990.

In 1988 GSM applied for a major expansion of operations (Amendment 008). Following completion of a mitigated Environmental Assessment in 1990, GSM was authorized to proceed with the expansion. Amendment 008 included 31 stipulations attached to the Decision Record for the EA. These stipulations were designed to address a varity of environmental issues developed in the EA. This decision was appealed to the Interior Board of Land Appeals (IBLA) by several environmental groups in 1990. In 1993 the IBLA ruled largely in favor of the agencies. In 1992 these same groups appealed the approval of Amendment 008 in Montana State court. On September 1, 1994, the District Court Judge ruled that DSL must prepare an EIS for the impacts associated with Amendment 008. Following the court ruling the plaintiffs, GSM, and DSL negotiated a Settlement Agreement that allowed mining to continue until the completion of an EIS.

In compliance with the District Court Decision, the agencies began preparation of an EIS in 1995.

Total disturbance is approximately 2,336 acres at this time. Under the proposed action the mine's permitted disturbance would expand to include an additional 517 acres of GSM land, 75 acres of BLM-administered land, and 35 acres of school trust (state) land. Operations would continue until approximately 2006.

The Golden Sunlight mine is a conventional truck-and-shovel open-pit mine. Approximately 60,000 to 70,000 tons of rock are excavated per day, totaling approximately 22 million tons per year. Only 2.5 million tons of this total are ore, the remainder being waste rock. Approximately 320 million tons of waste have been placed in waste rock dumps. The ore is processed in a vat cyanide process. Gold-bearing cyanide solutions are treated by carbon adsorption to recover the gold. The recovered gold is ultimately returned to solution for electrowinning onto steel wool, which is then smelted down to recover gold as doré. Following processing, the mill stream is piped as a slurry to Impoundment II, a lined tailings impoundment. Impoundment I, an unlined facility which did experience some leakage in the early 1980s and corrected through a series of pumpback wells, is currently undergoing the early stages of reclamation.

Proposed reclamation of the waste rock dumps includes a mix of 2h:1v and 3h:1v slopes. Because the waste rock at GSM has high potential for ''acid rock drainage'' or low pH runoff/effluent, effective reclamation of these wastes is crucial to limiting the reactions that produce acid rock drainage. The reclamation plan calls for a cover system that includes approximately 24 inches of neutral waste rock and 19 to 24 inches of cover soil. Extensive monitoring of several slopes reclaimed since 1990 to 1992 has helped the mine and the agencies determine what reclamation practices have been most effective. Surface water management is another critical factor in reclamation success and is an important part of the reclamation plan. Long-term water treatment is an integral part of the mine plan. GSM has posted a total bond of approximately 38 million dollars to cover reclamation costs.

A Notice of Intent was published in the **Federal Register** on October 25, 1995. A public scoping meeting was conducted on October 17, 1995, to solicit comments for the scope of the EIS. Written comments were accepted through November 10, 1995.

Dated: November 5, 1997.

Merle Good,

Headwaters Resource Area Manager.

[FR Doc. 97–30133 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CO–030–5101–00–YCKD; COC–51280]

Notice of Intent To Prepare a Supplement to a Final Environmental Impact Statement; Colorado and New Mexico

AGENCY: Bureau of Land Management, USDI, and Forest Service, Department of Agriculture.

ACTION: Notice; Intent to prepare a supplement to a Final Environmental Impact Statement; Notice of scoping with a public comment period.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the Bureau of Land Management (BLM) in cooperation with the U.S. Forest Service (USFS) is initiating the preparation of a Supplement (supplement) to the Final Environmental Impact Statement (FEIS) for the TransColorado Gas Transmission Company (TransColorado) pipeline project on federal lands in Colorado and New Mexico. TransColorado is the proponent. Lands managed by the BLM in the Montrose, Craig, and Grand Junction Districts in Colorado, and the Farmington District in New Mexico, and the USFS in the Uncompahgre and San Juan National Forests, Colorado, are crossed by the TransColorado pipeline project. The supplement will address the environmental impacts of the construction, operation, maintenance, and ultimate abandonment of known proposed route changes and minor realignments (less than 100 ft.) of portions the approved pipeline and right-of-way (ROW) grant COC–51280, and the impacts of the proposed construction and use of known additional temporary work areas adjacent to the approved ROW or, proposed ROW route changes or minor realignments. The supplement will also address the impacts of the construction, operation, maintenance and ultimate abandonment of several ROW route changes or realignments, and the construction and use of several alternative temporary work areas in unspecified locations. These unspecified temporary work areas and ROW route changes or minor realignments will be addressed in the supplement to accommodate conditions that might be encountered during construction. Cumulative affects of potential future gas supply facilities, such as gas supply pipeline laterals will be addressed. The FEIS is not being re-opened nor re-analyzed, nor are the decisions in the FEIS being reconsidered. Any comments addressing issues analyzed in the FEIS will not be considered. Please focus any comments on the proposed action of the supplement to the FEIS.

DATES: Written comments on the proposed action will be accepted until December 15, 1997. The comment period on the draft supplement to the FEIS will be 45 days from the notice of availability, published in the **Federal Register**.

ADDRESSES: Any comments relative to the proposed action described in this notice should be sent to Bill Bottomly, TransColorado Project Manager, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, CO 81401.

FOR FURTHER INFORMATION CONTACT: Bill Bottomly (970) 240–5337, Ilyse Auringer (970) 385–1341, or Steve Hemphill (970) 874–6633.

SUPPLEMENTARY INFORMATION: After preparing a Draft and Final Environmental Impact Statement in 1992, the BLM and the USFS issued Records of Decision on December 1, 1992, approving the authorization of a

ROW grant and an adjacent Temporary Use Permit (TUP) for subsequent construction, operation and maintenance of the 292 mile-long TransColorado Gas Transmission pipeline from Meeker, Colorado to Bloomfield, New Mexico. Under the authority of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (37 Stat. 567), the BLM issued a 50 foot-wide ROW grant on December 4, 1997, accompanied by a 25 foot-wide TUP, excepting 1.7 miles near Grand Junction, Colorado. The FERC issued TransColorado a Certificate of Public Convenience and Necessity on June 3, 1994. TransColorado completed the 22.5 mile Phase I of the project in December, 1996. The proponent is now prepared to construct the remainder of the pipeline during 1998. TransColorado is requesting approval of additional temporary work areas to construct the pipeline, and is requesting that the existing ROW be amended to accommodate the proposed route changes and minor realignments (less than 100 ft). Public meetings or open houses may be conducted during the comment period to gather comments from the public prior to preparation of the supplement. Public notice of locations, dates, and times of any meetings to be held will be provided. Maps and plats of the project are available for public review at the following offices of the BLM and USFS: the Grand Junction District Office, the Montrose District Office, the Grand Mesa/Uncompahgre/Gunnison National Forest Office, the San Juan National Forest/San Juan Resource Area office, and the Farmington District Office. The level of public interest in the issues of the supplement to the FEIS will determine if additional meetings will be held.

Dated: November 7, 1997.

Phillip W. Dwyer,

Assistant District Manager, Montrose District.

Dated: November 17, 1997.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 97–30663 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1220–00: GP8–0036]

Prineville District; John Day River, OR: Special Recreation Permits

AGENCY: Bureau of Land Management (BLM), Department of the Interior (DOI), Prineville District.

ACTION: Notice is hereby given that the existing moratorium on the issuance of new commercial floatboating permits for the John Day River will be extended until completion of the John Day Wild and Scenic River Management Plan and Environmental Impact Statement.

The current moratorium on the issuance of new Special Recreation Permits for commercial boating use of the John Day Wild and Scenic River has been extended by Administrative Decision (dated November 12, 1997). The moratorium will remain in effect until the completion of the John Day Wild and Scenic River Management Plan and Environmental Impact Statement.

The BLM is currently in the process of completing the John Day Wild and Scenic River Management Plan and Environmental Impact Statement. This plan addresses management issues within the Wild and Scenic corridor, including the desired use level of commercial floatboating. To allow the desired use level of to be determined by the planning process, application for new commercial boating permits will not be accepted until further notice.

Decisions made by the plan will direct the future availability of commercial floatboating permits for the John Day Wild and Scenic River.

The authority for this decision comes from 43 CFR 8372.0–3: Authority, 8372.1–1: Public lands, general, and 8372.3 Issuance of permits.

A more specific location of public lands covered by this notice may be obtained at the BLM Prineville District Office.

FOR FURTHER INFORMATION CONTACT:

Heidi Mottl, Recreation Planner, BLM Prineville District Office, P.O. Box 550, Prineville, Oregon 97754, telephone number (541) 416–6700.

Dated: November 12, 1997.

Donald L. Smith,

Acting District Manager.

[FR Doc. 97–30590 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations: Gateway National Recreation Area; Staten Island, Fort Wadsworth

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing food service, and conference center facilities and services for the public at Fort Wadsworth within the Staten Island Unit of Gateway National Recreation Area for a period of ten (10) years from date of contract execution.

EFFECTIVE DATE: January 20, 1998.

ADDRESSES: Interested parties should contact National Park Service, Boston Support Office, Concession Management Program, 15 State Street, Boston, MA 02109–3572 ATTN: Lynne Koser, Telephone (617) 223–5209, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

There is no existing concessioner. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be received by the National Park Service, Boston Support Office, Concession Management Program, 15 State Street, Boston, Massachusetts 02109–3572, not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: November 3, 1997.

Chrysandra L. Walter,

Acting Field Director, Northeast Field Area.

[FR Doc. 97–30647 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/ General Management Plan Amendment for Backcountry and Wilderness Management Plan, Joshua Tree National Park, San Bernardino County, CA; Notice of Availability

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 81–190 as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS)

assessing the potential impacts of amending the current General Management Plan (approved in 1995). The DEIS includes a draft Backcountry and Wilderness Management Plan, and identifies and evaluates the environmental consequences of a proposed action and three alternatives. Mitigation measures are noted and evaluated. No significant adverse environmental impacts are anticipated. Once approved, the plan will guide wilderness management and other operations for the next 10–15 years.

Proposal

As described under Alternative A, the National Park Service (NPS) proposes to amend the General Management Plan (GMP) for Joshua Tree National Monument, including but not limited to the following changes: designate a trail system with prescriptions for specific uses; designate unpaved roads newly added to the park as part of the Development Zone (allowing limited motor vehicle use); designate places where installing fixed anchors for rock climbing may or may not be permitted; and designate locations where roadside vehicle-camping may or may not be permitted. The DEIS also analyzes the artificial water sources installed for wildlife in designated Wilderness and would determine where such sources should be removed or maintained. The draft plan would designate areas closed to public access and establish group size limits for overnight stays in the backcountry and Wilderness. Finally, the draft plan would implement the Department of the Interior's Desert Tortoise Recovery Plan of June 1994. Implementing Alternative A would result in the protection of (with no additional disturbance) park lands, and the reclamation of some previously disturbed lands. User conflicts would be minimized by providing for a variety of visitor experiences, groups sizes, trail allocations and designations, and a climbing bolt permit system.

Alternatives

Alternatives to the actions proposed include No Action (Alternative B), Maximum Protection (Alternative C), and Minimum Requirements (Alternative D). Under Alternative B the park would maintain existing programs and operations. Alternative C would impose greater restrictions upon all uses in the park and afford the most rigorous and strict protection to the resources, in particular the wilderness resource. Also, those lands in the Natural Zone that are not Wilderness would be treated and managed as if they were so designated. Alternative D would impose no restrictions on use of the old monument lands other than those that already exist. The public could use the newly added lands much as the lands were used prior to their inclusion within the park. Only those public recreational activities that are illegal in NPS or other regulations, such as hunting or operating vehicles in wilderness, would be prohibited.

SUPPLEMENTARY INFORMATION: The DEIS is now available for public review; review copies are available at park headquarters, as well as at local public libraries. Inquiries and comments on the DEIS should be directed to: Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twentynine Palms, California 92277. The telephone number for the park is (760) 367–5503. All written comments must be postmarked not later January 31, 1998.

Public Meetings

A series of public workshops will be held to provide NPS staff an opportunity to hear concerns and suggestions from the public. In contrast to a traditional formal hearing, interested individuals and organization representatives will have the opportunity to offer informal input and engage in dialog about the range of alternatives, elements of the alternatives, and issues involved. This dialog is intended to provide additional guidance to the NPS in preparing a final EIS and plan amending the GMP. These workshops are scheduled as follows:

December 2, Santa Monica area—6:00–9:00 p.m.

December 11, Palm Desert area—6:00–9:00 p.m.

January 16, Moronga Basin area—6:00–9:00 p.m.

Complete details about locations for the meetings may be obtained via written or telephone inquiry as noted above.

Decision

After the formal DEIS review period has concluded, all comments and suggestions received will be considered in preparing a final plan. Currently the final EIS and plan amending the GMP are anticipated to be completed during summer 1998; their availability will be similarly announced in the **Federal Register**. Subsequently a Record of Decision would be executed no sooner than 30 (thirty) days after release of the final EIS. The responsible officials are John Reynolds, Regional Director, Pacific West Region and Ernest Quintana, Superintendent, Joshua Tree National Park.

Dated: November 4, 1997.

Sondra S. Humphries,

Acting Regional Director, Pacific West Region.

[FR Doc. 97–30648 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoa Pili O Kaloko Honokohau, Kaloko Honokohau National Historical Park Advisory Commission will be held at 9:00 a.m., December 13, 1997, the Coffee Mill Room, Keauhou Beach Hotel in Kona, Hawaii.

On Saturday, December 13, the Commission will begin its first meeting with a formal swearing in ceremony. The business meeting will begin immediately following and last until 3 p.m.

The Advisory Commission was established by Pub. L. 95–625 and has been re-established by Title I, Section 503, of Pub. L. 104–333 to advise the park superintendent with respect to the historical, archeological, cultural, and interpretive programs of the park.

Members of the Commission are as follows:

David Roy, chairperson
Henry Auwae
Abbie Napeahi
George Naope
Hannah Kihalani Springer
Francis Kuailani
Bryan Harry
Angel Pilago
Stephen Kane–A–I Morse
Mervyn Thompson
Pualani Kanahele
Fred Cachola
Duane Hanakeawe

The regulations involving nude bathing and the use of the fish ponds and traps will be the principal discussion topics at the Saturday meeting.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after December 30, 1997. For copies of the minutes, contact the Park Superintendent at 808–329–6881.

Dated: November 7, 1997.

Patricia L. Neubacher,

Acting Regional Director, Pacific West.

[FR Doc. 97–30650 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Maine Acadian Culture Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Maine Acadian Culture Preservation Commission will meet on Friday, December 12, 1997. The meeting will convene at 7:00 p.m. in the basement meeting hall, St. David Church, on U.S. Route 1, Madawaska, Aroostook County, Maine.

The Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

- the development and implementation of an interpretive program of Acadian culture in the state of Maine.
- the selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review and approval of the summary report of the meeting held October 17, 1997.
2. A talk by Steven White of Moncton, New Brunswick, on ''Acadian Genealogy''.
3. Report of the National Park Service Maine Acadian project staff.
4. Opportunity for public comment.
5. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5472.

Dated: November 5, 1997.

Norm Dodge,

Acting Superintendent, Acadia National Park.

[FR Doc. 97–30649 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation; Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first Federal Register Notice on this information collection request on September 2, 1997, in 62 FR 169, p. 46372, at which time a 60-calendar day comment period was announced. This comment period ended November 3, 1997. No comments were received in response to this Notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

OMB Reviewer

Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–5871.

Summary of Form Under Review

Type of Request: Extension of a currently approved collection.

Title: Contractors & Exporters Program: Application for Political Risk Investment Insurance.

Form Number: OPIC–81.

Frequency of Use: One per investor per project.

Type of Respondents: Business or other institutions (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 4 hours per form.

Number of Responses: 15 per year.

Federal Cost: $300 annually.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application for the contractors and exporters program is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: November 7, 1997.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 97–30579 Filed 11–20–97; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d), notice is hereby given that on October 31, 1997, the trustees for natural resources at the Tulalip Landfill Superfund Site on Ebey Island in Puget Sound, Washington (''the Site'') lodged with the United States District Court for the Western District of Washington consent decrees against defendants Seattle Goodwill Industries and R.W. Rhine, Inc. in the civil action styled *United States* v. *The Boeing Company, et al.*, Civil Action No. C97–1648–WD.

The consent decrees require the defendants to compensate the trustees for natural resource damages resulting from the release of hazardous substances at the Site. The trustees consist of the State of Washington Department of Ecology, the Tulalip

Tribes of Washington, the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the United States Department of Interior. Under the consent decrees, R.W. Rhine will pay $26,734 and Seattle Goodwill Industries will pay $19,102 for natural resources damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *The Boeing Company, et al.,* DOJ Ref. #90–11–3–1412D.

The proposed consent decrees may be examined at the office of the United States Attorney, 1010 Fifth Avenue, Seattle, WA 98104; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G. Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting copies please refer to the referenced case, specify which decree or decrees you would like to receive, and enclose a check payable to the Consent Decree Library in the amount of $7.00 for the decree with R.W. Rhine and/or $7.50 for the decree with Seattle Goodwill Industries (25 cents per page reproduction costs).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–30585 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on October 31, 1997, a proposed Consent Decree in *United States* v. *Caribe General Electric Products, Inc., and General Electric Company,* No. 96–1366 (D.P.R.), was lodged with the United States District Court for the District of Puerto Rico.

In this action the United States sought, pursuant to Sections 107(a) and 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. §§ 9607(a) and 9613(b), recovery of past costs and a declaratory judgment for future costs concerning the General Electric Wiring Devices Superfund Site, located in Juana Diaz, Puerto Rico. In the proposed consent decree, the settling parties, Caribe General Electric Products, Inc., and General Electric Company, agree to pay to the United States $612,500.00 for past response costs and future oversight costs, to provide the Environmental Protection Agency with access to their property pursuant to a 1984 Administrative Order on Consent, and to covenant not to sue the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Caribe General Electric Products, Inc., and General Electric Company,* No. 96–1366 (D.P.R.), D.J. Ref. 90–11–2–1157.

The consent decree may be examined at the Office of the United States Attorney, District of Puerto Rico, Federal Building, Room 452, Chardon Avenue, Hato Rey, Puerto Rico 00918, at U.S. EPA Region II, 290 Broadway, New York, NY 10007–1866, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $13.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–30586 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Order Pursuant to the Clean Air Act

Notice is hereby given that a proposed Consent Decree in *United States* versus *Ford Motor Company,* Civil Action No. 97 C 7716, has been lodged with the United States District Court for the Northern District of Illinois on November 3, 1997.

The Consent Decree resolves claims asserted against defendant, Ford Motor Company (''Ford''), under the Clean Air Act (''Act''), 42 U.S.C. 7401 *et seq.,* for violations of 40 CFR 52.741(x), which was part of a Federal Implementation Plan for the Chicago metropolitan area ozone non-attainment area. Under the proposed Consent Decree, Ford will implement and maintain specific measures that will substantially reduce emissions from cleanup solvents at Ford's Chicago Assembly Plant, and Ford will pay a civil penalty of $135,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044, and should refer to *United States* versus *Ford Motor Company,* D.J. Ref. 90–5–2–1–1932.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 200 West Adams Street, Chicago, Illinois 60606, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $7.25 (25 cents per page reproduction costs) payable to the ''Consent Decree Library.''

Bruce S. Gelber,

Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–30587 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of First Amendment to May 24, 1994 Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on October 28, 1997, a proposed First Amendment to the May 24, 1994 Consent Decree (''Amendment'') in *United States and State of Michigan* v. *Wayne County et al.*, Civil Action No. 87–70992, was lodged with the United States District Court for the Eastern District of Michigan.

The United States and the State of Michigan asserted claims in this case under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, against Wayne County,

Michigan, and 13 addition municipalities that send wastewater to the Wayne's Treatment Plant (the ''Plant''). The case was resolved in 1994 by a Consent Decree pursuant to which defendants agreed to attain and maintain compliance with the Plant's National Pollutant Discharge Elimination System permit limits and to comply with Decree-mandated interim limits during construction of Plant and collection-system improvements. Defendants further agreed to complete capital improvements needed at the Plant and in its collection system. The capital-improvements project, detailed in a 1993 Project Plan incorporated by reference in the 1994 Decree, included steps to achieve: the removal of improper infiltration-and-inflow; the improvement of transport and storage capacity in the Plant's wastewater collection system by constructing retention-equalization basins and an underground tunnel for storage and transport of untreated wastewater; and the upgrade the Plant's facilities to ensure that all flows meet Permit-mandated limits.

Since entry of the Consent Decree in 1994, defendants have submitted studies, plans, and design documents required by the 1994 Consent Decree to the U.S. Environmental Protection Agency and the Michigan Department of Environmental Quality. These documents contain recommendations for changes in the design of certain components of the work required by the 1994 Consent Decree, including: the modification of the wastewater storage and transport tunnel required by the original decree; further improvements in Plant treatment capacity; further study and design work prior to commencement of construction of a detention basin required by the 1994 Decree, referred to as the Eureka Basin, intended to eliminate sewer overflows and backups in the Plant's collection system above the proposed basin; and construction of a new connecting conduit, rather than a new Plant outfall, that would convey excess flows from the Plant to another treatment plant for treatment and discharge. The Amendment, if approved by the Court, would modify the injunctive relief provisions of the 1994 Decree to reflect these changes to the 1993 Project Plan. In all other respects, the 1994 Decree would remain the same.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Amendment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Michigan* v. *Wayne County et al.*, D.J. Ref. 90–5–1–1–2766.

The Amendment may be examined at the Office of the United States Attorney, Eastern District of Michigan, 211 W. Fort Street, Suite 2300, Detroit, MI 48226, at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the Amendment may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–30588 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #167F]

Controlled Substances: Established Initial Aggregate Production Quotas for 1998

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of aggregate production quotas for 1998.

SUMMARY: This notice establishes initial 1998 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On September 2, 1997, a notice of the proposed initial 1998 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (62 FR 46373). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before October 2, 1997.

One company commented that the initial 1998 aggregate production quota for amphetamine is insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

Another company commented that the initial 1998 aggregate production quotas for codeine (for sale), diphenoxylate, morphine (for sale), opium, and oxycodone (for sale) are insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

After a review of 1997 manufacturing quotas, current 1997 sales and inventories, 1998 export requirements and research and product development requirements, the DEA agrees that increases are necessary for amphetamine, codeine (for sale), morphine (for sale) and oxycodone (for sale). Regarding diphenoxylate and opium, the DEA has determined that the proposed initial 1998 aggregate production quotas are sufficient to meet the 1998 estimated medical, scientific, research and industrial needs of the United States.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Acting Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage from manufacturers of Schedules I and II controlled

substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Acting Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Acting Deputy Administrator hereby orders that the 1998 initial aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established initial 1998 quotas
Schedule I:	
2,5-Dimethoxyamphetamine	15,000,100
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
3-Methylfentanyl	14
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	25
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	30
3,4-Methylenedioxymethamphetamine (MDMA)	20
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5,-Dimeththoxyamphetamine	2
4-Bromo-2,5-Dimeththoxyphenethylamine (2–CB)	2
4-Methoxyamphetamine	100,100
4-Methylaminorex	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2
Acetyl-alpha-methylfentanyl	2
Acetylmethadol	7
Allylprodine	2
Alpha-acetylmethadol	7
Alpha-ethyltryptamine	2
Alphameprodine	2
Alpha-methadol	2
Alpha-methylfentanyl	2
Alphaprodine	2
Alpha-methylthiofentanyl	2
Aminorex	7
Beta-acetylmethadol	2
Beta-hydroxyfentanyl	2
Beta-hydroxy-3-methylfentanyl	2
Beta-methadol	2
Betaprodine	2
Bufotenine	2
Cathinone	9
Codeine-N-oxide	2
Diethyltryptamine	2
Difenoxin	16,000
Dihydromorphine	7
Dimethyltryptamine	2
Ethylamine Analog of PCP	5
Heroin	2
Hydroxypethidine	2
Lysergic acid diethylamide (LSD)	57
Mescaline	7
Methaqualone	17
Methcathinone	11
Morphine-N-oxide	2
N-Ethylamphetamine	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	4
N,N-Dimethylamphetamine	7
Noracymethadol	2
Norlevorphanol	2
Normethadone	7
Normorphine	7
Para-fluorofentanyl	2
Pholcodine	2
Psilocin	2
Psilocybin	2
Tetrahydrocannabinols	26,000
Thiofentanyl	2
Trimeperidine	2

Basic class	Established initial 1998 quotas
Schedule II:	
1-Phenylcyclohexylamine	15
1-Piperidinocyclohexanecarbonitrile (PCC)	12
Alfentanil	8,100
Amobarbital	12
Amphetamine	4,037,000
Cocaine	550,100
Codeine (for sale)	62,020,000
Codeine (for conversion)	18,460,000
Desoxyephedrine	1,332,000
1,300,000 grams of levodesoxyephedrine for use in a non-controlled, non-prescription product and 32,000 grams for methamphetamine.	
Dextropropoxyphene	109,500,000
Dihydrocodeine	189,000
Diphenoxylate	1,600,000
Ecgonine	651,000
Ethylmorphine	12
Fentanyl	202,000
Glutethimide	2
Hydrocodone (for sale)	13,908,000
Hydrocodone (for conversion)	3,000,000
Hydromorphone	766,000
Isomethadone	12
Levo-alpha-acetylmethadol (LAAM)	356,000
Levomethorphan	2
Levorphanol	15,000
Meperidine	9,311,000
Methadone (for sale)	3,790,000
Methadone (for conversion)	1,169,000
Methadone Intermediate	6,777,000
Methamphetamine (for conversion)	723,000
Methylphenidate	14,442,000
Morphine (for sale)	11,535,000
Morphine (for conversion)	75,918,000
Nabilone	2
Noroxymorphone (for sale)	25,000
Noroxymorphone (for conversion)	2,117,000
Opium	615,000
Oxycodone (for sale)	9,032,000
Oxymorphone	120,000
Pentobarbital	16,562,000
Phencyclidine	60
Phenmetrazine	2
Phenylacetone	10
Secobarbital	301,000
Sufentanil	700
Thebaine	9,580,000

Dated: November 17, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–30651 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Supplementary homicide report.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 20, 1998.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to SSA Paul J. Gans (phone number and address

listed above). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact SSA Paul J. Gans, 304–625–4830, FBI, CJIS, Statistical Unit, PO Box 4142, Clarksburg, WV 26302–9921. Overview of this information collection:

(1) *Type of information collection:* Extension of Current Collection

(2) *The title of the form/collection:* Supplementary Homicide Report [SHR].

(3) *The agency form number, if any, and applicable component of the Department sponsoring the collection. Form:* I–704. Federal Bureau of Investigation Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract. Primary:* State and Local Law Enforcement Agencies. This collection is needed to provide data regarding age, sex, race, victim/offender relationships, weapons and motives of murders committed throughout the United States. Data is tabulated and published in the annual ''CRIME in the United States.''

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 17,145 agencies with 205,740 responses which includes Zero reports; and with an average completion time of 9 minutes a month per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* 30,861 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 12, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–30151 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Monthly return of arson offenses known to law enforcement.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 20, 1998.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to SSA Paul J. Gans (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact SSA Paul J. Gans, 304–625–4830, FBI, CJIS, Statistical Unit, PO Box 4142, Clarksburg WV 26302–9921.

Overview of this information collection:

(1) *Type of information collection:* Extension of Current Collection.

(2) *The title of the form/collection:* Monthly Return of Arson Offenses Known to Law Enforcement.

(3) *The agency form number, if any, and applicable component of the Department sponsoring the collection. Form:* I–725. Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract. Primary:* State and Local Law Enforcement Agencies. This collection is needed to collect information on arson offenses committed throughout the United States and reported to Law Enforcement. Data is tabulated and published in the annual ''CRIME in the United States.''

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 17,145 agencies with 205,740 responses [including Zero Reports]; and with an average completion time of 9 minutes a month per report.

(6) *An estimate of the total public burden (in hours) associated with this collection:* 30,861 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 12, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–30152 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services: Agency Information Collection Activities; Proposed Collection, Comment Request

ACTION: Notice of information collection under review: Number of full-time law enforcement employees as of October 31.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 22, 1997.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to SSA Paul J. Gans (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact SSA Paul J. Gas, 304–625–4830, FBI, CJIS, Statistical Unit, PO Box 4142, Clarksburg, WV 26302–9921.

Overview of this information collection:

(1) *Type of information collection:* Extension of Current Collection.

(2) *The title of the form/collection:* Number of Full-Time Law Enforcement Employees as of October 31.

(3) *The agency form number, if any, and applicable component of the Department sponsoring the collection. Form:* I–711A/I–711B/I–711C. Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract. Primary:* State and Local Law Enforcement Agencies. This collection is needed to determine the number of civilian and sworn full-time law enforcement employees in the United States. Data is tabulated and published in the annual ''CRIME in the United States.''

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 17,125 agencies; 17,125 responses; and with an average completion time of 8 minutes a year per responding agency.

(6) *An estimate of the total public burden (in hours) associated with this collection:* 36 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 12, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–30153 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 14, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction At of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096, ext. 143) or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday-Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for BLS or ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), by December 22, 1997.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Forms for Agricultural Recruitment System of Services to Migratory Workers and their Employers Applicant for Alien Employment Certification.

OMB Number: 1205–0134 (extension).

Frequency: On occasion.

Affected Public: State, Local or Tribal Government.

Form	Re-spond-ents	Re-sponses	Average time per response
ETA 790.	52	2,000	1 hour.
ETA 795.	52	3,000	30 minutes.
ETA 785.	52	3,500	30 minutes.
ETA 785A.	52	2,500	30 minutes.

Total Burden Hours: 6,500.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: State Employment Security Agencies use forms in servicing agricultural employers to ensure their labor needs for domestic migratory agricultural workers are met; in servicing domestic agricultural workers to assist them in locating jobs expeditiously and orderly; and to ensure exposure of employment opportunities to domestic agricultural workers before certification for employment of foreign workers.

Agency: Employment and Training Administration.

Title: Income and Eligibility Verification.

OMB Number: 1205–0238 (reinstatement).

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: Section 603.4=21,000,000; Section 603.8=243,100.

Estimated Time Per Respondent: Section 603.4=2 seconds; Section 603.8=10 minutes.

Total Burden Hours: 52,183.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $1,043,660.

Description: The exchange of Unemployment Insurance wage record and benefit payment information will allow the child support and Social Security agencies to verify applicant eligibility for benefits available under Titles II and XVI of the Social Security Act.

Agency: Employment and Training Administration.

Title: JTPA Summer Program Report and Monitoring Guide.

OMB Number: 1205–0379 (revision).

Frequency: On occasion.

Affected Public: State, Local or Tribal Government.

Activity	Frequency	Respondents	Average time per respondent
Reporting	3 reports	59	3 hours.
Recordkeeping	1 report	59	30 minutes.
Recordkeeping for auditing purposes	1 report	59	12 hours.
Monitoring	1 report	59	2 hours.

Total Burden Hours: 1,403.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Employment and Training Administration has revised the data collection process for reporting and monitoring information of the Summer Youth Employment and Training Program (SYEPT). The JASPR (JTPA Annual Summary Program Report) formerly used to collect non-financial information annually has been merged with the reporting form used to collect financial and participant information for II–B. The new form is entitled the JSPR (JTPA Summary Program Report), which will be used to collect both financial and non-financial information at three intervals (beginning of the program—providing planning information, midsummer report and end of the summer). In addition, collection of information through use of the monitoring instrument is included with the newly consolidated reporting system.

Agency: Bureau of Labor Statistics.

Title: Multiple Worksite Report (MWR) and the Report of Federal Employment and Wage (RFEW).

OMB Number: 1220–0134 (revision).

Frequency: Quarterly.

Affected Public: Federal Government; State, Local or Tribal Government.

Form	Respondents	Average time per response (minutes)
BLS 3020 (MWR)	112,666	22.2
BLS 3021 (RFEW)	2,154	22.2

Total Burden Hours: 169,934.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: States use the Multiple Worksite Report to collect employment and wages data by worksite from employers covered by State Unemployment Insurance which are engaged in multiple operations within a State. These data are used for sampling, benchmarking, and economic analysis.

Agency: Bureau of Labor Statistics.

Title: Annual Refiling Survey (ARS).

OMB Number: 1220–0032 (revision).

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Form	Frequency	Respondents	Average time per response (hours)
BLS 3023–VS.	Every 3 years.	1,994,750	.083
BLS 3023–VM.	Every 3 years.	38,197	.75
BLS 3023–CA.	Every 3 years.	53,000	.167
BLS 3023–P.	Every 5 years.	n/a[1]	n/a[1]

[1] Burden hours not included for this submission.

Total Burden Hours: 203,072.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Accurate industrial coding based on the 1987 Standard Industrial classification manual is needed by many Federal, State, and local government officials and private researchers. This extension will permit the use of previously approved forms to obtain this information.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–30681 Filed 11–20–97; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Change in Status of an Extended Benefit (EB) Period for the State of Puerto Rico

This notice announces a change in benefit period eligibility under the EB Program for the State of Puerto Rico.

Summary

The following changes have occurred since the publication of the last notice regarding States' EB status:

- August 24, 1997—Puerto Rico's 13-week insured unemployment rate for the week ending August 9, 1997 exceeded 6.0 percent, causing the State to trigger ''on'' EB effective August 24, 1997.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, regulations promulgated by the U.S. Department of Labor, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on November 13, 1997.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor for Employment and Training.

[FR Doc. 97–30682 Filed 11–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study

of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

Illinois
IL970019 (Feb. 14, 1997)
Michigan
MI970063 (Feb. 14, 1997)
Minnesota
MN970007 (Feb. 14, 1997)
MN970008 (Feb. 14, 1997)
MN970058 (Feb. 14, 1997)
MN970059 (Feb. 14, 1997)

Volume V

Texas
TX970085 (Feb. 14, 1997)

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 14th day of November 1997.

Margaret Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–30339 Filed 11–20–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 97–46]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hazard Communication

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health

Administration is soliciting comments concerning the proposed extension of the information collection request for the Hazard Communication Standard 29 CFR 1910.1200; 1915; 1917; 1918; 1926; 1928. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addressee section of this notice.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 20, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–97–46, U.S. Department of Labor, Room N–2625, 200 Constitution Ave. NW, Washington, D.C. 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Health Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3718, 200 Constitution Ave., NW, Washington D.C. 20210. Telephone: (202) 219–7075, extension 109. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Todd R. Owen (202) 219–7075 extension 109 or Barbara Bielaski on 219–8076, extension 142. For electronic copies of the Hazard Communication Information Collection Request, contact the Labor News Bulletin Board (202) 219–4784; or OSHA's WebPage on Internet at http://www.osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION:

I. Background

The Hazard Communication Standard and its information collection requirements are designed to ensure that the hazards of all chemicals produced or imported are evaluated and that information concerning their hazards is transmitted to employees and downstream employers. The standard requires chemical manufacturers and importers to evaluate chemicals they produce or import to determine if they are hazardous; for those chemicals determined to be hazardous, material safety data sheets and warning labels must be developed. Employers are required to establish hazard communication program, to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets and training programs. Implementation of these collection of information requirements will ensure all employees have the ''right-to-know'' the hazards and identities of the chemicals they work with and will reduce the incidence of chemically-related occupational illnesses and injuries.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in the Hazard Communication Standard. Extension is necessary to ensure that employees continue to receive information about hazardous and chemicals they are exposed to when working, as well as what protective measures are available to prevent adverse effects from occurring.

Type of review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Hazard Communication.

OMB Number: 1218–0072.

Agency Number: Docket Number ICR–97–46.

Affected Public: Business or other for-profit, Federal government and State, Local or Tribal governments.

Total Respondents: 5,041,918.

Frequency: On occasion.

Total Responses: 74,679,540.

Average Time per Response: Time per response ranges from 12 seconds to affix labels to in-house containers containing hazardous chemicals to 5 hours to develop a hazard communication program.

Estimated Total Burden Hours: 7,301,762.

Estimated Capital, Operational/Maintenance Burden Cost: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 17, 1997.

Adam M. Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 97–30680 Filed 11–20–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–97]

Applied Research Laboratories, Inc., Recognition as a NRTL

AGENCY: Occupational Safety and Health Administration; Labor.

ACTIONS: Notice of recognition as a Nationally Recognized Testing Laboratory (NRTL).

SUMMARY: This notice announces the Agency's final decision on the application of Applied Research Laboratories, Inc. for recognition as a NRTL under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on November 21, 1997 and will be valid for a period of five years from that date, until November 21, 2002, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that Applied Research Laboratories, Inc. (ARL), which made application pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or materials, and the program listed below.

The address of the laboratory covered by this recognition is: Applied Research Laboratories, Inc., 5371 NW 161st Street, Miami, Florida 33014.

Background

Applied Research Laboratories, Inc. (ARL), according to the applicant, was founded in 1949, and is a Florida-registered engineering corporation, with

the owner as sole stockholder. Applied Research Laboratories, Inc., applied for recognition as a Nationally Recognized Testing Laboratory, pursuant to 29 CFR 1910.7, and a notice of the application was published in the **Federal Register** (62 FR 42827, 8/8/97). The notice included a preliminary finding that ARL could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by October 7, 1997. No comments were received concerning this request for recognition.

The four primary criteria for recognition are presented below, along with examples which illustrate how ARL has met these criteria.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be certified, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate product test standards.

The on-site review report indicates that ARL has facilities and personnel which are appropriate for the area of recognition it seeks. In addition, ARL maintains a Procedures Manual, which indicates step-by-step procedures for processing done in a number of areas. Procedures available cover areas such as testing, calibration, record keeping, and product follow-up service. ARL also maintains a Quality Assurance Manual and a Laboratory Accreditation Manual, with responsibility for internal quality control vested in the Director of Quality Control. The on-site review report indicates that ARL has test equipment available to perform testing necessary for the area of recognition it seeks, with the exception of specialized tests which ARL is unable to perform at its Miami facility.

In these cases, ARL obtains the services of other testing organizations, and witnesses the tests.

The On-site Review report indicates that ARL has adequate calibration procedures and calibration records, and that calibrations are traceable to NIST or other approved sources. A record of all calibrations is maintained by the Director of Quality.

Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production runs at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

ARL has procedures for follow-up inspections on the products it certifies, and for completing a Listing, Labeling, and Follow-up Service Agreement with a manufacturer. Other procedures cover control of its listing and labeling, and decertification. ARL conducts four inspections per year at those factories where ARL listed/certified products are manufactured. In addition, before use of the ARL certification mark is permitted, ARL will inspect the manufacturer's facility to ensure there is a capability to produce products in conformance with ARL's requirements.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and for any manufacturers or vendors of equipment or materials being tested for these purposes.

ARL supplied a statement of affiliation which included declarations that it has no managerial affiliations with any producer, supplier, or vendor; it has no securities, investments, or stock options in the product lines; the employment security of its personnel is free from influence by any producer, supplier, or vendor; and it is not owned, operated, or controlled by any producers, suppliers, or vendors.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that a recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

ARL's application, and the on-site review report indicate that ARL maintains various manuals that describe the procedures for testing and for all written reports, as well as record keeping requirements.

With regard to the handling of complaints or contested results, ARL maintains a Submissions and Review Board, which can be convened at the request of a client, to review results and actions undertaken by ARL.

Programs and Procedures

Applied Research Laboratories, Inc., performs acceptance of witnessed testing data, based upon the conditions as detailed in the **Federal Register** document titled ''Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures,'' 60 FR 12980, 3/9/95.

Currently, this Program is primarily utilized for certain wind load tests conducted on large structures which require they be tested as installed and which ARL does not have the facilities to perform. The tests would be witnessed by either an ARL Professional Engineer, or the ARL Department Head to which a particular project has been assigned. Test results are presented in report form to ARL and become part of the ARL file documentation.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site review report, OSHA finds that Applied Research Laboratories, Inc. has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials, and for acceptance of witnessed test data.

Pursuant to the authority in 29 CFR 1910.7, Applied Research Laboratories, Inc. is recognized as a Nationally Recognized Testing Laboratory subject to the limitations and conditions listed below:

Limitations

This recognition is limited to equipment or materials which, under Title 29, require or permit testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is further limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards. ARL has stated that it believes that the following standards pertain to equipment or materials that will be used in environments under OSHA's jurisdiction, and OSHA has determined they are appropriate within the meaning of 29 CFR 1910.7(c):

ASTM E152—Standard Methods of Fire Tests of Door Assemblies
ANSI/UL 22—Amusement and Gaming Machines
ANSI/UL—858 Household Electric Ranges
UL 1838—Low Voltage Landscape Lighting Systems
UL 1995—Heating and Cooling Equipment

Conditions

Applied Research Laboratories, Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA shall be allowed access to ARL's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ARL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ARL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ARL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ARL shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

ARL will continue to meet the requirements for recognition in all areas where it has been recognized; and

ARL will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Authority: 29 CFR 1910.7.

Signed at Washington, DC, this 14th day of November, 1997.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 97–30685 Filed 11–20–97; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–97]

Detroit Testing Laboratory, Inc., Application for Recognition

AGENCY: Occupational Safety and Health Administration; Labor.

ACTIONS: Notice of application for recognition as a Nationally Recognized Testing Laboratory, and preliminary finding.

SUMMARY: This notice announces the application of Detroit Testing Laboratory, Inc. for recognition as a NRTL under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is January 20, 1998.

ADDRESSES: Send comments concerning this notice to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program at the above address, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that Detroit Testing Laboratory, Inc. (DTL) has made application pursuant to 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory.

The address of the laboratory covered by this application is: Detroit Testing Laboratory, Inc., 7111 E. Eleven Mile, Warren, Michigan 48092.

Background

Detroit Testing Laboratory, Inc. (DTL), according to the applicant, is a Michigan corporation and was formally incorporated in 1949. The applicant states that the lab was originally founded in 1903 as a partnership, that ownership of the lab changed in 1948 and again in 1968, and that in 1976, the current owner purchased DTL as sole stockholder.

The applicant submitted an application package, and separately submitted a Quality Assurance (QA) Manual (see Exhibits 2A and 2B). The QA Manual includes: an organization chart, position descriptions, and resumes of key personnel; department descriptions including equipment & standards used for departments involved in testing; description of certifications done and standards used for certification; and the details on how calibrations are handled, including descriptions of equipment and standards.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The applicant has one main facility at its site in Warren, Michigan, and a smaller test facility in Center Line, Michigan. This smaller site is not included in the applicant's request for recognition. The applicant claims that natural gas, electric, compressed air, steam, and water are available in the laboratory for product testing and for calibrations and tests.

The applicant's QA Manual shows the testing experience of its key testing staff, mentions its certification, and listing and labeling experience with products, and describes its testing capabilities and experience in a number of specific areas. It also contains a list of major instrumentation and equipment.

Quality Assurance Procedures, Test/Operating procedures (developed on a form, the original of which is kept by each lab), calibration procedures, and audits (including proficiency audits which depends in part on the use of outside private services) are described in the QA manual. Furthermore, the QA includes an Internal Corrective Action Procedure whereby reports are issued to an area when it operates outside the guidelines of the QA System. The QA Manual also contains a sample handling procedure and procedures on employee training. Written procedures exist for typical tests, per QA manual.

Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These consist of implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production runs at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of identifying marks or labels.

The application contains the description of the listing and labeling procedure, which indicates ''inspections'' will be done four times per year, and periodic compliance testing is done every four years. A sample listing and follow-up agreement was also provided. In addition, ''Instructions for * * * Inspections * * *,'' and a sample inspection form were submitted.

Independence

A statement of independence was supplied attesting that DTL is independent of any producer, supplier, or vendor. The applicant claims in the statement that, for products being tested and certified: it has no managerial affiliations with any producer, supplier, or vendor; it has no securities, investments, or stock options in the product lines; the employment security of its personnel is free from influence by any producer, supplier, or vendor; that it is not owned, operated, or controlled by any producers, suppliers, or vendors; and that it is not engaged in promotion or design.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that a OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system. The QA manual contains details on development of test data and reports, and both the application and the QA manual describe a complaint procedure.

Standards

DTL desires recognition for testing and certification of products to determine compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI/UL 234—Low Voltage Lighting Fixtures for Use in Recreational Vehicles
ANSI/UL 1025—Electric Air Heaters

Preliminary Finding

Detroit Testing Laboratory, Inc., addressed all of the criteria which had to be met for recognition as an NRTL, as summarized above. In addition, the NRTL Recognition Program staff performed an on-site review of DTL's main facility and investigated nine major areas: facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel. Any discrepancies noted by the survey team during the on-site review were adequately responded to following the on-site evaluation and are included as an integral part of the On-Site Review Report (see Exhibit 3). With the preparation of the final report, the Program staff was satisfied that the testing facility appeared to meet the necessary criteria required by 29 CFR 1910.7, and recommended that DTL be recognized.

Following a review of the application file and the On-Site Review Report, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory for the Warren, Michigan facility and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file, the On-Site Review Report, and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that Detroit Testing Laboratory, Inc. can meet the requirements as prescribed by 29 CFR 1910.7 to recognize the Warren, Michigan facility for the two standards previously listed.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant having met the requirements for recognition as a Nationally Recognized Testing Laboratory, as well as Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than January 20, 1998 and must be addressed to the Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N 3653, Washington, D.C. 20210. Copies of the DTL application, the laboratory On-Site Review Report, and all submitted comments, as received, (Docket No. NRTL–2–97), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (DTL) satisfies the requirements for recognition as a NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A to Section 1910.7.

Authority: 29 CFR 1910.7.

Signed at Washington, DC, this 14th day of November, 1997.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 97–30684 Filed 11–20–97; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–4–93]

Underwriters Laboratories Inc.; Request for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of request for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL), and preliminary finding.

SUMMARY: This notice announces the application of Underwriters Laboratory for expansion of its recognition as a NRTL under 29 CFR 1910.7, for test standards, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is January 20, 1998.

ADDRESSES: Send comments concerning this notice to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653 Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program at the above address, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that Underwriters Laboratories Inc. (UL), has made application pursuant to 29 CFR 1910.7, for expansion of its recognition as a Nationally Recognized Testing Laboratory for the equipment or materials listed below. UL previously made application pursuant to 29 CFR 1910.7, for renewal of its recognition as a Nationally Recognized Testing Laboratory (see 60 FR 16171, 3/29/95), and was so recognized (see 60 FR 33852, 6/29/95).

The addresses of the UL laboratories covered by this application are:

333 Pfinsten Road, Northbrook, Illinois 60062
1285 Walt Whitman Road, Melville, Long Island, New York 11747
1655 Scott Boulevard, Santa Clara, California 95050
12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709
2600 N.W. Lake Road, Camas, Washington 98607
UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor

34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong

UL International Services, Ltd., 3rd Floor, No. 35 Chung Yang South Road, Section 2, Pei Tou 11237, Taipei, Taiwan

Background

This **Federal Register** notice announces UL's application for expansion of recognition as a Nationally Recognized Testing Laboratory for additional test standards, dated 2/5/96, and amended on 4/1/97 (see Exhibits 13A and 13B).

UL has stated that it believes that the following standards pertain to equipment or materials that will be used in environments under OSHA's jurisdiction. UL desires recognition for testing and certification of products when tested for compliance with these test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

[1] ANSI/IEEE–C37.013 AC High-Voltage Generator Circuit Breakers Rated on a Symmetrical Current Basis
[1] ANSI/IEEE–C37.13 Low Voltage AC Power Circuit Breakers Used in Enclosures
[1] ANSI/IEEE–C37.14 Low Voltage DC Power Circuit Breakers Used in Enclosures
[1] ANSI–C37.17 Trip Devices for AC and General Purpose DC Low-Voltage Power Circuit Breakers
[1] ANSI/IEEE–C37.18 Enclosed Field Discharge Circuit Breakers for Rotating Electric Machinery
[1] NSI/IEEE–C37.20.1 Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
[1] ANSI/IEEE C37.20.2 Metal-Clad and Station-Type Cubicle Switchgear
[1] ANSI/IEEE C37.20.3 Metal-Enclosed Interrupter Switchgear
[1] ANSI/IEEE C37.21 Control Switchboards
[1] ANSI/IEEE C37.29 Low-Voltage AC Power Circuit Protectors Used in Enclosures
[1] ANSI/IEEE C37.38 Gas-Insulated, Metal-Enclosed Disconnecting, Interrupter and Grounding Switches
[1] ANSI C37.42 Distribution Cutouts and Fuse Links
[1] ANSI C37.44 Distribution Oil Cutouts and Fuse Links
[1] ANSI C37.45 Distribution Enclosed Single-Pole Air Switches
[1] ANSI C37.46 Power Fuses and Fuse Disconnecting Switches
[1] ANSI C37.47 Distribution Fuse Disconnecting Switches, Fuse Supports, and Current-Limiting Fuses
[1] ANSI C37.50 Low-Voltage AC Power Circuit Breakers Used in Enclosures—Test Procedures
[1] ANSI C37.51 Metal-Enclosed Low-Voltage AC Power Circuit-Breaker Switchgear Assemblies—Conformance Test Procedures
[1] ANSI C37.52 Low-Voltage AC Power Circuit Protectors Used in Enclosures—Test Procedures
[1] ANSI C37.53.1 High-Voltage Current Motor-Starter Fuses—Conformance Test Procedures
[1] ANSI C37.54 Indoor Alternating-Current High Voltage Circuit Breakers Applied as Removable Elements in Metal-Enclosed Switchgear Assemblies—Conformance Test Procedures
[1] ANSI C37.55 Metal-Clad Switchgear Assemblies—Conformance Test Procedures
[1] ANSI C37.57 Metal-Enclosed Interrupter Switchgear Assemblies—Conformance Testing
[1] ANSI C37.58 Indoor AC Medium-Voltage Switches for Use in Metal-Enclosed Switchgear—Conformance Test Procedures
[1] ANSI/IEEE C37.60 Overhead, Pad-Mounted, Dry-Vault, and Submersible Automatic Circuit Reclosers and Fault Interrupters for AC Systems
[1] ANSI/IEEE C37.66 Oil-Filled Capacitor Switches for Alternating-Current Systems—Requirements
[1] ANSI/IEEE C37.71 Three Phase, Manually Operated Subsurface Load Interrupting Switches for Alternating-Current Systems
[1] ANSI C37.72 Manually-Operated Dead-Front, Pad-Mounted Switchgear with Load-Interrupting Switches and Separable Connectors for Alternating-Current System
[1] ANSI/IEEE C37.90 Relays and Relay Systems Associated with Electric Power Apparatus
[1] ANSI C37.121 Unit Substations—Requirements
[1] ANSI/IEEE C37.122 Gas-Insulated Substations
[1] ANSI/IEEE C57.12.00 Distribution, Power and Regulating Transformers—General Requirements
[1] ANSI C57.12.13 Liquid-Filled Transformers Used in Unit Installations including Unit Substations—Conformance Requirements
[1] ANSI C57.12.20 Overhead-Type Distribution Transformers, 500 kVA and Smaller
[1] ANSI C57.12.21 Pad-Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with High Voltage Bushings; 167 kVA and Smaller
[1] ANSI C57.12.22 Pad-Mounted Compartmental-Type, Self-Cooled, Three-Phase Distribution Transformers with High Voltage Bushings; 2500 kVA and Smaller
[1] ANSI C57.12.23 Underground-Type Self-Cooled, Single-Phase Distribution Transformers with Separable Insulated High-Voltage Connectors; 167 kVA and Smaller
[1] ANSI C57.12.24 Underground-Type Three-Phase Distribution Transformers, 2500 kVA and Smaller
[1] ANSI C57.12.25 Pad-Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with Separable Insulated High-Voltage Connectors; 167 kVA and Smaller
[1] ANSI C57.12.26 Pad-Mounted Compartmental-Type, Self-Cooled, Three-Phase Distribution Transformers for use with Separable Insulated High-Voltage Connectors; 2500 kVA and Smaller
[1] ANSI C57.12.27 Liquid-Filled Distribution Transformers Used in Pad-Mounted Installations, Including Unit Substations—Conformance Requirements
[1] ANSI C57.12.28 Switchgear and Transformers—Pad-Mounted Equipment—Enclosure Integrity
[1] ANSI C57.12.40 Three Phase Secondary Network Transformers, Subway and Vault Types (Liquid Immersed); 2500 kVA and Smaller
[1] ANSI C57.12.50 Ventilated Dry-Type Distribution Transformers, 1 to 500 kVA, Single-Phase; and 15 to 500 kVA, Three Phase
[1] ANSI C57.12.51 Ventilated Dry-Type Power Transformers, 501 kVA and Larger, Three-Phase
[1] ANSI C57.12.52 Sealed Dry-Type Power Transformers, 501 kVA and Larger, Three-Phase
[1] ANSI C57.12.55 Dry-Type Transformers in Unit Installations, Including Unit Substations—Conformance Requirements
[1] ANSI C57.12.57 Ventilated Dry-Type Network Transformers, 2500 kVA and Below, Three-Phase
[1] ANSI/IEEE C57.13 Instrument Transformers—Requirements
[1] ANSI/IEEE C57.13.2 Instrument Transformers—Conformance Test Procedures
[1] ANSI/IEEE C57.15 Step-Voltage and Induction-Voltage Regulators
[1] ANSI/IEEE C57.21 Shunt Reactors Over 500 kVA
[1] ANSI/IEEE C62.1 Gapped Silicon-Carbide Surge Arresters for AC Power Circuits
[1] ANSI/IEEE C62.11 Metal Oxide Surge Arresters for AC Power Circuits
ANSI K61.1 Storage and Handling of Anhydrous Ammonia (CGA G–2.1)
ANSI/NEMA 250 Enclosures for Electrical Equipment
ANSI Z21.24 Metal Connectors for Gas Appliances
ANSI Z21.50 Vented Decorative Gas Appliances
ANSI Z21.57 Recreational Vehicle Cooking Gas Appliances
ANSI Z21.60 Decorative Gas Appliances for Installation in Vented Fireplaces
ANSI Z21.70 Earthquake Actuated Automatic Gas Shutoff Systems
ANSI Z83.7 Gas-Fired Construction Heater
UL 5A Nonmetallic Surface Raceways and Fittings
UL 5B Strut-Type Channel Raceways and Fittings
UL 201 Standard for Garage Equipment
UL 218 Fire Pump Controllers
ANSI/UL 231 Electrical Power Outlets

[1] These standards are approved for equipment or materials intended for use in commercial and industrial power system applications. These standards are not approved for equipment or materials intended for use in installations that are excluded by the provisions of Subpart S in 29 CFR 1910, in particular Section 1910.302(2). This statement is intended as a clarification for any party reviewing this notice.

ANSI/UL 234 Low Voltage Lighting Fixtures for Use in Recreational Vehicles
ANSI/UL 248–1 Low-Voltage Fuses—Part 1: General Requirements
UL 248–2 Low-Voltage Fuses—Part 2: Class C Fuses
UL 248–3 Low-Voltage Fuses—Part 3: Class CA and CB Fuses
ANSI/UL 248–4 Low-Voltage Fuses—Part 4: Class CC Fuses
UL 248–5 Low-Voltage Fuses—Part 5: Class G Fuses
UL 248–6 Low-Voltage Fuses—Part 6: Class H Non-Renewable Fuses
UL 248–7 Low-Voltage Fuses—Part 7: Class H Renewable Fuses
ANSI/UL 248–8 Low-Voltage Fuses—Part 8: Class J Fuses
UL 248–9 Low-Voltage Fuses—Part 9: Class K Fuses
ANSI/UL 248–10 Low-Voltage Fuses—Part 10: Class L Fuses
UL 248–11 Low-Voltage Fuses—Part 11: Plug Fuses
ANSI/UL 248–12 Low-Voltage Fuses—Part 12: Class R Fuses
UL 248–13 Low-Voltage Fuses—Part 13: Semiconductor Fuses
ANSI/UL 248–14 Low-Voltage Fuses—Part 14: Supplemental Fuses
ANSI/UL 248–15 Low-Voltage Fuses—Part 15: Class T Fuses
UL 248–16 Low-Voltage Fuses—Part 16: Test Limiters
ANSI/UL 252A Compressed Gas Regulator Accessories
UL 300 Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Areas
UL 307B Gas Burning Heating Appliances for Manufactured Homes and Recreational Vehicles
ANSI/UL 391 Solid-Fuel and Combination-Fuel Control and Supplementary Furnaces
UL 508C Power Conversion Equipment
ANSI/UL 583 Electric-Battery-Powered Industrial Trucks
ANSI/UL 588 Christmas-Tree and Decorative-Lighting Outfits
UL 635 Insulating Bushings
ANSI/UL 668 Hose Valves For Fire Protection Service
ANSI/UL 745–1 Portable Electric Tools
ANSI/UL 745–2–1 Particular Requirements of Drills
ANSI/UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
ANSI/UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
ANSI/UL 745–2–4 Particular Requirements for Sanders
ANSI/UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
ANSI/UL 745–2–6 Particular Requirements for Hammers
ANSI/UL 745–2–8 Particular Requirements for Shears and Nibblers
ANSI/UL 745–2–9 Particular Requirements for Tappers
ANSI/UL 745–2–11 Particular Requirements for Reciprocating Saws
ANSI/UL 745–2–12 Particular Requirements for Concrete Vibrators
ANSI/UL 745–2–14 Particular Requirements for Planers
ANSI/UL 745–2–17 Particular Requirements for Routers and Trimmers
ANSI/UL 745–2–30 Particular Requirements for Staplers
ANSI/UL 745–2–31 Particular Requirements for Diamond Core Drills
ANSI/UL 745–2–32 Particular Requirements for Magnetic Drill Presses
ANSI/UL 745–2–33 Particular Requirements for Portable Bandsaws
ANSI/UL 745–2–34 Particular Requirements for Strapping Tools
ANSI/UL 745–2–35 Particular Requirements for Drain Cleaners
ANSI/UL 745–2–36 Particular Requirements for Hand Motor Tools
ANSI/UL 745–2–37 Particular Requirements for Plate Jointers
UL 791 Residential Incinerators
UL 962 Household and Commercial Furnishings
ANSI/UL 985 Household Fire Warning System Units
ANSI/UL 1023 Household Burglar-Alarm System Units
UL 1075 Gas Fired Cooling Appliances for Recreational Vehicles
ANSI/UL 1247 Diesel Engines for Driving Centrifugal Fire Pumps
UL 1248 Engine-Generator Assemblies for Use in Recreational Vehicles
UL 1363 Temporary Power Taps
ANSI/UL 1419 Professional Video and Audio Equipment
ANSI/UL 1431 Personal Hygiene and Health Care Appliances
ANSI/UL 1468 Direct-Acting Pressure-Reducing and Pressure-Control Valves for Fire Protection Service
UL 1472 Solid-State Dimming Controls
ANSI/UL 1478 Fire Pump Relief Valves
ANSI/UL 1581 Reference Standard for Electrical Wires, Cables, and Flexible Cords
ANSI/UL 1637 Home Health Care Signaling Equipment
UL 1651 Optical Fiber Cable
UL 1682 Plugs, Receptacles, and Cable Connectors, of the Pin and Sleeve Type
UL 1684 Reinforced Thermosetting Resin Conduit
UL 1690 Data-Processing Cable
ANSI/UL 1692 Polymeric Materials—Coil Forms
UL 1693 Electric Radiant Heating Panels and Heating Panel Sets
UL 1694 Tests for Flammability of Small Polymeric Component
UL 1730 Smoke Detector Monitors and Accessories for Individual Living Units of Multifamily Residences and Hotel/Motel Rooms
ANSI/UL 1740 Industrial Robots and Robotic Equipment
UL 1821 Thermoplastic Sprinkler Pipe and Fittings for Fire Protection
UL 1838 Low Voltage Landscape Lighting Systems
UL 1889 Commercial Filters for Cooking Oil
UL 1951 Electric Plumbing Accessories
ANSI/UL 1963 Refrigerant Recovery/Recycling Equipment
ANSI/UL 1971 Signaling Devices for the Hearing Impaired
UL 1977 Component Connectors for Use in Data, Signal, Control and Power Applications
ANSI/UL 1981 Central Station Automation Systems
UL 1993 Self-Ballasted Lamps and Lamp Adapters
UL 1994 Low-Level Path Marking and Lighting Systems
UL 1995 Heating and Cooling Equipment
UL 1996 Duct Heaters
UL 2021 Fixed and Location-Dedicated Electric Room Heaters
UL 2024 Optical Fiber Cable Raceway
UL 2034 Single and Multiple Station Carbon Monoxide Detectors
ANSI/UL 2044 Commercial Closed Circuit Television Equipment
UL 2061 Adapters and Cylinder Connection Devices for Portable LP-Gas Cylinder Assemblies
ANSI/UL 2083 Halon 1301 Recovery/Recycling Equipment
UL 2085 Insulated Aboveground Tanks for Flammable and Combustible Liquids
ANSI/UL 2096 Commercial/Industrial Gas and/or Gas Fired Heating Assemblies with Emission Reduction Equipment
UL 2106 Field Erected Boiler Assemblies
UL 2111 Overheating Protection for Motors
ANSI/UL 2157 Electric Clothes Washing Machines and Extractors
ANSI/UL 2158 Electric Clothes Dryers
UL 2161 Neon Transformers and Power Supplies
UL 2250 Instrumentation Tray Cable
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3044 Surveillance Closed Circuit Television Equipment
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
UL 8730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

Note: Testing and certification of gas operated equipment is limited to equipment for use with ''liquefied petroleum gas'' (''LPG'' or ''LP-Gas'').

The NRTL staff reviewed the details of UL's on-site evaluation (review)

reports, and determined that UL has the staff capability and the necessary equipment to conduct testing of products covered by these additional test standards.

Preliminary Finding

Based upon a review of the complete application, the on-site evaluation (review) reports, and the recommendations of the staff, including the recommendation from the Lead Assessor dated August 19, 1997 (see Exhibit 14), the Assistant Secretary has made a preliminary finding that Underwriters Laboratory Inc., can meet the requirements as prescribed by 29 CFR 1910.7 for the expansion of its recognition to include the 174 test standards previously listed.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for expansion of its recognition as a Nationally Recognized Testing Laboratory, as required by 29 CFR 1910.7 and Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than January 20, 1998, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210. Copies of the UL application, the recommendation of the Lead Assessor, and all submitted comments, as received, (Docket No. NRTL–4–93), are available for inspection and duplication at the Docket Office, Room N2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (Underwriters Laboratory Inc.) satisfies the requirements for expansion of its recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A to Section 1910.7.

Authority: 29 CFR 1910.7.

Signed at Washington, DC, this 14th day of November, 1997.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 97–30683 Filed 11–20–97; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[97–163]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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)). The information is used by NASA attorneys and technology transfer specialists to determine if a licensee is achieving and maintaining practical application of the licensed inventions as required by its license agreement.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before January 20, 1998.

ADDRESSES: All comments should be addressed to Mr. Michael Battaglia, Office of Aeronautics & Space Transportation Technology, Code RW, National Aeronautics and Space Administration, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: AST—Technology Utilization.

OMB Number: 2700–0009.

Type of review: Reinstatement.

Need and Uses: As required in Section 305(b) of the National Aeronautics and Space Act of 1958 and the NASA Supplement to the Federal Acquisitions Regulations, NASA R&D contracts require federally funded technology to the private sector.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 300.

Responses Per Respondent: 3.

Annual Responses: 900.

Hours Per Request: 1 hour.

Annual Burden Hours: 900.

Frequency of Report: Annually.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–30689 Filed 11–20–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting XLI

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on December 5, 1997 from 9:00 a.m. to 12:00 p.m. This meeting will convene to discuss the recommendations made in Creative America, a Report to the President on the system of support for arts and culture in the United States today and to consider specific measures in California for increasing support for the arts and the humanities. The meeting will be held in the Schwab Room of the San Francisco Museum of Modern Art, 151 Third Street, San Francisco, California.

At 9:00 a.m. the Committee meeting will begin with a welcome from Mayor Willie Brown, followed by opening remarks from Dr. John Brademas, Chairman. Executive Director Harriet Fulbright will give a Director's update, and the meeting will conclude with reports by individual members of the committee. The meeting will adjourn at 12:00 p.m.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited in meeting rooms and staff of the San Francisco Museum of Modern Art will need to know who will be attending. Therefore, for this meeting, individuals wishing to attend

are required to notify the staff of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506.

Dated: November 17, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–30592 Filed 11–20–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL INSTITUTE FOR LITERACY

Notice of Meeting

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES AND TIME: December 11, 1997 from 10:00 am to 4:30 pm, and December 12, 1997 from 9:00 am to 4:00 pm.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Carolyn Staley, Deputy Director, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006. Telephone (202) 632–1526.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by Title I of P.L. 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships. The Board will meet in Washington, DC on December 11, 1997 from 10:00 am to 4:30 pm, and December 12, 1997 from 9:00 am to 4:00 pm. The meeting of the Board is open to the public. This meeting of the Institute's Advisory Board will focus on the following agenda items: recent legislative activities effecting literacy and the Institute; a report from the 1996 Literacy Leader Fellows on their fellowship projects: the creation of Advisory Board Committees which would focus on specific topic areas; and a discussion of major Institute projects with a focus on developments since the September Board meeting.

Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006 from 8:30 am to 5:00 pm.

Dated: November 14, 1997.

Andrew J. Hartman,

Director, National Institute for Literacy.

[FR Doc. 97–30576 Filed 11–20–97; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a small research camp at Patriot Hills, Antarctica by Dr. Red Whittaker, a citizen of the United States. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978 .

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within 30 days of the publication of this notice. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko or Nadene Kennedy at the above address or (703) 306–1033

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the establishment of a field camp at Patriot Hills Antarctica (80°18′ S 61°16′ W) to support field testing of robotic components for possible future use in Antarctica. The field camp will be operated for approximately one month for each of three austral summer research seasons, from January 1998 to February 2000. The permit period requested is from January 1, 1998 through February 29, 2000. The permit applicant is: Dr. Red Whittaker, Director, Field Robotics Center, Carnegie Mellon University, 5000 Forbes Avenue, Pittsburgh, PA 15213.

Activity for Which a Permit is Requested

Researchers at Carnegie Mellon University wish to establish a temporary field camp to be used as the base camp for trials of robotic components in Antarctica. The camp will consist of three temporary structures and four backup tents housing up to seven researchers and their equipment. The scientists will also use two snowmobiles to carry equipment and personnel to sites outside the camp, generally within a 30 km radius. Approximately 800 liters (220 gallons) of unleaded gasoline will be used each season in snowmobiles and electric generators. Also, batteries will be used in some of the instrumentation to be evaluated. Generators will be equipped with drip pans to reduce the risk of spills. Any spills will be contained and clean up. Any solid waste generated will be removed from Antarctica at the conclusion of each season's field work. No waste will be left in Antarctica. Conditions of the permit would include requirements to educate all participants with the provisions of the Antarctic Conservation Act (ACA), report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 97–30662 Filed 11–20–97; 8:45 am]

BILLING CODE 7555–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider and act upon the 1998 budget and to deliberate and make final rulings on certain petitions for exemption from operation of the price regulation. The Commission will also receive Ad Hoc Committee reports on ongoing studies, and act upon such studies as appropriate, and consider certain matters relating to office administration.

DATES: The meeting is scheduled for December 3, 1997 commencing at 10:00 a.m. to adjournment.

ADDRESSES: The meeting will be held at the New Hampshire Historical Society, Tuck Library Building Auditorium—1st Floor, located at 30 Park Street in Concord, NH (exit 14 off Interstate 93).

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT 05601. Telephone (802) 229–1941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Northeast Dairy Compact Commission will hold its regularly scheduled monthly meeting. The Compact Commission will consider and act upon the 1998 budget and deliberate and make final rulings in certain administrative petitions for exemption from operation of the price regulation. See 62 FR 35065 (June 30, 1997) The Commission will also receive reports from the Ad Hoc Committees on Regulations, Cost of Production and School Lunch Program Impact and take action upon such reports as required. The Commission will also consider certain matters relating to administration of the Compact Commission.

Daniel Smith,

Executive Director.

(Authority: (a) Article V, Section 11 of the Northeast Interstate Dairy Compact, and all other applicable Articles and Sections, as approved by Section 147, of the Federal Agriculture Improvement and Reform Act (FAIR ACT), Pub. L. 104–127, and as thereby set forth in S.J. Res. 28(1)(b) of the 104th Congress; Finding of Compelling Public Interest by United States Department of Agriculture Secretary Dan Glickman, August 8, 1996 and March 20, 1997. (b) Bylaws of the Northeast Dairy Compact Commission, adopted November 21, 1996.)

[FR Doc. 97–30601 Filed 11–20–97; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Notice of Amendment To Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation Portsmouth Gaseous Diffusion Plant Portsmouth, OH

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs. The basis for this determination for the amendment request is described below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) the interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For Further Details with Respect to the Action see: (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of Amendment Request: June 16, 1997.

Brief Description of Amendment: The proposed amendment, in accordance with a commitment made in the USEC certificate application, adds an additional criticality safety program element to the list of elements committed to in Technical Safety Requirement (TSR) 3.11.1.

Section 3.9 of the PORTS Safety Analysis Report (SAR) Revision 4 dated July 26, 1996, summarizes the upgrades

required to bring the process facilities in compliance with the descriptions provided in SAR Chapter 3. One of the upgrades involves the identification of Structures, Systems and Components (SSCs) and associated support systems required to meet the nuclear criticality safety (NCS) double contingency principle. These SSCs are also referred to as AQ–NCS SSCs. By March 3, 1997, USEC was required by Issue 23 of the Compliance Plan (DOE/ORO–2027/R3) submitted as part of their certificate application, to identify and delineate AQ–NCS SSCs and their associated support systems. According to USEC, this action has been completed. A commitment made in SAR Section 3.9.10 entitled ''Identification of Nuclear Criticality Safety SSCs,'' requires USEC to follow-up by revising TSR 3.11.1, to reflect identification of AQ–NCS SSCs and their associated support systems. As such, USEC has proposed to add a new fourth bullet to TSR 3.11.1 to state that the NCS program will address the identification of SSCs and support systems necessary to meet the double contingency principle.

Basis for Finding of No Significance

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

This amendment adds an additional TSR commitment related to the PORTS NCS program by requiring identification of SSCs and support systems necessary to meet the double contingency principle. As such, it will not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

This amendment adds an additional TSR commitment related to the PORTS NCS program by requiring identification of SSCs and support systems necessary to meet the double contingency principle. As such, it will not result in a significant increase in individual or cumulative occupational radiation exposures.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment does not involve any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

This amendment adds an additional TSR commitment related to the PORTS NCS program by requiring identification of SSCs and support systems necessary to meet the double contingency principle. As such, it will not significantly increase the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

This amendment adds an additional TSR commitment related to the PORTS NCS program by requiring identification of SSCs and support systems necessary to meet the double contingency principle. As such, it will not result in new or different kinds of accidents.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

This amendment adds an additional TSR commitment related to the PORTS NCS program by requiring identification of SSCs and support systems necessary to meet the double contingency principle. As such, there will not be a significant reduction of any margin of safety. On the contrary, this amendment may constitute an increase in the NCS margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs.

This amendment adds an additional TSR commitment related to the PORTS NCS program by requiring identification of SSCs and support systems necessary to meet the double contingency principle. As such, it will not result in an overall decrease in the effectiveness of the plant's safety program. On the contrary, this amendment may increase the effectiveness of the plant's NCS program.

The staff has not identified any safeguards or security related implications from the proposed amendment. Therefore, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safeguards, or security programs.

Effective date: The amendment to GDP–2 will become effective immediately after issuance by NRC.

Certificate of Compliance No. GDP–2: Amendment will revise the Technical Safety Requirements.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 12th day of November 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–30619 Filed 11–20–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel Meeting: December 17, 1997—Augusta, Georgia: DOE-Owned Spent Fuel, Spent Naval Fuel, Treatment and Disposal of Aluminum-Clad Fuel, Defense Waste Processing, Defense Waste and Surplus Plutonium Disposal

Pursuant to its authority under section 5051 of Pub. L. 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's Panel on the Repository will hold a meeting December 17, 1997, beginning at 8:30 a.m. The meeting, which is open to the public, will focus on Department of Energy (DOE)-owned spent nuclear fuel, spent naval fuel, defense waste processing, and defense waste and surplus plutonium disposal.

Representatives of the DOE and the U.S. Navy have been invited to make presentations, including introductions to DOE-owned spent fuel, naval spent fuel, and aluminum-clad, highly enriched uranium (HEU) spent fuel. Disposal of aluminum-clad HEU spent fuel will be covered, including package design, criticality analyses, and treatment options. Representatives of the Savannah River facility will talk about the work done there, including defense high-level waste processing and disposition. Other presentations will cover the characteristics and disposal of vitrified high-level defense waste, and the immobilization and disposal of surplus weapons-grade plutonium. A detailed agenda will be available approximately two weeks prior to the meeting by fax or email, or on the Board's web site at www.nwtrb.gov.

The meeting will be held at the Radisson Riverfront Hotel, Two 10th Street, Augusta, Georgia 30901; Tel (706) 722–8900; Fax (706) 823–6513. Reservations for accommodations must be made by December 8, 1997, and you must indicate that you are attending the Nuclear Waste Technical Review Board's panel meeting to receive the preferred rate.

Time has been set aside on the agenda for comments and questions from the public. Those wishing to speak are encouraged to sign the Public Comment Register at the check-in table. A time limit may have to be set on the length of individual remarks; however, written

comments of any length may be submitted for the record.

Transcripts of this meeting will be available on computer disk, via e-mail, or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning January 13, 1998. For further information, contact Frank Randall, External Affairs, 2300 Clarendon Blvd., Suite 1300, Arlington, Virginia 22201–3367; (Tel) 703–235–4473; (Fax) 703–235–4495; (E-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's high-level radioactive waste and commercial spent nuclear fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Dated: November 18, 1997.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 97–30621 Filed 11–20–97; 8:45 am]

BILLING CODE 6820–AM–M

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice was previously published at 62 FR 61153 on November 14, 1997, that the Railroad Retirement Board would 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. This meeting has been canceled.

Date: November 18, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–30770 Filed 11–19–97; 10:52 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22888; File No. 812–10740]

The Guardian Insurance & Annuity Company, Inc., et al.; Notice of Application

November 14, 1997.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting relief from rule 6e–2(c)(1) and from certain provisions of the Act and rules thereunder specified in paragraph (b) of rule 6e–2; and from sections 2(a)(32) and 27(i)(2)(A) of the Act and rules 6e–2(b)(12) and 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary: (1) to permit them to offer and sell certain variable whole life insurance policies with modified scheduled premiums (''Policies''); and (2) to permit certain other persons which may become the principal underwriter for such Policies (''Future Underwriters'') to offer and sell such Policies.

APPLICANTS: The Guardian Insurance & Annuity Company, Inc. (''GIAC''), The Guardian Separate Account K (''Separate Account''), and Guardian Investor Services Corporation (''GISC'').

FILING DATES: The application was filed on July 28, 1997, and amended and restated on October 20, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 9, 1997, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Richard T. Potter, Jr., Esq., The Guardian Insurance & Annuity Company, Inc., 201 Park Avenue, South, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, at (202) 942–0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. GIAC, a Delaware stock life insurance company, is a wholly-owned subsidiary of The Guardian Life Insurance Company of America.

2. GIAC established the Separate Account under Delaware insurance law to serve as a funding vehicle for certain variable life insurance products. The Separate Account is registered under the Act as a unit investment trust. The Separate Account currently has eight investment divisions, each of which invests in shares of a corresponding mutual fund registered under the Act as an open-end diversified management investment company.

3. GISC, a wholly-owned subsidiary of GIAC, will act as the principal underwriter for the policies. GISC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (the ''NASD'').

4. Those premium amounts set forth in each Policy which must be paid to obtain the benefits provided by the Policy exclusive of the additional benefit riders (''Basic Scheduled Premiums'') plus rating charges for those insureds that do not satisfy (GIAC's underwriting requirements for standard issuance, and premiums for insurance benefits that the Policy owner may add as riders to the Policy (collectively, ''Policy Premium Assessments'') are payable until the Policy anniversary nearest the insured's 100th birthday. If all Basic Scheduled Premiums and Policy Premium Assessments (collectively, ''Policy Premiums'') are paid when due or skipped under the premium skip option (described below), the Policy will not lapse and will retain its minimum death benefit guarantee until the Policy anniversary nearest the insured's 100th birthday, so long as no partial withdrawals are made and there is no Policy debt outstanding.

5. Policy Premiums may be paid annually or periodically. Each periodic Policy Premium must be at least $100.

6. The Policy's Basic Scheduled Premiums cannot be increased during the guaranteed premium period, but will be reduced by GIAC if the Policy's face amount is decreased. The guaranteed premium period starts on the Policy date and ends on the later of the Policy anniversary nearest the insured's 70th birthday or the 10th Policy anniversary. After the expiration of the guaranteed premium period, a

Policy's Basic Scheduled Premiums may increase.

7. A Policy owner also may make unscheduled premium payments, subject to certain limits and restrictions set forth in the Policy and GIAC's administrative procedures.

8. GIAC generally credits and allocates each payment as of the business day of receipt, if it receives the payment before the close of business at its executive office. There are two exceptions to this practice. First, GIAC credits and allocates any payment received prior to the issue date on the issue date. Second, GIAC credits and allocates that portion of any payment that is used to pay a Policy Premium on the premium due date if such payment is received on or during the 31 days preceding such premium due date.

9. If Policy Premiums and/or unscheduled payments in excess of $100,000 are received from the Policy owner prior to the later of: (i) 45 days after Part I of the completed application is signed; or (ii) 15 days after the issue date, GIAC will allocate that portion, if any, of a scheduled premium payment or an unscheduled payment which is allocated among the variable investment options and the fixed-rate option according to instructions provided by the Policy owner (''net premium'') in excess of $100,000 (''excess net premium'') to The Guardian Cash Fund, a money market fund. On the later of (i) or (ii), any excess net premium allocated to The Guardian Cash Fund and any earnings attributable thereto, will be re-allocated in accordance with the policy owner's then-current allocation instructions.

10. The Policy provides for a premium skip option, which permits an owner to skip one or more scheduled premium payments after the first Policy year, subject to certain conditions. When a premium skip is effected, GIAC deducts from the sum of the values attributable to a Policy which are allocated to the variable investment options, the fixed-rate option, and the loan collateral account (the ''Policy Account Value'') an amount equal to 92.5% of any Policy Premium Assessments that would be due on the Policy Anniversary to pay such assessments for the coming Policy year. The amount will be deducted proportionately from the Policy Account Value attributable to the variable investment options. If some or all of the required deduction exceeds the Policy Account Value held in the variable investment options, GIAC will deduct the remainder from the Policy Account Value held in the fixed-rate option.

11. In addition, a Policy owner may use up to 90% of the Policy's cash surrender value less any then-outstanding Policy debt (''loan value'') to pay a Policy Premium if the Policy owner has elected and is eligible for the Policy's automatic premium loan feature. Under the automatic premium loan feature, GIAC transfers the required premium amount from the unloaned Policy Account Value to the loan collateral account and uses the loan proceeds to pay the Policy Premium due.

12. A Policy Premium which is unpaid as of its due date is in default, but the Policy provides a 31-day grace period for the payment of each Policy Premium after the first. If the insured should die during the grace period and before the premium is paid, the death proceeds payable to the beneficiary will be reduced by an outstanding Policy debt and any due and unpaid Policy Premium for the period through the Policy month of death. If GIAC does not receive a Policy Premium before the grace period ends, and neither the premium skip option nor the automatic premium loan feature are available, and no waiver of premium rider is in effect, the Policy will lapse. Upon Policy lapse, all insurance coverage ends as of the end of the grace period, unless a policy value option becomes effective. The Policy owner can surrender the Policy for its net cash surrender value at any time during the grace period.

13. GIAC deducts Policy Premium Assessments and a premium charge from Policy Premiums and unscheduled payments. Policy Premium Assessments are deducted from each Policy Premium to cover GIAC's risks and costs associated with providing insurance coverage to higher risk insureds or providing additional benefits through Policy benefit riders.

14. The premium charge initially is equal to 7.5% of each Basic Scheduled Premium and each unscheduled payment and will decrease to 4.5% after the total amount of premiums paid under a Policy, through Basic Scheduled Premiums and/or unscheduled payments, equals 12 annual Basic Scheduled Premiums payable during the guaranteed premium period for the current fact amount. This charge covers premium taxes, a portion of GIAC's federal income tax burden, and a premium sales charge. GIAC also reserves the right to charge a maximum handling fee of $2.00 for each unscheduled payment it receives.

15. GIAC deducts each month from the Policy Account Value a Policy charge, an administration charge, a guaranteed insurance amount charge, and a charge for the cost of insurance. These charges compensate GIAC for the cost of underwriting and issuing a Policy. GIAC also may make transaction deductions upon: (i) a partial withdrawal (the lesser of $25 or 2% of the requested withdrawal amount); (ii) a premium skip; and (iii) a transfer after the twelfth transfer in a Policy year ($25). GIAC also charges the Separate Account for the mortality and expense risks it assumes, at an annual rate of 0.60% (guaranteed not to exceed 0.90%) of the Separate Account's average daily net assets. Charges for investment advisory and other Fund expenses are indirectly borne by owners of the Policies.

16. During the first 12 Policy years, GIAC deducts a surrender charge upon surrender, lapse, a lapse option taking effect upon Policy default, and upon a reduction in face amount by request or through a partial withdrawal. The surrender charge during the first Policy year is expressed as a flat dollar amount charge per $1000 in face amount; the per $1000 rate will vary from $5.37 to $58.87 based upon the issue age, sex, and underwriting class of the insured. The surrender charge will decrease proportionally on an annual basis over the first 12 Policy years so that the surrender charge beginning in year 13 is $0. After imposition of the surrender charge, a Policy's net cash surrender value may be zero, particularly in early Policy years.

17. In the case of a reduction in face amount, the surrender charge is prorated by multiplying the applicable surrender charge by the following fraction to reduce the payable charges:

$$\frac{\text{the amount of the face amount reduction}}{\text{the face amount prior to the reduction}}$$

The adjusted surrender charge is paid by deductions from the unloaned Policy Account Value. The surrender charge is intended to compensate GIAC for certain sales-related and administrative expenses.

18. The Policy provides for two alternate death benefit options. The Option 1 death benefit is equal to the greatest of: (i) the face amount of the Policy on the date of the insured's death; (ii) the minimum death benefit then required under federal tax laws on the monthly date preceding the insured's death; or (iii) after the first Policy year, the Policy's ''variable insurance amount.'' The variable insurance amount provides a guarantee that the death benefit will be greater than the then-effective face amount if the Policy Account Value is greater than

the net single premium set forth in that Policy on any Policy review date.

19. The Option 2 death benefit is equal to the greatest of: (i) the face amount of the Policy on the date of the insured's death plus any amount by which the Policy Account Value then exceeds the Benchmark Value [1] as adjusted to the monthly date preceding the date of death; (ii) the minimum death benefit then required under federal tax laws on the monthly date preceding the insured's death; or (iii) after the first Policy year, the Policy's variable insurance amount.

20. Under an Option 1 Policy, when favorable investment performance and unscheduled payments increase the Policy Account Value, the Net Amount at Risk (the amount of death benefit provided under the death benefit option then in force minus the Policy Account Value) under the Policy will decrease. When the Net Amount at Risk is reduced, the dollar amount of the cost of insurance charge deducted on each monthly date may also decline.

21. Under an Option 2 Policy, favorable investment performance and the addition of unscheduled payments can possibly increase the Policy Account Value sufficiently to increase the death benefit. At such time, however, the Net Amount at Risk will not change as a result of the favorable investment performance or unscheduled payments. Unfavorable investment performance can reduce an Option 2 Policy's death benefit, but the benefit will never be less than the face amount.

22. Under either Option, any partial withdrawal taken after a monthly date will reduce the death benefit by the amount of the partial withdrawal and any applicable charge if the insured dies after that monthly date but prior to the next succeeding monthly date.

Applicants' Legal Analysis

Definition of ''Variable Life Insurance Contract''

1. Rule 6c–3 grants exemptions from those provisions of the Act that are specified in paragraph (b) of Rule 6e–2 (except for Sections 7 and 8(a)) to certain separate accounts of life insurance companies that support variable life insurance policies. Specifically, the exemptions provided by Rule 6c–3 are available only to separate accounts registered under the Act whose assets are derived solely from the sale of ''variable life insurance contracts'' that meet the definition set forth in Rule 6e–2(c)(1), and from certain advances made by the insurer. The term ''variable life insurance contract'' is defined by Rule 6e–2(c)(1) to include only life insurance policies that provide a death benefit and a cash surrender value, both of which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an initial dollar amount stated in the policy.

2. Applicants believe that the Option 2 death benefit falls within the requirement that it ''vary to reflect the investment experience of the separate account.'' Although the Option 2 death benefit varies only when the Policy's cash value exceeds its Benchmark Value, Applicants state that it is analogous to more conventional scheduled premium variable life insurance policies where death benefits are increased when investment experience exceeds an assumed investment rate. Rule 6e–2(c)(1) clearly contemplates that a death benefit would vary only if it exceeds a guaranteed minimum death benefit. A Policy under the Option 1 death benefit, however, will fail to satisfy this requirement if the death benefit has not been otherwise increased to satisfy Federal tax law requirements.

3. The Policy also contains other provisions, relating primarily to the flexibility of premium payments, that are not specifically addressed in Rule 6e–2. Applicants must rely on certain exemptive provisions in Rule 6e–2(b), as described below, in order to issue, sell, and maintain the Policies.[2] Applicants therefore request relief from the definition of ''variable life insurance contract'' set forth in Rule 6e–2(c)(1) to the extent necessary to permit reliance on the exemptions provided in each of the provisions of paragraph (b) of Rule 6e–2 that are set forth below, under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2.

(a) Paragraph (b)(1)—''Sales load'' is no longer subject to the specific quantitative limits set forth in the Act and rules thereunder. It is nonetheless possible that the amount of ''sales load'' imposed under the Policies would need to be determined (for example, in connection with analyzing an exchange offer involving the Policies; or analyzing variations in sales load pursuant to Section 22(d) of the Act). Accordingly, Applicants seek relief permitting them to rely on paragraph (b)(1) of Rule 6e–2.

(b) Paragraph (b)(3)—Relief is requested to permit the Separate Account to rely on paragraph (b)(3)(ii) of Rule 6e–2 in order to effect compliance with Section 8(b) of the Act (regarding the filing of a registration statement with the Commission).

(c) Paragraph (b)(4)—Relief is requested to permit Applicants to apply the eligibility restrictions of Section 9 of the Act in the fashion contemplated by paragraph (b)(4).

(d) Paragraph (b)(5)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 13(a) of the Act relating to insurance regulatory authority imposing certain requirements on the investment policies of the Separate Account; and disapproval by GIAC of changes in the investment policy of the Separate Account initiated by Policy owners under circumstances contemplated by and in accordance with the requirements of paragraph (b)(5); and to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(5).

(e) Paragraph (b)(6)—Relief is requested to permit Applicants to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(6).

(f) Paragraph (b)(7)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 15(a), (b), and (c) relating to an insurance regulatory authority disapproving advisory or underwriting contracts; disapproval by GIAC of changes in the principal underwriter for the Separate Account initiated by Policy owners; and disapproval by GIAC of changes in the investment adviser to the Separate Account initiated by Policy owners under circumstances contemplated by and in accordance with the requirements of paragraph (b)(7); and to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(7).

(g) Paragraph (b)(8)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 16(a) relating to an insurance regulatory authority disapproving or removing a member of the board of directors of a separate account under circumstances contemplated by and in accordance with the requirements of

[1] The Benchmark Value is a hypothetical value to which GIAC compares the actual Policy Account Value to determine whether and to what extent certain Policy privileges can be exercised (such as the premium skip option), and to redetermine the Basic Scheduled Premium in Policy years after the guaranteed premium period.

[2] Certain of the relief requested may not currently be necessary in light of the structure of the Separate Account as a ''unit investment trust,'' but would become necessary if the Separate Account were to be restructured as an open-end management company in the future. The Policies permit such a restructuring.

paragraph (b)(8); and to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(8).

(h) Paragraph (b)(9)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 17(f) in order to maintain separate account assets in the custody of GIAC or an affiliate thereof, in accordance with the requirements of paragraph (b)(9).

(i) Paragraph (b)(10)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 18(i) in order to provide for variable contract owner voting as contemplated by and in accordance with the requirements of paragraph (b)(10).

(j) Paragraph (b)(12)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 22(d), 22(e), and Rule 22c–1 in connection with issuance, transfer and redemption procedures for the Policies, including premium processing, premium rate structure, underwriting standards, and the benefit provided by the Policies, as contemplated by and in accordance with the requirements of paragraph (b)(12).

(k) Paragraph (b)(14)—Relief is requested to permit Applicants to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(14).

(l) Paragraph (b)(15)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 9(a), and to facilitate the voting by GIAC of shares of management investment companies held by the Separate Account in disregard of Policy owner instructions under the circumstances contemplated by, and in accordance with the requirements of, paragraph (b)(15). Relief is also requested to permit Applicants to rely on the exemptions provided from Section 14(a), 15(a), 16(a), and 32(a)(2) in connection with any registered management investment company established by GIAC in the future in connection with the Policies, in accordance with the requirements of paragraph (b)(15), and paragraphs (b)(5), (b)(7), (b)(8), and (b)(14) of Rule 6e–2.

4. Applicants submit that the considerations that led the Commission to adopt Rules 6c–3 and 6e–2 apply equally to the Separate Account and the Policy, and that the exemptions provided by these rules should be granted to the Separate Account and to the other Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested in the application.

Redeemability

5. Section 27(i)(2)(A) provides that no registered separate account funding variable insurance contracts or its sponsoring insurance company shall sell such contract unless the contract is a ''redeemable security.'' Section 2(a)(32) defines a ''redeemable security'' as one entitling its holder to receive ''approximately his proportionate share'' of the issuer's current net asset value upon presentation to the issuer. Applicants request relief from the requirement in Section 27 that the Policies be ''redeemable securities,'' and from the definition of ''redeemable security'' set forth in Section 2(a)(32), in connection with the issuance and sale of the Policies.

6. Rule 22c–1 requires that a Policy be redeemed at a price based on the current net asset value of the Policy next computed after receipt of request for surrender. If the conditions of Rule 6e–2(b)(12) are satisfied, paragraph (b)(12) provides certain exemptions from Rule 22c–1. A contingent deferred charge such as the surrender charge may, however, not be contemplated by Rule 6e–2(b)(12), and thus may be deemed inconsistent with the foregoing provisions, to the extent that the charge can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after surrender or after partial withdrawal from the Policy. Accordingly, Applicants request relief from Rule 22c–1 and Rule 6e–2(b)(12), to the extent necessary to permit the deduction of the surrender charge on surrender, lapse, a lapse option taking effect, or face amount reduction by request or through partial withdrawal from a Policy.

7. Although Section 2(a)(32) does not specifically contemplate the imposition of a charge at the time of redemption, Applicants assert that such charges are not necessarily inconsistent with the definition of ''redeemable security.''

8. Applicants submit that although the deferred imposition of the surrender charge (upon surrender, lapse, or reduction in face amount by request or through partial withdrawal) may not fall within the literal pattern of all the provisions described in the application, that does not change the charge's essential nature. Moreover, the proposed amendments to Rule 6e–2 would permit a sales charge to be imposed on a contingent deferred basis. Contingent deferred charges are also authorized by Rule 6e–3(T) for contracts able to rely on that rule. Therefore, Applicants submit that the surrender charge is consistent with the principles and policies underlying limitations in Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rules 6e–2(b)(12) and (c)(1) and 22c–1 thereunder.

Class Exemption for Future Underwriters

9. Applicants seek the relief requested herein with respect to Future Underwriters. Future Underwriters will be members of the NASD.

10. Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in Section 6(c) of the Act. Further, Applicants state that, without the requested class relief, exemptive relief for any Future Underwriter would have to be requested and obtained separately. Applicants assert that these additional requests for exemptive relief would present no issues under the Act not already addressed herein. Applicants submit, for all the reasons stated herein, that their request for class exemptions is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Policy and provisions of the Act, and that an order of the Commission including such class relief, should, therefore, be granted.

Conclusion

For the reason summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30573 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22891; 812–10860]

Kemper Technology Fund, et al.; Notice of Application

November 17, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the implementation, without shareholder approval, of new investment advisory agreements between Zurich Kemper Investments, Inc. (''ZKI'') and Zurich Kemper Value Advisors, Inc. (''ZKVA'') (collectively, the ''Advisers''), and the Funds (as defined below) (the ''New Advisory Agreements'') for a period of up to 120 days following the date of consummation of a merger and until each New Advisory Agreement receives shareholder approval (but in no event later than April 30, 1998) (the ''Interim Period''). The order also would permit the Advisers to receive all fees earned under the New Advisory Agreements during the Interim Period following shareholder approval.

APPLICANTS: ZKI; ZKVA; Scudder, Stevens & Clark, Inc. (''Scudder''); Kemper Technology Fund (''KTEC''), Kemper Total Return Fund (''KTRF''), Kemper Growth Fund (''KGF''), Kemper Small Capitalization Equity Fund (''KSCF''), Kemper Income and Capital Preservation Fund (''KICPF''), Kemper National Tax-Free Income Series (''KNTIS''), Kemper Diversified Income Fund (''KDIF''), Kemper High Yield Series (''KHYS''), Kemper U.S. Government Securities Fund (''KGSF''), Kemper International Fund (''KIF''), Kemper State Tax-Free Income Series (''KSTIS''), Kemper Portfolios (''KP''), Kemper Adjustable Rate U.S. Government Fund (''KARGF''), Kemper Blue Chip Fund (''KBCF''), Kemper Global Income Fund (''KGIF), Kemper Value Plus Growth Fund (''KVGF''), Kemper Quantitative Equity Fund (''KQEF''), Kemper Asian Growth Fund (''KAGF''), Kemper Aggressive Growth Fund (''KAGGF''), Zurich Money Funds (''ZMF''), Zurich YieldWise Money Fund (''ZYMF''), Cash Equivalent Fund (''CEF''), Tax-Exempt California Money Market Fund (''TECMF''), Investors Cash Trust (''ICT''), Investors Municipal Cash Fund (''IMCF''), Cash Account Trust (''CAT''), Kemper Value Fund, Inc. (''KVF''), Kemper Horizon Fund (''KHF''), Kemper Europe Fund (''KEUF''), Kemper Target Equity Fund (''KTEF''), Kemper High Income Trust (''KHI''), Kemper Intermediate Government Trust (''KGT''), Kemper Municipal Income Trust (''KTF''), Kemper Multi-Market Income Trust (''KMM''), Kemper Strategic Municipal Income Trust (''KSM''), The Growth Fund of Spain, Inc. (''GSP''), Kemper Strategic Income Fund (''KST''), Investors Fund Series (''INFS'') and Kemper International Bond Fund (''KIBF'') (each a ''Fund'', collectively the ''Funds'').

FILING DATES: The application was filed on November 5, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 8, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Funds & ZKI, 222 South Riverside Plaza, Chicago, Illinois 60606; ZKVA, 280 Park Avenue, New York, NY 10017; Scudder, 345 Park Avenue, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. Scudder is an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Funds are registered as open-end or closed-end investment companies under the Act. The Advisers are investment advisers registered under the Advisers Act and serve in the capacity of investment manager, investment adviser, or subadviser to at least one of the Funds or a series of the Funds under advisory agreements (the ''Existing Advisory Agreements'').[1]

Zurich Insurance Company (''Zurich'') is the indirect parent of ZKI. ZKVA is a wholly-owned subsidiary of ZKI.

2. On June 26, 1997, Zurich, ZKI Holding Corp., ZKI, Scudder and the representatives of the beneficial owners of the capital stock of Scudder entered into a transaction agreement (the ''Transaction Agreement''), under which Zurich will become the majority stockholder in Scudder, and ZKI will become a wholly-owned subsidiary of, or be combined with, Scudder (the ''Transaction''). Upon completion of the Transaction, Scudder will change its name to Scudder Kemper Investments, Inc. (''SKI'').[2] Applicants expect consummation of the Transaction on December 5, 1997.

3. Applicants believe that the Transaction will result in an assignment of the Existing Advisory Agreements and that the Existing Advisory Agreements will terminate by their terms on the closing date of the Transaction. Applicants request an exemption to permit (i) implementation, during the Interim Period, prior to obtaining shareholder approval, of the New Advisory Agreements, and (ii) the Advisers to receive from each Fund, upon approval of that Fund's shareholders of the New Advisory Agreement, any and all fees earned under the related New Advisory Agreement during the applicable Interim Period. Applicants represent that the New Advisory Agreements will have substantially the same terms and conditions as the Existing Advisory Agreements, except for the effective dates. Applicants state that each Fund should receive, during the Interim Period, the same advisory services, provided in the same manner and at the same fee levels, by substantially the same personnel as it received prior to the Transaction.[3]

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[1] ZKI is investment manager for the following Funds under Existing Advisory Agreements: KTEC, KTRF, KGF, KSCF, KICSPF, KNTIS, KDIF, KHYS, KGSF, KIF, KSTIS, KP, KARGF, KBCF, KGIF, KVGF, KQEF, KAGF, KAGGF, KHF, KEUF, KTEF, KHI, KGT, KMM, KTF, KSM, GSP, KST, CEF, TECMF, ICT, CAT, IMCF, INFS, KIBF, ZMF and ZYMF. ZKVA is investment manager for KVF and two series of INFS. Under agreements with ZKI, ZKVA is subadviser to KHF, KVGF and certain series of INFS. Under agreements with ZKI, Zurich Investment Management Limited, an indirect subsidiary of Zurich Insurance Company (''ZIML''), is subadviser to KEUF, KTEF, KHF, KTEC, KTRF, KGF, KSCF, KICPF, KDIF, KHYS, KIF, KBCF, KGIF, KVGF, KQEF, KAGF, KAGGF, KHI, KGT, KMM, KST, GSP, certain series of INFS and KIBF.

In each of the foregoing cases, whether acting as investment manager, investment adviser, or subadviser, each Adviser and ZIML is acting as an investment adviser within the meaning of section 2(a)(20) of the Act, and serves as investment manager, investment adviser or subadviser under a contract subject to section 15 of the Act.

[2] Subsequent to the execution of the Transaction Agreement, Zurich agreed to cause ownership of ZIML to be transferred by Zurich to SKI. In addition, as a wholly owned subsidiary of ZKI, ZKVA will become part of SKI.

[3] Except for KSCF and KAGGF, the management fee under the New Advisory Agreements will be paid at the end of each month and will be computed as 1/12 of the applicable annual rate based upon the average daily net assets (weekly net assets

4. The board of trustees or directors, as the case may be, of each Fund (''Board'') met on one or more dates between June 30, 1997 and September 20, 1997 to consider the Transaction and its anticipated effects upon the investment management and other services provided to the Funds by the Advisers and their affiliates. The Board members who are not ''interested persons'' of the Funds as that term is defined in section 2(a)(19) of the Act (''Independent Trustees'') also met separately with counsel on a number of occasions to discuss the Transaction. On September 15, 1997 and September 20, 1997, the Boards, including the Independent Trustees, voted unanimously in accordance with section 15(c) of the Act to approve the New Advisory Agreements and to recommend them to shareholders for their approval.

5. Proxy materials for the shareholders meetings relating to the New Advisory Agreements were mailed by the Funds on or about October 22, 1997. Applicants state that it is possible that shareholders of each of the Funds will approve the New Advisory Agreements at the shareholders meetings expected to be held on December 3, 1997. Applicants note, however, that it may be necessary to adjourn a meeting to permit additional shareholders to vote their shares.

6. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The fees payable to the Advisers during the Interim Period under the New Advisory Agreements will be paid into an interest-bearing escrow account maintained by the escrow agent. The escrow agent will release the amounts held in the escrow account (including any interest earned): (a) to the applicable Adviser only upon approval of the Funds' shareholders of the relevant New Advisory Agreement; or (b) to the relevant Fund if the Interim Period has ended and its New Advisory Agreement has not received the requisite shareholder approval. Before any such release is made, the Funds' Boards would be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires that the written contract provide for its automatic termination in the event of its ''assignment.'' Section 2(a)(4) of the Act defines the term ''assignment'' to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that the Transaction will be deemed to result in an assignment of the Existing Advisory Agreements and, therefore, their termination upon consummation of the Transaction.

3. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

4. Applicants submit that it is in the best interests of shareholders to have sufficient time to consider and return proxies and to hold shareholder meetings. Applicants also believe it is desirable to close the Transaction as soon as possible.

5. Applicants believe that the requested relief is necessary to permit continuity of investment management services for the Funds during the Interim Period. Applicants also believe that the Interim Period would facilitate the orderly and reasonable consideration of the New Advisory Agreements with respect to those Funds whose shareholders have not voted in sufficient numbers by the date of the shareholders meeting.

6. Applicants submit that the scope and quality of services provided to the Funds during the Interim Period will not be diminished. The New Advisory Agreements would be substantially the same as the Existing Advisory Agreements, except for their effective dates. Applicants submit that they are not aware of any material changes in the personnel who will provide investment management services during the Interim Period. Accordingly, the Funds should receive, during the Interim Period, the same advisory services, provided in the same manner, at the same fee levels, by substantially the same personnel as they received before the Transaction.

7. Applicants submit that to deprive the Advisers of their customary fees during the Interim Period would be unduly harsh and unreasonable. Applicants emphasize that the fees payable to the Advisers have been approved by the Boards, including a majority of the Independent Trustees, in accordance with their fiduciary and other obligations under the Act, and that such fees will not be released by the escrow agent without the approval of the respective Fund's shareholders.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Advisory Agreements to be implemented during the Interim Period will have substantially the same terms and conditions as the Existing Advisory Agreements, except for the effective dates.

2. Fees earned by an Adviser in respect of the New Advisory Agreements during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid (a) to an Adviser in accordance with the New Advisory Agreements, after the requisite shareholder approvals are obtained, or (b) to the respective Fund, in the absence of such approval with respect to such Fund.

3. The Funds will hold a meeting of shareholders to vote on approval of the New Advisory Agreements on December 3, 1997, or within the 120-day period following the consummation of the Transaction (but in no event later than April 30, 1998).

4. Zurich or its affiliates will bear the costs of preparing and filing the application, and any costs relating to the solicitation of approval of the Funds' shareholders necessitated by the consummation of the Transaction.

5. The Advisers will take all appropriate steps so that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Boards, including a majority of the Independent Trustees, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, the Advisers will apprise

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in the case of KHI, KGT, KTF, KMM, KSM, GSP and KST) for such month; whereas under the Existing Advisory Agreements, the management fee is paid at the end of each month and is computed at the annual rate based upon the average daily net assets (weekly net assets in the case of KHI, KGT, KTF, KMM, KSM, GSP and KST). While the annual rates are the same under the New Advisory Agreements and the Existing Advisory Agreements, depending upon the level of net assets at any time, the fees may differ. However, if at any time during the Interim Period, the fees payable under the New Advisory Agreements are greater than those that would have been payable under the Existing Advisory Agreements, the excess amount shall be waived. For KSCF and KAGGF, the management fee will continue on the same basis as under the Existing Advisory Agreements as if there were no termination of the Existing Advisory Agreements.

and consult with the Boards of the affected Funds to assure that the Boards, including a majority of the Independent Trustees, are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30571 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22890; File No. 812–10674]

The Life Insurance Company of Virginia, et al.; Notice of Application

November 14, 1997.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for exemptions under Section 26(b) of the Investment Company Act of 1940 (the ''1940 Act'') approving the proposed substitutions of shares and under Section 17(a) of the 1940 Act from the provisions of Section 17(a)(1) and 17(a)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(b) of the 1940 Act approving the substitution of securities issued by certain registered management investment companies for securities issued by certain other registered management investment companies currently held by separate accounts of The Life Insurance Company of Virginia and Great Northern Insured Annuity Corporation to support variable life insurance policies and variable annuity contracts. Applicants also seek an order pursuant to Section 17(b) of the 1940 Act granting exemptions from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit Applicants to carry out certain of the proposed substitutions in-kind.

APPLICANTS: The Life Insurance Company of Virginia (''Life of Virginia''), Great Northern Insured Annuity Corporation (''GNA,'' collectively with Life of Virginia, the ''Companies'') and their respective separate accounts, Life of Virginia Separate Account I (''Account I''), Life of Virginia Separate Account II (''Account II''), Life of Virginia Separate Account III (''Account III''), Life of Virginia Separate Account 4 (''Account 4'') and GNA Variable Investment Account (''GNA Account'' and collectively with the other separate accounts ''the Accounts'').

FILING DATE: This application was filed on May 16, 1997, and amended and restated on October 9, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this aplicaiton by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 9, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o J. Neil McMurdie, Esq., The Life Insurance Company of Virginia, 6610 West Broad Street, Richmond, VA 23260. Copies to Stephen E. Roth/David S. Goldstein, Sutherland, Asbill & Brennan, L.L.P., 1275 Pennsylvania Avenue, N.W., Washington, D.C. 20004–2404.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Mark C. Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Life of Virginia is a stock life insurance company operating under a charter granted by the Commonwealth of Virginia. Eighty percent of the capital stock of Life of Virginia is owned by General Electric Capital Assurance Corporation (''GECA''). The remaining twenty percent is owned by GE Life Insurance Group, Inc. (''GELIG''). GECA and GELIG are wholly owned subsidiaries of GE Capital Corporation (''GE Capital''). GE Capital's parent is General Electric Company. Life of Virginia is the depositor and sponsor of Account I, Account II, Account III and Account 4.

2. GNA is a stock life insurance company organized under the laws of Washington. GNA is a wholly owned subsidiary of GECA. GNA is the depositor and sponsor of the GNA Account.

3. Each of the Accounts is registered under the 1940 Act as a unit investment trust. The assets of each Account support either variable annuity contracts or variable life insurance contracts (together, the ''Contracts''). Interests in each of the Accounts offered through such Contracts are registered under the Securities Act of 1933 on either Form S–6 or Form N–4.

4. Account 1 is divided into four investment subdivisions; Account II, Account III and Account 4 are each divided into 34 investment subdivisions. Each investment subdivision invests exclusively in shares representing an interest in a separate corresponding portfolio (each, a ''Fund'') of one of nine series-type investment companies, each of which is registered under the 1940 Act as an open-end management investment company. The following five investment companies are involved in the substitutions discussed in the application: GE Investments Funds, Inc. (''GEIF''), Variable Insurance Products Fund (''VIPF''), Oppenheimer Variable Account Funds (''OVAF''), Janus Aspen Series (''JAS'') and Neuberger & Berman Advisers Management Trust (''AMT'').

5. GEIF (formerly, Life of Virginia Series Fund, Inc.) currently comprises (or will soon comprise) eleven Funds. The following seven GEIF Funds are involved in the proposed substitutions discussed in the application: Money Market Fund, Government Securities Fund, Income Fund, Premier Growth Fund, U.S. Equity Fund, International Equity Fund and Value Equity Fund. GE Investment Management Incorporated (''GEIM''), a wholly owned subsidiary of GE, currently serves as investment manager for GEIF.

6. VIPF currently comprises five Funds. VIPF's Money Market Portfolio, High Income Portfolio and Growth Portfolio are involved in the proposed substitutions. Fidelity Management & Research Company (''FMR'') serves as VIPF's investment adviser.

7. OVAF currently comprises nine investment portfolios. OVAF's Money Fund and High Income Fund are involved in the proposed substitutions. Oppenheimer Funds, Inc. serves as investment adviser to OVAF.

8. JAS currently comprises nine investment portfolios. The JAS Balanced Fund is involved in the proposed substitutions. Janus Capital Corporation serves as the investment adviser to JAS.

9. AMT currently comprises eight investment portfolios. AMT's Balanced

Portfolio, Growth Portfolio and Limited Maturity Bond Portfolio are involved in the proposed substitutions. Neuberger & Berman Management Incorporated serves as investment adviser to AMT.

10. GNA Trust currently comprises for investment portfolios: GNA Adjustable Rate Portfolio, GNA Government Portfolio, GNA Value Portfolio and GNA Growth Portfolio. All four GNA Funds are involved in the proposed substitutions. GNA Capital Management Inc. serves as investment adviser to GNA Trust.

11. VIT currently comprises for investment portfolios: GE International Equity Portfolio, GE U.S. Equity Portfolio, GE Fixed Income Portfolio and GE Money Market Portfolio. All four VIT Funds are involved in the proposed substitution. GEIM serves as the investment adviser to VIT.

12. Life of Virginia on its own behalf and on behalf of Account I, Account II, Account III and Account 4 proposes to make certain substitutions of shares held in those Accounts. Applicants assert that by making the proposed substitutions in the Life of Virginia Accounts, Life of Virginia can better serve the interest of owners of its Contracts who will benefit from reduced confusion caused by duplicative Funds and the likely addition of new Funds of different types in the future that better suit the needs of such owners. At the current time, due to data processing constraints, Life of Virginia can only administer the Contracts on a cost-effective basis if the number of active investment subdivisions is limited to a manageable number. Applicants assert that while no particular number of investment subdivisions represents an outer limit as to what Life of Virginia could administer, each investment subdivision beyond the current thirty-four brings with it administrative expenses significantly beyond those associated with the addition of the tenth or twentieth investment subdivisions. The incremental cost of adding investment subdivisions in such that the projected increase in sales from each additional necessary to justify the addition, increase with each additional subdivision. Because of this, Applicants assert that there is an opportunity cost associated with each existing active investment subdivision. Thus, for example, having three investment subdivisions that invest in money market Funds could deprive owners of the opportunity to invest in two other alternative Funds. Likewise, maintaining investment subdivisions through which high income Fund offerings from both OVAF and VIPF and balances Fund offerings from both AMT and JAS are available, utilizes valuable administrative resources yet offers Contract owners little additional value. In addition, Applicant's state that GEIF's Government Securities Fund and AMT's Limited Maturity Bond Portfolio have proven unpopular and do not exhibit signs of future growth potential. Life of Virginia believes that it and Contract owners would be better served by consolidating the subdivisions investing in duplicative Funds and by replacing the two unpopular Funds with ones that may prove more popular.

13. GNA on its own behalf and behalf of GNA Account proposes to make certain substitutions of shares held in GNA Account. Applicants assert that by making the proposed substitutions in the GNA Account, GNA can better serve the interests of owners of its individuals Contracts and participants under its group Contracts who will benefit from larger Funds with future growth potential. The proposed substitutions by GNA are principally the result of recent reorganizations of the lines of business of several life insurance subsidiaries of GE Capital, including Life of Virginia and GNA. Among the changes taking place in these life insurance companies is the centralization of variable annuity and variable life insurance operations at Life of Virginia's home office in Richmond, Virginia. To facilitate this reorganization, variable annuity operations are being moved from other GE Capital life companies, such as GNA, to Richmond.

14. GNA Trust and VIT were both recently established to support variable annuity contracts issued by GNA and possibly other affiliated and unaffiliated life insurance companies. With Life of Virginia becoming the principal variable annuity carrier for the GE Capital organization, Applicants state that it is unlikely that GNA will sell a significant number of additional Contracts. Consequently, Applicants assert that it is unlikely that the Funds of the GNA Trust and VIT will grow to any appreciable size in the foreseeable future unless Life of Virginia offers them as investment options in its variable life insurance and viable annuity contracts or unless other alternative distribution channels are found for them. Applicants state that the substitutions proposed by GNA would facilitate the distribution of GNA Trust Fund and VIT shares by consolidating duplicative Fund offerings among GEIF, GNA Trust and VIT and by transferring non-duplicative GNA Trust and VIT Funds to GEIF. This is because the consolidated Funds would be larger than any of the component Funds and because housing all of the insurance Funds managed by GEIM in a single corporate entity with the ''GE'' name would enhance their brand identity.

15. Applicants state that in addition to the foregoing, the ultimate effect of the proposed GNA substitutions would be consolidate certain Fund offerings under the GEIF umbrella and to transfer other Funds to GEIF. Because GEIF is a Virginia corporation, GNA Trust is a Delaware Business Trust and VIT is a Massachusetts Business Trust, GEIM could achieve certain significant administrative efficiencies by housing all of the Funds in a single corporate entity.

The Proposed Transactions

1. Applicants propose that Life of Virginia carry out the following substitutions of shares held by corresponding investment subdivisions of Account I, Account II, Account III and Account 4: (1) shares of the GEIF Money Market Fund for shares of VIPF's Money Market Portfolio; (2) share of the GEIF Money Market Fund of shares of Oppenheimer Money Fund; (3) shares of the GEIF Income Fund for shares of the GEIF Government Securities Fund; (4) shares of the GEIF Income Fund for shares of AMT's Limited Maturity Bond Portfolio: (5) shares of Oppenheimer High Income Fund for shares of VIPF's High Income Portfolio; (6) shares of VIPF's Growth Portfolio for shares of AMT's Growth Portfolio; and (7) share of the Balanced Portfolio of JAS for shares of AMT's Balanced Portfolio. Where, after the proposed substitutions, more than one investment subdivision holds shares of a single Fund, Life of Virginia intends to consolidate those subdivisions.

2. Applicants propose that GNA carry out the following substitutions of hares held by corresponding sub-accounts of the GNA Account: (1) shares of the GEIF Income Fund for shares of GNA Trust's Adjustable Rate Portfolio; (2) shares of the GEIF Income Fund for shares of GNA Trust's Government Portfolio; (3) shares of the GEIF Income Fund for shares of VIT's Fixed Income Portfolio; (4) shares of the GEIF Premier Growth Fund for shares of GNA Trust's Growth Portfolio; (5) shares of the GEIF Value Equity Fund for shares of GNA Trust's Value Portfolio; (6) share of the GEIF International Equity Fund for shares of VIT's International Equity Portfolio; (7) shares of the GEIF U.S. Equity Fund for shares of VIT's U.S. Equity Portfolio; and (8) shares of GEIF's Money Market Fund for shares of VIT's Money Market Portfolio.

3. By supplements to the various prospectuses for the Contracted and the Accounts, all owners of the Contracts

have been notified of Life of Virginia's and GNA's intention to take the necessary actions, including seeking the order requested by the application, to carry out the proposed substitutions. The supplements for Accounts, I, II, III and 4 advise Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in any one of the affected investment subdivisions of the date of the supplement to another investment subdivision other than one of the other affected investment subdivision without that transfer counting as the free transfer permitted in a calendar month. The supplements also inform Contracts owners that Life of Virginia will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitution. The supplements for GNA Account advise Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in any one of the sub-accounts on the date of the supplement to another sub-account without that transfer counting as one of the six free transfers permitted in a Contract year or certificate year. The supplements also inform Contract owners that GNA will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitution.

4. Applicants state that the proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's contract or accumulation value or death benefit or in the dollar value off his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions nor will their rights or Life of Virginia's or GNA's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by Life of Virginia or GNA. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. The proposed substitutions will not, of course, be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a calendar month or Contract year (or certificate year). Life of Virginia and GNA will not exercise any right either may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the proposed substitutions.

5. Applicants state that, within five days after the proposed substitutions, any Contract owners who were affected by the substitution will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all amounts under a Contract invested in any one of the affected investment subdivisions or subaccounts on the date of the notice to another investment subdivision or sub-account without the transfer counting as one of any limited number of transfers permitted in a calendar month or Contract year (or certificate year) or as one of a limited number of transfers permitted in a calendar month or Contract year (or certificate year) free of charge. The notice will also reiterate the fact that Life of Virginia and GNA will not exercise any rights reserved by either under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notices will be accompanied by a current GEIF prospectus.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the proposed substitutions. Section 26(b) provides, in pertinent part, that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' Section 26(b) also provides that the Commission will approve the substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act and are not the type of substitution which Section 26(b) was designed to prevent. Applicants state that, for Life of Virginia, the consolidation of three money market investment subdivisions into one money market investment subdivision, two high income subdivisions into one high income subdivision and two balanced subdivisions into one balanced subdivision is an appropriate way to promote the likelihood that additional new subdivisions will be added to Accounts II, III, and 4 in the future that better suit the needs of Contract owners. Similarly the consolidation of two relatively unpopular subdivisions with a third new one, offers a new subdivision while at the same time making room for an additional new subdivision in the future. Applicants represent that (1) GEIF's Money Market fund has a substantially identical investment objective to each of the VIPF's Money Market Portfolio and Oppenheimer Money Market Fund that it would replace; (2) Oppenheimer bond Fund has investment objectives that are similar to and compatible with those of the Government Securities Portfolio and Limited Maturity Bond Portfolios; (3) Oppenheimer High Income Fund has an investment objective that is compatible with that of VIPF's High Income Portfolio; (4) Growth Portfolio of VIPF and AMT's Growth Portfolio share similar investment objectives; and (5) JAS Balanced Portfolio has an identical investment objective to the Balanced Portfolio of AMT.

3. Applicants state that, for GNA, replacing certain GNA Trust and VIT Funds with those of GEIF and transferring others from GNA Trust or VIT to GEIF is an appropriate way in which to provide GNA Contract owners with Funds that have future growth potential. Applicants represent that the GEIF Income Fund has an investment objective that is similar to and compatible with GNA Trust's Adjustable Rate Portfolio and Government Securities Portfolio and that each of the other GEIF Funds that GNA proposes to substitute has an investment objective (or objectives) that is (or are) substantially identical to those that they would replace. With regard to GNA's proposed substitutions of shares of GEIF's Money Market Fund, Income Fund and International Equity Fund, the corresponding sub-accounts of GNA Account would immediately become invested in substantially larger Funds than those in which each sub-account is currently invested.

4. Applicants anticipate that Contract owners will be at least as well off with the proposed array of investment subdivisions or sub-accounts offered after the proposed substitutions as they have been with the array of investment subdivisions offered prior to the substitutions. The proposed

substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. All Contract owners will be permitted to allocate purchase payments to and transfer contract values or accumulation values among and between the same number of investment subdivisions or sub-accounts as they could before the proposed substitutions.

5. Applicants also request an order pursuant to Section 17(b) of the 1940 Act exempting them and GEIF, GNA Trust and VIT from the provisions of Section 17(a) to the extent necessary to permit GNA to carry out certain of the substitutions of securities by redeeming securities issued by GNA Trust and VIT in-kind and using the redemption proceeds to purchase securities issued by GEIF. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principals, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the persons described above, acting as principal, from knowingly purchasing any security or other property from the registered investment company.

6. Section 2(a)(3) of the 1940 Act defines the term ''affiliated person of another person'' in relevant part as:

(A) any person directly, or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person.

7. Applicants have concluded, as more fully described in the application, that GEIF, GNA Trust and VIT and the Funds of each may be affiliated persons of each other or affiliated persons of affiliated persons of each other. Each also may be an affiliated person of GNA or an affiliated person of an affiliated person of GNA. The proposed substitutions by GNA, which may entail the indirect purchase of shares of GEIF Funds with portfolio securities of GNA Trust and VIT Funds and the indirect sale of portfolio securities of such Funds for shares of GEIF Funds, therefore may also entail the purchase or sale of such securities by each of the Funds involved, acting as principal, to one of the other Funds and therefore may be in contravention of Section 17(a). In addition, the participation of GNA in such purchase and sale transactions could be viewed as entailing the purchase of such securities from Funds of GNA Trust and VIT and the sale of such securities to Funds of GEIF by GNA, acting as principal, and therefore may be in contravention of Section 17(a).

8. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

9. Applicants submit that the terms of the proposed substitutions by GNA, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants state that the transactions will not cause owners' interests under a Contract to be diluted. Applicants also state that the transactions will conform with all but one of the conditions enumerated in Rule 17a–7. The proposed transactions will take place at relative net asset value with no change in the amount of any Contract owner's contract or accumulation value or death benefit or in the dollar value of his or her investment in any of the Accounts. Even though GNA, GEIF, GNA Trust and VIT may not rely on Rule 17a–7, Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons. Each transaction will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each Fund involved valued in accordance with the procedures disclosed in the respective management company's registration statement and as required by Rule 22c–1 under the 1940 Act.

10. Applicants also submit that the proposed substitutions by GNA are consistent with the policies of (1) GEIF and of its Income Fund, Premier Growth Fund, Value Equity Fund, International Equity Fund, U.S. Equity Fund and Money Market Fund; (2) GNA Trust and its Adjustable Rate Portfolio, Government Portfolio, Growth Portfolio and Value Portfolio; and (3) VIT and its Fixed Income Portfolio, International Equity Portfolio, U.S. Equity Portfolio, and Money Market Portfolio as recited in the current registration statements and reports filed under the 1940 Act.

11. Applicants submit that the proposed substitutions are consistent with the general purposes of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

Applicants assert that, for the reasons summarized above, the terms of the proposed substitutions and related transactions meet the standards set forth in Sections 26(b) and 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30572 Filed 11–20–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26778]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 14, 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 8, 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.

GPU, Inc., et al. (70–7926)

GPU, Inc. (''GPU''), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and Jersey Central Power & Light Company (''JCP&L''), Metropolitan Edison Company (''Met-Ed''), and Pennsylvania Electric Company (''Penelec''), 2800 Pottsville Pike, Reading, Pennsylvania 19640, each an electric public utility subsidiary of GPU, have filed a post-effective amendment to their declaration under sections 6(a), 7, 32 and 33 of the Act and rules 53 and 54 under the Act.

By order dated October 26, 1994 (HCAR No. 26150) (''Order'') and supplemental order dated July 17, 1996 (HCAR No. 26544) (''Supplemental Order''), the Commission, among other things, authorized, through December 31, 1997: (1) GPU, JCP&L, Met-Ed, and Penelec (''Declarants'') to issue, sell and renew their respective unsecured promissory notes (''Unsecured Promissory Notes''), maturing not more than nine months after issuance, to various commercial banks under loan participation arrangements and informal lines of credit (''Lines of Credit'') in amounts up to the limitations on short-term indebtedness contained in their respective charters (''Charter Limits'') and, in the case of GPU, up to $250 million; (2) JCP&L, Met-Ed and Penelec to issue and sell their unsecured short-term promissory notes as commercial paper (''Commercial Paper'') in amounts up to their Charter Limits; and (3) the Declarants to issue, sell and renew unsecured promissory notes to lenders other than commercial banks, insurance companies or similar institutions (''Other Short-Term Debt'') in amounts up to their Charter Limits and, in the case of GPU, up to $250 million. Borrowings under Lines of Credit, Commercial Paper and Other Short-Term Debt are collectively referred to as ''Short-Term Borrowings.''

Declarants request that the period during which they may issue, sell and renew Short-Term Borrowings be extended to December 31, 2000. In all other respects, the transactions remain as described in the Order and the Supplemental Order.

The proceeds from the borrowings will be used by the Declarants to finance their businesses, including, in the case of GPU, to finance the acquisition of exempt wholesale generators, as defined in section 32 of the Act, and foreign utility companies, as defined in section 33 of the Act.

Central and South West Corporation, et al. (70–9107)

Central and South West Corporation (''CSW''), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a registered holding company, and its electric public-utility subsidiary companies, Central Power and Light Company (''CPL''), 539 North Carancahua Street, Corpus Christi, Texas 78401–2802, Public Service Company of Oklahoma (''PSO''), 212 East Sixth Street, Tulsa, Oklahoma 74119–1212, Southwestern Electric Power Company (''SWEPCO''), 428 Travis Street, Shreveport, Louisiana 71156–0001, and West Texas Utilities Company (''WTU''), 301 Cypress Street, Abilene, Texas 79601–5820, and Central and South West Services, Inc. (''CSW Services''), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a service company subsidiary of CSW (all companies collectively, ''Applicants'') have filed an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, 12(b) and 12(e) of the Act and rules 43, 45, 54, 62 and 65 under the Act.

The Applicants seek authorization to engage in various financing and related transactions (''Financing Plan''), effective through December 31, 2002 (''Authorization Period''). As described more fully below, the Applicants seek authority for: (i) External financings by CPL, PSO, SWEPCO, WTU and CSW Services (''Subsidiaries'') and CSW; (ii) CSW to acquire common stock from the Subsidiaries; (iii) the Subsidiaries to repurchase their common stock from CSW; (iv) credit enhancement for their securities, including guarantees; (v) the Subsidiaries to guarantee the securities of their subsidiary financing entities; (vi) CSW and the Subsidiaries to repurchase their securities by means of tender offers; (vii) the issuance of other types of securities not exempt under rules 45 and 52; (viii) the Subsidiaries to organize new entities for facilitating certain types of financings and for the financing entities to issue securities to third parties; and (ix) increasing their authorized capital, amending their articles of incorporation, and soliciting proxies through a proxy statement requesting shareholder approval of any amendment to their articles of incorporation, subject to a reservation of jurisdiction pending completion of the record. The Applicants request authority to engage in financing transactions for which the specific terms and conditions are not currently known, subject to certain conditions concerning the financial condition of the Applicants.

Financings by each Applicant will be subject to the following limitations: (i) The issuance of common stock by CSW will not exceed $250 million; (ii) external financings by the Subsidiaries, other than the refunding of outstanding securities which will not be limited, will not exceed the following amounts—(a) CPL–$500 million, (b) PSO–$250 million, (c) SWEPCO–$300 million, (d) WTU–$150 million, and (e) CSW Services–$100 million; (iii) the issuance of common stock by the Subsidiaries to CSW will not exceed the following amounts—(a) CPO–$200 million, (b) PSO–$100 million, (c) SWEPCO–$100 million, and (d) WTU–$50 million; (iv) repurchases by the Subsidiaries of their common stock from CSW will not exceed the following amounts—(a) CPL–$1 billion, (b) PSO–$150 million, (c) SWEPCO–$200 million, and (d) WTU–$100 million; and (v) credit enhancement and guarantees will only be provided in connection with a financing that satisfies the requirements set forth in an order authorizing this Application.

1. External Financings by CSW

CSW requests authorization to issue common stock, including issuances of common stock upon the exercise of convertible debt or pursuant to rights, options, warrants and similar securities. CSW also requests authorization to purchase common stock from the Subsidiaries and to sell common stock back to the Subsidiaries. The only financing authority requested by CSW in the Application is to issue common stock.

CSW seeks authority to issue common stock in any of the following ways: (i) Through underwriters or dealers; (ii) directly to a limited number of purchasers or to a single purchaser, or (iii) through agents or dealers. If underwriters are used in the sale of the securities, these securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by managing underwriters) or directly by one or more underwriters acting alone. The securities may be sold directly by CSW or through agents

designated from time to time. If dealers are used in the sale of any securities, these securities will be sold to the dealers as principal. Any dealers may then resell these securities to the public at varying prices to be determined by the dealer at the time of resale.

If the common stock is being sold by CSW in an underwritten offering, CSW may grant the underwriters a ''green shoe'' option permitting the purchase from CSW of additional equity securities (an additional 15% under present guidelines) at the same price as the original equity securities then being offered, solely for the purpose of covering over-allotments.

2. External Financing by the Subsidiaries

The Subsidiaries seek authority to obtain funds externally through: sales for preferred stock, including the sale of tax-advantaged preferred securities; short-term debt financing; long-term debt financing, such as first mortgage bonds, pollution control revenue bonds, notes (secured and unsecured) and debentures; medium-term notes; other forms of indebtedness; and borrowings under credit agreements (''Credit Agreements''). The Subsidiaries also request authorization to issue common stock to CSW.

The Subsidiaries propose to borrow from banks or other lending institutions from time to time through the end of the Authorization Period. The borrowings will be evidenced by promissory notes issued to the lender, to be dated as of the date of the first borrowing, with each borrowing maturing in not more than 50 years. Notes may or many not be prepayable, in whole or in part, with or without a premium in the event of prepayment.

The Subsidiaries seek authority to issue external financing in any of the following ways: (i) Through underwriters or dealers; (ii) directly to a limited number of purchasers or to a single purchaser, or (iii) through agents or dealers. If underwriters are used in the sale of the securities, these securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by managing underwriters) or directly by one or more underwriters acting, alone. The securities may be sold directly by the Subsidiaries or through agents designated from time to time. If dealers are used in the sale of any securities, these securities will be sold to the dealers as principal. Any dealers may then resell these securities to the public at varying prices to be determined by the dealer at the time of resale.

If debt securities are being sold, they may be sold under ''delayed delivery contracts'' which permit the underwriters to locate buyers who will agree to buy the debt at the same price but at a later date than the date of the closing of the sale to the underwriters. Debt securities may also be sold through the use of medium-term note and similar programs, including in transactions covered by the rule 144A under the Securities Act of 1933. Pollution control revenue bonds may be sold either currently or in forward refunding where the price of the securities is established currently for delivery at a future date.

3. Acquisition of Securities

CSW requests authorization to purchase common stock from the Subsidiaries. In addition, the Subsidiaries request authorization to repurchase their common stock from CSW.

4. Credit Enhancement

Applicants may obtain credit enhancement for the securities covered by this Application, which could include insurance, a letter of credit or a liquidity facility. The Applicants anticipate they may be required to provide credit enhancement if they were to issue floating rate securities, whereas credit enhancement would be a purely economic decision for fixed rate securities. The Applicants anticipate that even though they would be required to pay a premium or fee to obtain the credit enhancement, they would realize a net benefit through a reduced interest rate on the new securities. Applicants will obtain credit enhancement only if it is economically beneficial to do so.

If insurance is obtained, the Applicants may be required to enter into an agreement with the insurer and an escrow agent under which the Applicants would be obligated to make payments of certain amounts into an escrow fund upon a failure to maintain certain financial ratios and on the occurrence of certain other events. Amounts held in an escrow fund would be payable to the insurer as an indemnity for any amounts paid by the insurer for principal or interest on the new securities.

5. Financing Entities

The Subsidiaries seek authority to organize new corporations, trusts, partnership or other entities to be created for the purpose of facilitating certain types of financing such as the issuance of tax advantaged preferred securities. The financing entities may issue these securities to third parties. In addition, authority is requested for (i) the Subsidiaries' issuance of debentures or other evidences of indebtedness to a financing entity in return for the proceeds of the financing and (ii) the acquisition by a Subsidiary of voting interests or equity securities issued by the financing entity to establish the Subsidiary's ownership of the financing entity (the equity portion of the entity generally being created through a capital contribution or the purchase of equity securities, such as shares of stock or partnership interests, involving an amount usually ranging from 1 to 25 percent of the capitalization of the financing entity). The Subsidiaries also request authorization to enter into expense agreements with their respective financing entities, under which they would agree to pay all expenses of the financing entity.

6. Guarantees

Aside from any guaranty provided by any instrument acquired and/or issued for credit enhancement, the Subsidiaries may also guarantee (i) payment of interest, dividends or distributions on the securities issued by their subsidiary financing entities if and to the extent these financing entities declare dividends or distributions or pay interest out of funds legally available therefor; (ii) payments to the holders of the securities issued by financing entities of amounts due upon liquidation of these financing entities or redemption of their securities; and (iii) certain additional amounts that may be payable on these securities.

7. Refinanancings/Tender Offers

In connection with any refinancing by CSW or a Subsidiary under an order in this filing, CSW and the Subsidiaries may determine to acquire outstanding securities (''Outstanding Securities'') through tender offers to the holders of the Outstanding Securities. Tender offers may be conditioned upon receipt of a certain percentage of the Outstanding Securities. The tender offer price would be based on a number of factors, including the coupon rate of the Outstanding Securities, the date of expiration of the refunding protection of the Outstanding Securities, the date of expiration of the refunding protection of

the Outstanding Securities, the redemption price on the expiration date and the then current market rates for similar securities, all of which are relevant to the decision of an informed holder as to whether to hold or sell Outstanding Securities. Holders of Outstanding Securities may be offered a fixed price for their Outstanding Securities, or the tender offer may be a ''fixed spread'' offer where the Applicants will offer a price based upon a fixed spread over comparable U.S. Treasury securities. Any tender offer will be conducted in accordance with standard market practice, *i.e.*, the length of time the offer will be held open, the method of solicitation, etc., at the time of the tender offer.

The Applicants would, in connection with any tender offer, retain one or more investment banking firms experienced in these matters to act as tender agent and dealer-manager. The dealer-manager will act as the Applicants' agent in disseminating the tender offer and receiving responses thereto. As a dealer-manager, the investment banking firm will not itself become obligated to purchase or sell any of the Outstanding Securities. The dealer-manager's fee will be determined following negotiation and investigation of fees in similar transactions and will include reasonable out-of-pocket expenses and attorney's fees. It is expected that the Applicants will be required, as is customary, to indemnify the dealer-manager for certain liabilities. The Applicants may also retain a depositary to hold the tendered Outstanding Securities pending the purchase thereof and/or an information agent to assist in the tender offer.

8. Other Securities

The Applicants also propose to issue other types of securities within the parameters of this Application during the period ending December 31, 2002. The Applicants request that the Commission reserve jurisdiction over the issuance of additional types of securities. The Applicants also undertake to file a post-effective amendment in this proceeding which will describe the general terms of each security and request a supplemental order of the Commission authorizing their issuance. The Applicants request that each supplemental order be issued by the Commission without further public notice.

9. Charter Amendments

The Applicants propose that they be allowed to (i) increase their authorized capital as deemed necessary and appropriate by CSW for proper corporate purposes, (ii) amend their articles of incorporation, and (iii) solicit proxies through a proxy statement, filed under and meeting the standards of the Securities Exchange Act of 1934, requesting shareholder approval of any amendment to their articles of incorporation.

Proxy solicitation material relating to amendments to the articles of incorporation will meet the requirements of Schedule 14A under the Securities Exchange Act of 1934, and will, to the extent required, be reviewed for compliance with this regulation by the Commission before the proxy material is sent to shareholders. The Applicants request reservation of jurisdiction over any order to solicit proxies and the implementation of amendments to the articles of incorporation pending completion of the record. The Applicants further request that any supplemental order authorizing amendments to the articles of incorporation be issued by the Commission without further public notice.

The authorization requested by the Applicants will be subject to the following conditions: (i) For financings at the Subsidiary level only, the Subsidiaries seeking to issue securities or enter into Credit Agreements will maintain long-term debt ratings which are investment grade as established by a nationally recognized statistical rating organization (as this term is used in rule 15c3–1(c)(2)(vi)(F) under the 1934 Act); (ii) the effective cost of money on debt securities will not exceed the greater of (a) 300 basis points over comparable term U.S. Treasury securities, or (b) a gross spread over comparable term U.S. Treasury securities which is consistent with comparable investment grade securities; (iii) the effective cost of money for borrowings under Credit Agreements will not exceed the greater of (a) the prime rate plus 300 basis points, or (b) the rate of interest for comparable investment grade credits prevailing in the market on the date of borrowing; (iv) the effective cost of money on preferred stock and other fixed income oriented securities will not exceed the greater of (a) 500 basis points over 30 year term U.S. Treasury securities, or (b) a gross spread over 30 year term U.S. Treasury securities which is consistent with comparable investment grade securities; (v) the underwriting fees, commissions, or other similar expenses paid in connection with the issue, sale or distribution of a security under an order for this filing will not exceed 5% of the principal or total amount of the financing; (vi) the aggregate amount of outstanding external financing, other than the refunding of outstanding securities which will not be limited, will not exceed $2 billion; and (vii) proceeds of the proposed financing may not be used to invest in an exempt wholesale generator, as defined under section 32 of the Act, or a foreign utility company, as defined under section 33 of the Act. Any deviation from these conditions would require further Commission approval.

The Applicants request authorization to deviate from the Commission's *Statement of Policy Regarding First Mortgage Bonds*, HCAR No. 13105 (Feb. 16, 1956), as amended by HCAR No. 16369 (May 8, 1969), and *Statement of Policy Regarding Preferred Stock*, HCAR No. 13106 (Feb. 16, 1956), as amended by HCAR No. 16758 (June 22, 1970), as applicable, where they apply to the proposed financings.

The Applicants are proposing that the authorization to engage in external financing requested in this filing supersede all relevant prior authorizations (the ''Prior Authorizations'').[1] If this proposal is approved, the Applicants would engage in long-term financing in the context of their needs and financial market conditions at the time of issuance, subject to the terms and conditions set forth in this notice and in any order in this file, and without reference to the terms and restrictions set forth in the Prior Authorizations. Any long-term debt or other security would have the designations, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, interest payment terms, redemption provisions, non-refunding provisions, sinking fund terms, conversion or put terms and other terms and conditions as the Applicants may at the time of issuance determine, unless this Application specifically provides otherwise.

New England Electric System (70–9109)

New England Electric System (''NEES''), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

NEES requests authority through December 31, 2002 to issue short-term notes to banks (''Notes'') and/or commercial paper to dealers (''CP'') up

[1] Holding Co. Act Release Nos. 26703 (Apr. 10, 1997), 26548 (July 30, 1996), 26531 (June 12, 1996), 26390 (Oct. 13, 1995), 26340 (July 26, 1995), 26309 (June 15, 1995), 26045 (May 2, 1994), 26019 (Apr. 6, 1994), and 25928 (Nov. 19, 1993).

to an aggregate amount of $500 million outstanding at any one time.[2]

NEES proposes to enter into a credit agreement (''Credit Agreement'') with Merrill Lynch Capital Corporation (''MLCC''), as arranger and syndication agent. The Credit Agreement provides for a revolving facility of $500 million which reduces to $400 million after three years and to $300 million after four years. Under the Credit Agreement, NEES would borrow at one of three types of interest rates.[3] Under the Credit Agreement, NEES is required to pay a facility fee quarterly in arrears to each bank that makes a commitment to loan funds to NEES.[4]

NEES also proposes to make arrangements with certain banks for short-term lines of credit, for various purposes, to be evidenced by notes payable maturing in less than one year from the date of issuance, and at rates that will not exceed on a daily basis the greater of the bank's base or prime lending rate, or the rate published daily as the high federal funds published in the Wall Street Journal.

NEES also proposes to issue and sell CP directly to one or more nationally recognized commercial paper dealers (''CP Dealers'') Initially the CP Dealer will be CS First Boston Corporation and/or Merrill Lynch Money Markets Incorporated. NEES states that the commercial paper so issued and sold will be in the form of unsecured promissory notes having varying maturities of not in excess of 270 days, with no payment rights until maturity. The CP will be in denominations of not less than $50,000, and will be at an interest rate generally not exceeding the base lending rate at BankBoston.[5]

NEES states that it may use the proceeds from the authorized transactions, subject to meeting margin requirements, to facilitate a share buy back of its subsidiaries' shares (not to exceed five million shares) after their anticipated sale of their non-nuclear generation business to U.S. Generating Company in the near future. In addition, NEES states that it may need to make investments in anticipation of receipt of the sale proceeds in order prudently to re-deploy funds obtained through the sale. NEES further states that it may also need to use such proceeds to make contributions to NEP, pending consummation of the sale. NEES also plans to use proceeds for other general corporate purposes.

NGE Resources, Inc. (70–9111)

NGE Resources, Inc. (''NGE''), a New York corporation not currently subject to the Act, located at One Commerce Plaza, Suite 2006A, Albany, New York 12260, has filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act.

NGE is a subsidiary of New York State Electric & Gas Corporation (''NYSEG''), a public utility company also not currently subject to the Act. NYSEG is engaged in generating, purchasing, transmitting and distributing electricity, and purchasing, transporting and distributing natural gas in the central, eastern and western parts of the state of New York.[6]

In summary, NGE seeks authority to acquire all of the outstanding common stock of NYSEG and of a wholly owned subsidiary of NYSEG (''Genco'') organized to own all or a part of NYSEG's coal-fired generating assets (''Generation Assets''). In addition, NGE seeks an order under section 3(a)(1) of the Act exempting NGE from all provisions of the Act, except section 9(a)(2).

On May 20, 1996 the New York Public Service Commission (''PSC'') issued an order establishing certain electricity industry restructuring goals for the state of New York. In response, NTSEG filed a petition on December 19, 1996 with the PSC requesting authority to form a holding company over NYSEG and to separate the Generating Assets from its other businesses regulated by the PSC.

Under a proposed plan of exchange, all outstanding NGE common stock will be canceled and all of the NYSEG common stock will be exchanged on a share-for-share basis for NGE common stock (''Share Exchange''), subject to appraisal rights. Each person who owned NYSEG common stock immediately prior to the Share Exchange (other than those who exercise their appraisal rights) will immediately after the Share Exchange own a corresponding number of shares and percentage of the outstanding NGE common stock. In addition, NGE will own all of the outstanding shares of NYSEG Common Stock.[7]

NGE also seeks authority to acquire all of the outstanding common stock of Genco, which will become an electric utility company as a consequence of the transfer to it of the Generation Assets by NYSEG. NYSEG may temporarily become a holding company under the Act if the Generation Assets are transferred to Genco prior to the acquisition of Genco by NGE. In this case, NYSEG will claim an exemption form the Act under sections 3(a)(1) or 3(a)(2) of the Act.

The Share Exchange will not affect shares of NYSEG's Serial Preferred Stock (''NYSEG Preferred Stock''), which will remain securities of NYSEG after the Share Exchange. Those shares of NYSEG Preferred Stock that were

[2] By Commission Order dated October 9, 1996 (HCAR No. 26589), NEES was authorized to issue and sell short-term promissory notes to banks up to a maximum aggregate principal amount outstanding at any time not exceeding $100 million. This borrowing authority expires October 31, 1998. The authority requested in this filing is intended to supersede such existing authorization.

[3] 1. At a periodic fixed Eurodollar rate with maturities of 1, 2, 3 or 6 months at the then applicable LIBOR plus a margin (based on NEES' subsidiaries' senior debt ratings), payable at the end of each interest period or quarterly for interest periods longer than 3 months.

2. At the highest of the following base rates: (a) BankBoston base rate, (b) ½ of 1% per annum above the latest three week moving average of secondary market offering rates in the United States for three-month certificates of deposit of major U.S. money market banks adjusted to the nearest ¼ of 1 percent; and (c) ½ of 1% per annum above the federal funds rate. These would be payable quarterly in arrears and would be calculated on the basis of a 365/366 day year.

3. At a rate obtained through competitive bids. NEES may request competitive bids for an aggregate outstanding amount not to exceed $100 million.

[4] The annual amount of the facility fee is determined by multiplying (i) the particular bank's commitment amount and (ii) the Applicable percentage (defined below). The Applicable Percentage varies between 0.065% and 0.200%, depending on the lowest debt rating of NEES' electric utility subsidiaries (Massachusetts Electric Company, The Narragansett Electric Company, and New England Power Company (''NEP'') senior secured debt. If NEP does not have secured debt, then the rating for its senior debt will apply. Based on current ratings, the Applicable percentage would be 0.105%.

[5] NEES states, however, that the effective interest cost of such paper is based on the supply of, and demand for, that and similar paper at the time of sale. Specifically, NEES notes that on several previous occasions short-term money markets have become very volatile during brief periods of extraordinary demand, and the interest costs of commercial paper have exceeded bank base rates. Because such volatile market conditions usually exist for brief periods, it is not anticipated that any sale of commercial paper with interest costs in excess of bank base rates would have a significant marginal impact on the annual interest cost of NEES. Therefore, NEES states that while it anticipates that the effective annual cost of borrowing through commercial paper will not exceed the annual base rate borrowing from BankBoston, in order to obtain maximum flexibility during the periods described above, it may issue commercial paper with a maturity of not more than 90 days with an effective cost in excess of the then-existing lending rate.

[6] In addition, NYSEG has two direct nonutility subsidiaries. These are Somerset Railroad Corporation, which owns a rail line used to transport coal and other materials to one of NYSEG's generating plants, and NGE Enterprises, Inc. (''Enterprises''). Enterprises owns interests in various companies engaged in power marketing, environmental and conservation engineering and consulting, energy-related financial services, energy usage information services, demand-side management services, utility-related software development, and energy management services.

[7] Following the consummation of the proposed transactions, one of NYSEG's two direct nonutility subsidiaries, Somerset Railroad Corporation, will be a direct subsidiary of Genco and the other, NGE Enterprises, Inc., will be a direct subsidiary of NGE.

issued and outstanding immediately prior to the Share Exchange will have the same preferences, designations, relative rights, privileges and powers, and will be subject to the same restrictions, limitations and qualifications, as were applicable prior to the Share Exchange. Other than the release of the Generation Assets from the lien of NYSEG's first mortgage bond indenture, the proposed transactions will not result in any change in the outstanding indebtedness of NYSEG, which will continue to be obligations of NYSEG after the Share Exchange.

NGE asserts that it will satisfy the requirements for an exemption under section 3(a)(1). It states that it, NYSEG and Genco are organized and carry on their business substantially in New York State.

Monongahela Power Company, et al. (70–9115)

Monongahela Power Company (''Monongahela''), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company (''Potomac Edison''), 10435 Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company (''West Penn''), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, each an electric utility subsidiary of Allegheny Energy, Inc., a registered holding company, have filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

Monongahela, Potomac Edison, and West Penn (''Declarants'') propose to enter into an agreement with The County Commission of Pleasants County, West Virginia (''County Commission'') under which, through December 31, 2002, Declarants will issue notes to support the contemporaneous issuance of pollution control revenue bonds by the County Commission.

The County Commission proposes to issue $92.5 million aggregate principal amount in three new series of long-term bonds (''Series D Bonds''). The proceeds from the Series D Bonds will be used to refund the County Commission's Series A Bonds presently outstanding. The Series A Bonds were issued for the tax exempt financing of certain air and water pollution control equipment and facilities at the Declarants' Pleasants Power Station located in Pleasants County, West Virginia.

The Series D Bonds will be issued under a supplemental trust indenture with a corporate trustee, approved by the Declarants, and sold at a time, interest rate, and price approved by the Declarants. The interest rate for the Series D Bonds will not exceed the interest rate of the corresponding series of Series A Bonds presently outstanding. The Series D Bonds will mature no later than the year 2020.

Each Declarant will deliver concurrently with the issuance of the Series D Bonds its non-negotiable Pollution Control Note (''Notes'') corresponding to the Series D Bonds in respect of principal amount, interest rate and redemption provisions (which may include a special right of the holder to require the redemption or repurchase of the Series D Bond at stated intervals) and having installments of principal corresponding to any mandatory sinking fund payments and stated maturities. The Notes will be secured by a second lien on the Facilities and certain other properties, under the Deed of Trust and Security Agreement dated November 1, 1977, as supplemented by a First Supplement thereto dated August 1, 1978 as to West Penn and Potomac Edison and a First Supplemental thereto dated February 1, 1979 as to Monongahela, delivered by the Declarants to the trustee creating a mortgage and security interest in the Facilities and certain other property (subject to the lien securing each Declarant's first mortgage bonds). Payment on the Notes will be made to the Trustee under the Third Supplemental Indentures to be entered into between the Declarants and the Trustee and will be applied by the Trustee to pay the maturing principal and redemption price of and interest and other costs on the Series D Bonds as the same become due. Each Declarant also proposes to pay any trustees' fees or other expenses incurred by the County Commission.

The Columbia Gas System, Inc., et al, (70–9129)

The Columbia Gas System, Inc. (''Columbia''), a registered holding company, its service company subsidiary, Columbia Gas System Service Corporation, its liquified natural gas subsidiary, Columbia LNG Corporation, its trading subsidiary, Columbia Atlantic Trading Corporation, Columbia's energy services and marketing subsidiaries, Columbia Energy Services Corporation (''Columbia Energy''), Columbia Assurance Agency, Inc., Columbia Energy marketing Corporation, Columbia Power Marketing Corporation, and Columbia Service Partners, Inc., all located at 12355 Sunrise Valley Drive, Suite 300, Reston, Virginia 20191–3458; Columbia's four distribution subsidiaries, Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc. (collectively, ''Utility subsidiaries''), and Columbia's service company subsidiary, Commonwealth Gas Service, Inc., all located at 200 Civic Center Drive, Columbus, Ohio 43215; Columbia's two transmission subsidiaries, Columbia Gas Transmission Corporation, located at 12801 Fairlakes Parkway, Fairfax, Virginia 22030–0146, and Columbia Gulf Transmission Company, located at 2603 Augusta, Suite 125, Houston, Texas 77057; Columbia's exploration and production subsidiary, Columbia Natural Resources, Inc. (''CNR''), CNR's subsidiaries, Alamco, Inc., Alamco-Delaware, Inc. and Hawg Hauling & Disposal, Inc, all located at 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia's propane distribution subsidiary, Columbia Propane Corporation, located at 9200 Arboretum Parkway, Suite 140, Richmond, Virginia 23236; Columbia's network services subsidiary, Columbia Network Services Corporation (''CNS'') and CNS' subsidiary, CNS Microwave, Inc., both located at 1600 Dublin Road, Columbus, Ohio 43215–1082; and Columbia's other subsidiaries, Tristar Ventures Corporation, Tristar Capital Corporation, Tristar Pedrick Limited Corporation, Tristar Pedrick General Corporation, Tristar Binghamton Limited Corporation, Tristar Binghamton General Corporation, Tristar Vineland Limited Corporation, Tristar Vineland General Corporation, Tristar Rumford Limited Corporation, Tristar Georgetown Limited Corporation, Tristar Georgetown General Corporation, Tristar Fuel Cells Corporation, TVC Nine Corporation, TVC Ten Corporation and Tristar System, Inc., all located at 205 Van Buren, Herndon, Virginia 22070 (collectively, the ''System''), have filed an application-declaration under sections 6, 7, 9 and 10 of the Act and rules 53 and 54 under the Act.

Columbia requests Commission approval to updated and expand its existing short-term financing authority. By Commission order dated December 23, 1996 (HCAR No. 26634) (the ''Omnibus Financing Order''), Columbia was authorized to engaged in a wide range of financing transactions through December 31, 2001, including short-term financing in an amount not to exceed $1 billion outstanding at any one time, subject to certain conditions and parameters. Columbia wishes to expand the foregoing order and specifically requests authorization to increase the System's short-term financing authority to an amount not to exceed $2 billion outstanding at any one time through

December 31, 2003. The short-term financing could include a revolving credit agreement, the issuance of commercial paper, bid notes issued to individual banks, which are participants in the revolving credit agreement, bank borrowing, or medium-term notes issued under its Indenture dated November 28, 1995, between Columbia and marine Midland Bank, Trustee, as amended.

Columbia and the Utility Subsidiaries also request authorization for the Utility Subsidiaries to issue to Columbia, and for Columbia to acquire from the utility Subsidiaries, short-term securities through December 31, 2003.

The authorization Columbia requests is subject to the general conditions for financing contained in the Omnibus Financing Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30630 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39327; File No. SR–BSE–97–7]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. to Extend a Pilot Program Relating to Market-On-Close Orders

November 14, 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 November 5, 1997,[3] the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has requested accelerated approval for the proposal, as amended. This order approves the Exchange's proposal, as amended, on an accelerated basis, and solicits comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend its pilot program for the handling of Market-on-Close (''MOC'') orders through October 31, 1998.[4] The Exchange's pilot program procedures mirror the procedures in place on the primary markets, including the New York Stock Exchange, Inc. (''NYSE''), in order to ensure equal treatment of MOC orders.

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 III 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 purpose of the proposed rule change is to extend the Exchange's pilot program[5] for the handling of MOC orders on expiration days,[6] non-expiration days, and when NYSE Rule 80A is in effect. The pilot program, as previously approved by the Commission,[7] mirrors the procedures of the primary markets (including the NYSE) so that the Exchange does not become a haven for MOC orders for pilot stocks that are prohibited on the primary markets. In this way, all orders sent to the Exchange will receive equal treatment to orders sent to the primary markets. The term ''pilot stocks'' refers to the list of stocks designated by the NYSE as pilot stocks for purposes of its auxiliary closing procedures.

On non-expiration days, these procedures include: (a) Providing a 3:50 p.m. deadline for the entry of all MOC orders in all stocks; (b) prohibiting the cancellation or reduction of any MOC order in any stock after 3:50 p.m.; (c) publishing order imbalances of 50,000 shares or more as soon as practicable after 3:50 p.m. in the pilot stocks, stocks being added to or dropped from an index, and in any other stock with the approval of a floor official; and (d) limiting the entry of MOC orders after 3:50 p.m. to offsetting published imbalances. With respect to item (b) above, the Exchange will permit cancellations of MOC orders after 3:50 p.m. in those instances where legitimate error has been made.

If an MOC index arbitrage order to buy (sell), to establish or increase a position (to eliminate or reduce a position), is entered and NYSE Rule 80A subsequently goes into effect because of significant upward (downward) market movement, the MOC order must be canceled regardless of the time NYSE Rule 80A goes into effect. If NYSE Rule 80A goes into effect prior to 3:50 p.m., the MOC order may be re-entered with the instruction ''buy minus'' (''sell plus''). If NYSE Rule 80A goes into effect after 3:50 p.m. and there is a published imbalance in the subject stock, the MOC order may be re-entered with the instruction ''buy minus'' (''sell plus'') to offset the imbalance.

On expiration days, the pilot procedures include: (a) Providing a 3:40 p.m. deadline for the entry of all MOC orders in all stocks; (b) prohibiting the cancellation or reduction of any MOC order in any stock after 3:40 p.m.; (c) publishing order imbalances of 50,000 shares or more as soon as practicable after 3:40 p.m. in the pilot stocks, stocks being added to or dropped from an index and, upon the request of a specialist, any other stock with the approval of a floor official; and (d) limiting the entry of MOC orders after 3:40 p.m. to offsetting published imbalances. With respect to item (b) above, the Exchange will permit cancellations of MOC orders after 3:40 p.m. in those instances where a legitimate error has been made.

If an MOC index arbitrage order to buy (sell), to establish or increase a position (to eliminate or reduce a position), is entered and NYSE Rule 80A subsequently goes into effect because of significant upward (downward) market movement, the MOC order must be canceled regardless

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] On November 10, 1997, the Exchange submitted an amendment to the filing, clarifying that the requested extension of the pilot was through October 31, 1998. *See* letter from Karen Aluise, Exchange to Mike Walinskas, Commission, dated November 10, 1997 (''Amendment No. 1'').

[4] *See* Amendment No. 1, *infra* note 3.

[5] The pilot program has not been altered since its initial approval by the Commission. Phone conversation between Karen Aluise, Exchange and Janice Mitnick, Commission on November 10, 1997. *See* Release No. 34–37478 (July 25, 1996), 61 FR 40268 (August 1, 1996) (approving SR–BSE–96–8 relating to the Exchange's MOC pilot program).

[6] The term ''expiration days'' refers to both: (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures, and options on stock index futures expire or settle concurrently and (2) the trading day on which end of calendar quarter index options expire.

[7] *See* Release No. 34–37478 (July 25, 1996), 61 FR 40268 (August 1, 1996), *infra* note 5.

of the time NYSE Rule 80A goes into effect. If NYSE Rule 80A goes into effect prior to 3:40 p.m., the MOC order may be re-entered with the instruction ''buy minus'' (''sell plus''). If NYSE Rule 80A goes into effect after 3:40 p.m. and there is a published imbalance in the subject stock, the MOC order may be re-entered with the instruction ''buy minus'' (''sell plus'') to offset the imbalance.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5), in particular in that the rule is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange states that it does not believe that the proposed rule will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange states that no written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested person 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–97–7, and should be submitted by December 12, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rule and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.[8] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

In recent years, the exchanges instituted certain safeguards (including the creation of auxiliary closing procedures on expiration days) to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving index derivative products. The Commission believes that the MOC order handling requirements instituted by the Exchange, as well as those instituted by other exchanges, work relatively well and may result in more orderly markets at the close on expiration days. In addition, under current competitive market conditions, a regional exchange which trades NYSE-listed stocks but does not have comparable auxiliary closing procedures could be utilized by market participants to enter MOC orders that would be prohibited on the NYSE. Although the Commission has no reason to believe that the Exchange has or will become a significant alternative market to enter otherwise prohibited MOC orders, the Commission agrees with the Exchange that if this did occur, it could have a negative impact on the fairness and orderliness of the national market system. Accordingly, the Commission finds that it is reasonable for the Exchange to extend the pilot program for MOC orders, and thereby maintain procedures for MOC orders received by the Exchange that should result in treatment consistent with that of MOC orders on the primary exchanges. Further, the Commission believes that the renewal of the pilot program does not present any new or novel regulatory issues not previously considered by the Commission when initially approving the pilot program for MOC orders.

The Commission notes that the NYSE received permanent approval for its MOC procedures in October 1996.[9] As stated above, the Exchange's procedures for MOC orders are based on those of the NYSE. The Division of Market Regulation staff requests that prior to submitting another request for extension of the pilot program, the Exchange consider seeking permanent approval of its MOC procedures.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** By accelerating the effectiveness of the Exchange's pilot program, the Commission will enable the Exchange to continue the pilot program with as little disruption as possible. In addition, the Commission believes that the extension of the pilot does not present any new or novel regulatory issues as the Exchange's proposal merely reflects the pilot as previously approved by the Commission. Accordingly, Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the act, that the proposed rule change (file No. SR–BSE–97–7) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30627 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

[8] In approving this proposal, the Commission notes that it has considered the proposal's impact on efficiency, competion, and capital formation. 15 U.S.C. 78c(f).

[9] *See* Release No. 34–37894 (October 30, 1996), 61 FR 56987 (November 5, 1996).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39324; File No. SR–CBOE–97–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Exchange Fees

November 13, 1997.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on October 3, 1997, the Chicago Board Options Exchange, Incorporated (''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 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 Exchange seeks to establish various fees and discounts relating to options based on Dow Jones & Company (''Dow Jones'') indexes, and the use of the Exchange's new cellular phone and pager systems. The Exchange also seeks to indefinitely suspend its Prospective Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change: is (i) To establish fees relating to options based on Dow Jones indexes, three of which began trading on October 6, 1997;[2] (ii) to indefinitely suspend, effective October 1, 1997, the Exchange's Prospective Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues;[3] (iii) to establish user fees relating to the Exchange's new trading-floor cellular phone system; and (iv) to impose fees for the repair of abusive damage to pagers. The Exchange is implementing these fee changes pursuant to Exchange Rule 2.22.

The Exchange proposes to establish a transaction fee schedule for all options based on Dow Jones indexes that is identical to the current OEX transaction fee schedule. The fees would be as follows: (1) Forty cents per contract for customer transactions that have a premium greater than or equal to one dollar; (2) twenty cents per contract for customer transactions that have a premium less than one dollar; (3) ten cents per contract for member firm proprietary transactions; and (4) six cents per contract for market maker transactions.

In addition, the Exchange proposes to apply a Large Trade Discount Program to Dow Jones indexes, through which customer orders in excess of one thousand contracts would receive a discount. While the first one thousand contracts of a customer order will be assessed regular transaction fee rates, all contracts in excess of one thousand would receive a fifty percent discount. It should be noted that the discount program relating to Dow Jones products will be separate and distinct from the Large Trade Discount Program currently applicable to all other Exchange products. The Exchange proposes to cap Retail Automated Execution System (''RAES'') fees for Dow Jones indexes, so that the fee of twenty five cents per contract only applies to the first twenty five contracts of any RAES order.

The Exchange also proposes, effective October 1, 1997, to indefinitely suspend its Prospective Fed Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues. As a result of the large expenditure of resources devoted to the commencement of options trading in the Dow Jones indexes, the Exchange finds it necessary to indefinitely suspend its Prospective Fee Reduction Program to recoup working capital.

The Exchange further proposes to establish fees for its new trading-floor cellular phone system. A lease fee of one hundred dollars per month is proposed to be charged for each cellular phone. Additionally, a lost, stolen, or damaged phone fee will be assessed at the current replacement or repair cost.

Finally, the Exchange proposes to impose a fee for abusive damage to pagers. The fee will be assessed at the current repair cost.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(4)[5] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe 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

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (e) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily

[2] On October 6, 1997, the Exchange commenced trading options on the following Dow Jones indexes: the Dow Jones Industrial Index (''DJX''), the Dow Jones Utilities Index (''DUX''), and the Dow Jones Transportation Index (''DTX'').

[3] The Exchange filed its proposed rule change with the Commission on October 3, 1997. However, the proposed rule change indefinitely suspends the Exchange's Prospective Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues, as of October 1, 1997. The Commission notes that a proposed rule change made pursuant to Section 19(b)(3)(A) of the Act, such as SR–CBOE–97–53, is not effective until filed with the Commission.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e).

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, NW., Washington, DC 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, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CBOE–97–53 and should be submitted by December 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30625 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39323; File No. SR–CHX–97–24]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc; Order Granting Accelerated Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to a Ban on the Entry of Certain Stop Orders and Stop Limit Orders

November 13, 1997.

I. Introduction

On September 22, 1997, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new rule to prohibit the entry of certain stop orders and stop limit orders if the New York Stock Exchange (''NYSE'') implements a stop order ban pursuant to NYSE Rule 80A.

The proposed rule change was published for comment in the **Federal Register** on October 20, 1997.[3] No comments were received on the proposal. On October 31, 1997, the CHX submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to add Article IX, Rule 10B (Stop Order Ban Due to Extraordinary Market Volatility) to prohibit the entry of certain stop orders and stop limit orders if the NYSE implements a stop order ban pursuant to NYSE Rule 80A. The NYSE's Rule 80A prohibits the entry of stop orders and stop limit orders if the price of the primary Standard and Poor's 500 Stock Price Index[5] futures contract traded on the Chicago Mercantile Exchange reaches a value 12 points below the contract's closing value on the previous trading day. Likewise, the Boston Stock Exchange (''BSE'') prohibits the entry of stop and stop limit orders on the BSE when the NYSE has a ban in place.[6] The Exchange's new rule would exempt from the ban stop orders and stop limit orders of 2,099 shares or less for the account of an individual investor pursuant to instructions received directly from the individual investor.

The Exchange has previously adopted circuit breaker rules on a pilot basis[7] which parallel the circuit breaker rules of the NYSE.[8] Such rules are designed to dampen market volatility by providing a ''time-out'' to permit investors and market professionals to evaluate the state of the market. However, unlike the NYSE, the Exchange has not previously prohibited the entry of stop and stop limit orders during times of market stress.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirement of Section 6 of the Act[9] and the rules and regulations thereunder applicable to a national securities exchange.[10] The Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[11] in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. Specifically, the Commission believes that the prohibition against accepting stop orders and stop limit orders, except for individual investor orders of up to 2,099 shares, during periods of market stress will facilitate the maintenance of an orderly market and reduce market volatility.

The Commission recognizes that banning the entry of stop orders and stop limit orders in a significant market decline may help to reduce market volatility related to increased selling pressure in the security. The Commission believes that banning the entry of stop orders and stop limit orders in dually-traded issues when NYSE Rule 80A is in effect should prevent the transfer of market volatility from the NYSE to the CHX. The Commission believes that the CHX proposal represents a reasonable effort to arrive at a coordinated means to address potential strain on the market that may develop should the CHX become inundated with orders that have been banned pursuant to NYSE Rule 80A.

The Commission notes that stop orders and stop limit orders on the specialist's book at the time the ban is

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[8] 17 CFR 200.30(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 39320 (October 10, 1997) 62 FR 54496.

[4] *See* Letter from Charles R. Haywood, Foley & Lardner, to Debbie Flynn, Division of Market Regulation, SEC, dated October 30, 1997 (''Amendment No. 1''). In Amendment No. 1, the CHX requested that the rule filing by approved on an accelerated basis due to the recent volatility in the financial markets and the Exchange's belief that such volatility may continue.

[5] Standard and Poor's 500 Stock Index is a service mark of Standard and Poor's Corporation.

[6] *See* Ch. II, Sec. 35(b) of the BSE's rules.

[7] *See* Securities Exchange Act Release Nos. 26218 (October 26, 1988) 53 FR 44137 (November 1, 1988) (order approving File No. SR–MSE–88–9); 27370 (October 23, 1989) 54 FR 43881 (October 27, 1989) (order approving File No. SR–MSE–89–9); 28580 (October 25, 1990) 55 FR 45895 (October 31, 1990) (order approving File No. SR–MSE–90–16); 29868 (October 28, 1991) 56 FR 56535 (November 5, 1991) (order approving File No. SR–MSE–91–14); 33120 (October 29, 1993) 58 FR 59503 (November 9, 1993) (order approving File No SR–CHX–93–22); 36414 (October 25, 1995) 60 FR 55630 (November 1, 1995) (order approving File No. SR–CHX–95–23); 37459 (July 19, 1996) 61 FR 39172 (July 26, 1996) (order approving File No. SR–CHX–96–20); and 38221 (January 31, 1997) 62 FR 5871 (February 7, 1997) (order approving File No. SR–CHX–96–33).

[8] *See* CHX Art. IX, Rule 10A.

[9] 15 U.S.C. 78f.

[10] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

instituted will remain eligible for execution. Consequently, the Commission believes that investors who have submitted orders will be unduly disadvantaged or effected by any subsequent ban on such orders. The Commission further believes that allowing individual investors to enter stop orders or stop limit orders for 2,099 shares or less, while restricting the professional use of such orders when the NYSE institutes a ban pursuant to Rule 80A represents a reasonable response to the problem presented by smaller, individual investors who may be able to monitor market conditions on a continuous basis and who desire a measure of downside protection in a rapidly moving market. In contrast, market professionals are able to monitor the market on a continuous basis and have less of a need to enter such orders. The Commission believes that this exception to the proposed rule should protect investors and the public interest by ensuring that individual investors' stop orders and stop limit orders will be handled even during periods of market volatility.[12]

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** The Commission notes that Amendment No. 1 merely accelerates the effectiveness of the proposed rule. The Commission further notes that no comments were received on this proposal.Finally, the Commission notes that it has previously approved an identical proposal submitted by the BSE.[13] Therefore, the Commission believes that this filing raises no new regulatory issues. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act[14] to approve the proposed rule change and Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 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–97–24 and should be submitted by December 12, 1997.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)2() of the Act,[15] that the proposed rule change (SR–CHX–97–24), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30626 Filed 11–20–97; 8:45 am]

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[12] The Commission notes that this exception to the proposed rule is consistent with the rules adopted by the NYSE and BSE. *See* NYSE Rule 80A(b) and Ch. II, Sec. 35(b) of the BSE's rules.

[13] *See* Securities Exchange Act Release No. 32697 (July 29, 1993) 58 FR 41538 (August 4, 1993) (order approving File No. SR–BSE–92–05).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39326; File Nos. SR–NASD–97–71, SR–NASD–96–20, and SR–NASD–96–29]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change, Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change, and Order Extending Temporary Approval of SR–NASD–96–20 and SR–NASD–96–29, Regarding Proposed Changes in the By-Laws and Restated Certificates of Incorporation of the NASD, NASD Regulation, Inc., The Nasdaq Stock Market, Inc., and the Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries

November 14, 1997.

On September 19, 1997, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] In this filing, the NASD proposed amendments to the corporate documents of the NASD, its regulatory subsidiary, NASD Regulation, Inc. (''NASD Regulation''), and its stock market operating subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''),[3] as well as to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (''Delegation Plan''), in order to finalize the corporate restructuring of the Association.[4] Notice of this proposed rule filing was published in the **Federal Register** on October 10, 1997 (''Notice'').[5] The Commission did not receive any comment letters on the filing.

Portions of the NASD Proposal were previously submitted and noticed in the **Federal Register** in SR–NASD–96–02, SR–NASD–96–16, SR–NASD–96–20, SR–NASD–96–29, and SR–NASD–97–28.[6] The versions of the by-laws and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In this Order, NASD Regulation and Nasdaq are referred to as the ''Subsidiaries.'' The three entities, NASD, NASD Regulation, and Nasdaq are referred to collectively as the ''Association.''

[4] The corporate documents proposed for amendment are: (1) The By-Laws of the NASD; (2) the By–Laws of NASD Regulation; (3) the By-Laws of Nasdaq; (4) the Restated Certificate of Incorporation of the NASD; (5) the Restated Certificate of Incorporation of NASD Regulation; and (6) the Restated Certificate of Incorporation of Nasdaq. The by-laws and restated certificates of incorporation of the NASD and its Subsidiaries are collectively referred to in this Order as the ''corporate governance documents.''

[5] Securities Exchange Act Release No. 39175 (September 30, 1997), 62 FR 53062 (October 10, 1997). On September 29, 1997, the NASD filed a technical amendment to the proposed rule change, the substance of which was included in the Notice. See letter from T. Grant Callery, General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 29, 1997. On September 30, 1997, the filing was further amended by the NASD to correct non-substantive typographical errors, all of which were incorporated in the original filing as well. Conversation between Mary Dunbar, Office of General Counsel, NASD Regulation, and Mandy S. Cohen, Division of Market Regulation, Commission. Subsequent to notice of the rule filing, the NASD filed Amendment No. 2, which adjusted the period during which a member may add an agenda item to the annual meeting, to allow the NASD sufficient time to prepare for the new agenda item. See letter from T. Grant Callery, General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 7, 1997. Collectively, the original filing and its subsequent amendments are referred to herein as the ''NASD'' Proposal.''

[6] Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996) (File No. SR–NASD–96–02); Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (File No. SR–NASD–96–16); Securities Exchange Act Release No. 37282 (June 6, 1996), 61 FR 29777 (June 12, 1996), (File No. SR–

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Delegation Plan contained in SR–NASD–96–02 and 96–16 were superseded by the later filings. The Commission's temporary approval of the versions of the by-laws and Delegation Plan proposed in SR–NASD–96–20 and 96–29 (as amended), which is scheduled to lapse on November 15, 1997, will be temporarily extended again, until the effective dates of the provisions approved in this Order.[7] The revisions to the corporate governance documents and the Delegation Plan proposed in SR–NASD–97–28 were withdrawn by Amendment No. 3 thereto.[8]

I. Introduction and Background

In November 1994, the NASD Board of Governors appointed the Select Committee on Structure and Governance (''Select Committee'') to review the NASD's corporate governance structure and to recommend changes to enable the NASD to better meet its regulatory and business obligations, including its oversight of the Nasdaq market. The Select Committee published its findings and recommendations in the Report of the NASD Select Committee on Structure and Governance to the NASD Board of Governors (''Select Committee Report''), which was presented to the NASD Board of Governors at its September 1995 board meeting.

Following the recommendations of the Select Committee, the NASD proposed reorganizing its corporate structure. Nasdaq was given sole responsibility to operate and oversee the Nasdaq market and other over-the-counter (''OTC'') markets, while NASD Regulation was given responsibility for regulation and member and constituent services. The NASD retained ultimate policymaking, oversight, and corporate authority as the parent holding company and statutory self-regulatory organization (''SRO''), while granting substantial deference to the operating Subsidiaries in the areas of their respective jurisdictions. These revisions to the corporate structure, outlined in the Delegation Plan[9] and implemented through amendment of the governing corporate documents, were proposed and adopted in mid-1996.[10]

On August 8, 1996, the Commission issued an order pursuant to Section 19(h)(1) of the Act (''SEC Order''), including fourteen undertakings (''Undertakings''),[11] and a related report pursuant to Section 21(a) of the Act (''21(a) Report'').[12] The SEC Order made certain findings about the NASD and imposed remedial sanctions, including ordering the NASD to comply with the Undertakings. The Commission determined that the NASD had not complied with its own rules and had failed to satisfy its obligations under the Act to enforce such rules and the federal securities laws.

The 21(a) Report findings indicated, among other things, that market making firms were afforded a disproportionate representation on the boards and committees that formerly governed the NASD, administered its disciplinary process, and operated the Nasdaq market. The Commission found that the ''undue influence of market makers and a lack of vigor and balance in the NASD's enforcement activities with respect to market maker firms'' was inconsistent with the NASD's statutory obligation to oversee the Nasdaq market, and to enforce its rules and regulations fairly as to all member firms.[13]

Based on the Commission's specific findings, the NASD agreed to the Undertakings, including, among other things, undertakings to improve public representation on its Boards and committees, to confer sole discretion in the regulatory staff of the NASD as to prosecutorial and regulatory matters, and to promulgate and apply uniform standards for regulatory and other access issues.[14] In response to the

NASD–96–20), as amended; Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 18, 1996) (File No. SR–NASD–96–29), as amended; and Securities Exchange Act Release No. 38545 (April 24, 1997) 62 FR 25226 (May 8, 1997) (File No. SR–NASD–97–28), as amended, respectively.

[7] See Securities Exchange Act Release No. 38909 (August 7, 1997), 62 FR 43571 (August 14, 1997) (SR–NASD–97–29) and Securities Exchange Act Release No. 38644 (May 15, 1997), 62 FR 43571 (May 22, 1997) (SR–NASD–96–20). The effective dates of the provisions approved by this Order are set forth *infra* notes 51 and 52 and the accompanying text.

[8] See letter from Alden S. Adkins, General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 11, 1997 (Amendment No. 3 to SR–NASD–97–28).

[9] The initial version of the Delegation Plan (with the implementing provisions contained in Rule 0130) was filed with the Commission in SR–NASD–96–16. For the purposes of this Order, reference to a ''Rule'' refers to the NASD Rules of the Association. It was published for comment and approved by the Commission on a temporary basis for a period of 90 days. See Release No. 34–37107, *supra* note 6. The Commission thereafter published notice of proposed rule changes containing revisions to the initial Delegation Plan and granted temporary accelerated approval thereto in Release No. 34–37425, *supra* note 6 (additional 120 day approval, as revised), Securities Exchange Act Release No. 37957 (November 15, 1996), 61 FR 59267 (November 21, 1997) (additional six month temporary approval through November 15, 1997, as revised), Securities Exchange Act Release No. 38645 (May 15, 1997), 62 FR 28086 (May 22, 1997) (additional six month temporary approval, as revised), and Release No. 34–38909, *supra* note 7 (continuing temporary approval through November 15, 1997).

[10] The Commission first granted temporary approval of the by-law revisions implementing the restructuring on April 11, 1996. See Release No. 34–37106, *supra* note 6. The Commission thereafter published notice of proposed rule changes containing revisions to the by-laws and/or granted temporary accelerated approval of such revisions in Securities Exchange Act Release No. 37424 (July 11, 1996), 61 FR 37515 (July 18, 1996) (notice); Release No. 34–37282, *supra,* note 6 (temporary approval for 120 days, as revised); Securities Exchange Act Release No. 37956 (November 15, 1996), 61 FR 59265 (November 21, 1996) (temporary approval for 6 months, as revised); Release No. 34–38644, *supra* note 7 (temporary approval for 6 months, as revised).

[11] Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3–9056). The first six Undertakings included in the SEC Order are reproduced *infra,* in note 14.

[12] Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market (Aug. 8, 1996).

[13] See 21(a) Report, *supra* note 11, at 39.

[14] Undertakings one through six of the SEC Order require the NASD:

(1) To implement and maintain at least fifty percent independent public and non-industry membership in its Board of Governors, the Board(s) of Governors or Directors of all of its subsidiaries and affiliates that exercise or have delegated self-regulatory functions, and the following committees: The National Nominating Committee, the Trading/Quality of Markets Committee, the Arbitration Committee, the Market Surveillance Committee (now the Market Regulation Committee), the National Business Conduct Committee, the Management Compensation Committee, and all successors thereto.

(2) To provide that NASDR and any successor thereto has, consistent with the NASD's By-Laws and Plan of Delegation, as amended from time to time and as approved by the Commission, primary day-to-day responsibility for the regulation, surveillance, examination, and disciplining of NASD member firms and registered persons, with respect to market activities as well as other self-regulatory matters, with full access to the records of the Nasdaq market.

(3) To institute the participation of professional Hearing Officers (who shall be attorneys with appropriate experience and training) to preside over disciplinary proceedings.

(4) To provide for the autonomy and independence of the regulatory staff of the NASD and its subsidiaries such that the staff, subject only to the supervision of the Board of Governors of the NASD and the Boards of Directors of NASDR and Nasdaq, and any successor thereto, (a) has sole discretion as to what matters to investigate and prosecute, (b) has sole discretion to handle regulatory matters such as approval of applications for membership and the conditions and limitations that may be placed thereon, (c) prepares rule proposals, rule interpretations and other policy matters with any consultations with interested NASD constituencies made in fair and evenhanded manner, and (d) is generally insulated from the commercial interests of its members and the Nasdaq market. Among other things, the District Business Conduct Committees and the Market Surveillance Committee shall not have any involvement in deciding whether or not to institute disciplinary proceedings, nor shall the District Committees, or any subcommittee thereof, have any involvement in the review or approval of applications for membership in the NASD. Subject to the foregoing, the regulatory staff of the NASDR engaged in the

Commission's findings in the 21(a) Report and to comply with the terms of certain undertakings, the NASD subsequently proposed the amendments to the Delegation Plan and the Association's corporate governance documents; these amendments were temporarily approved by the Commission. As discussed below, the NASD is now proposing further changes to the Association's corporate governance documents.

II. Description of the Proposal [15]

The revisions to the Association's corporate governance documents and the Delegation Plan respond to the changes required by the SEC Order, and the 21(a) Report. They also implement the most recent corporate restructuring, by reducing the number of members of the NASD, NASD Regulation and Nasdaq governing boards. In addition, they clarify various provisions in the corporate governance documents to more clearly delineate Association practices and procedures. The purpose of the amendments is to streamline the Association's decision making process to be more responsive, while simultaneously promoting public and member access to, and scrutiny of, the day-to-day activities of the Association.

A. The Corporate Governance Documents

The NASD proposes to retain the current three corporation structure, but reduce the overall number of board members for the three corporations and revise the structure of the three governing boards. Currently, the NASD Board has eleven Governors, the NASD Regulation Board has twenty-four Directors, and the Nasdaq Board has fourteen Directors.[16] As amended, the NASD Board will consist of twenty-one to twenty-seven Governors, and include a nucleus of Governors who will not serve as directors on either Subsidiary board.[17] The Subsidiary boards will have five to eight Directors each, all of whom will serve simultaneously as an NASD Governor.[18] The number of directors on each Subsidiary board will be equal, thereby enabling the nucleus of individuals serving only as NASD Governors to perform a tie-breaking function on the parent board. Each board will be balanced between Public, Non-Industry and Industry participants.[19] Specific terms of office for board and committee members have also been imposed.[20]

The NASD Board, while remaining ultimately responsible for the actions of its Subsidiaries, will retain its current authority to review and ratify or reject certain actions of the Subsidiaries. The process of exercising this authority, however, will be expedited by transferring certain functions to new entities under each Subsidiary board. The most significant of these transfers involves adjudication and listing decisions. Given the increased responsibilities of individual Governors created by the new interlocking boards structure, the Association wishes to ensure that a sufficient number of qualified individuals are available to review adjudication and listing decisions. The functions of the National Business Conduct Committee, a committee of the NASD Regulation Board composed entirely of board members, therefore will be transferred to a new entity, the National Adjudicatory Council (''NAC''),[21] and the functions of the Nasdaq Listing and Hearing Review Committee will transfer to the new Nasdaq Listing and Hearing Review Council (''Listing Council'').[22] The NAC will be appointed by the NASD Regulation Board, after nomination by the National Nominating Committee. Similarly, the Listing Council members will be appointed by the Nasdaq Board. Except for the Chair of the NAC, members of the councils will not serve on any of the Association's boards. These new councils will meet at least 15 days before the Subsidiary boards and generally will provide written reports of their decisions to their respective boards not later than 15 days before the Subsidiary board meetings, which will be scheduled to occur one day before the meetings of the NASD Board.

In addition to changes in the structure and composition of the Association's boards and committees, the NASD proposes to include strict quorum requirements. These requirements provide that decisions made by less than the entire board or balanced committee are also reached through balanced consideration.[23] For example,

disciplinary process may, solely on their own initiative, inform themselves on matters of market or other securities industry expertise by consulting with representatives of member firms or committees of the NASD or its subsidiaries.

(5) To promulgate and apply on a consistent basis uniform standards for regulatory and other access issues, such as admission to the NASD as a member firm, and conditions to becoming a market maker; and institute safeguards to ensure fair and evenhanded access to all services and facilities of the NASD.

(6) To ensure the existence of a substantial, independent internal audit staff which reviews all aspects of the NASD (including the regulatory function, the disciplinary process and the Nasdaq stock market and its systems) and reports directly to an audit committee of the NASD Board of Governors which includes a majority of public and non-industry Governors and is chaired by a public Governor.

[15] Only substantive changes to the corporate governance documents and the Delegation Plan are highlighted. Unless specifically noted otherwise, the term ''committee'' include the NAC and the Listing Council. For a more detailed description of the NASD's proposed rule change, *see* Notice, *supra* page 2.

[16] The NASD Proposal will allow the Association to reduce the overall number of Association board members from forty-nine to twenty-seven, reduce the number of board meetings from seventeen to seven, reduce the number of board committees from nine to five, and replace two Subsidiary board executive committees with one parent board executive committee.

[17] As reconstituted, the NASD Board will include the Chief Executive Officer and the Chief Operating Officer of the NASD, the Presidents of NASD Regulation and Nasdaq, the Chair of the NAC, and between 16 and 22 elected Governors. The elected Governors will include an investment company, an insurance company, and a Nasdaq issuer.

[18] The NASD Regulation and Nasdaq Boards of Directors will have five to eight Directors, and will be equal in size at all times. Only Governors of the NASD Board are eligible for election to these boards. The boards will include their respective Presidents. The Chief Executive Officer of the NASD will be an ex-officio non-voting member of each, but will not be recognized for compositional purposes. The NASD Regulation Board will also include the chair of NAC, as well as an investment company and an issuance company representative. The Nasdaq Board will include at least one issuer representative. See new NASD Regulation By-Laws, Article IV, Sections 4.2, 4.3; see also new Nasdaq By-Laws, Article IV, Sections. 4.2, 4.3.

[19] A majority of the Governors on the NASD Board will be Non-Industry, including five or six Public Governors, depending on the size of the board. Non-Industry Directors on the NASD Regulation and Nasdaq Boards must equal or exceed the number of Industry Directors plus their respective President, and will also include at least one Public Director each (or two each for eight-member boards). For a discussion of the terms ''Public,'' ''Non-Industry,'' and ''Industry,'' see *infra* notes 26, 27, and 29.

[20] The term of office for the Board of Governors of the NASD varies between elected and appointed positions. The Chief Executive Officer and the Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq serve until a successor is elected, or until death, resignation, or removal. The Chair of the NAC serves as a Governor for a one year term, or until a successor is elected and qualified, or until death, resignation, disqualification, or removal. The Governors elected by the members of the NASD serve three year terms. See new NASD By-Laws, Article VII, Sections 5(a–c). Members of the Boards of Directors for both NASD Regulation and Nasdaq are elected annually. See new NASD Regulation By-Laws, Article IV, Section 4.4; new Nasdaq By-Laws, Article IV, Section 4.4.; new Nasdaq By-Laws, Article IV, Section 4.4. Members of the NASD's Management Compensation Committee serve a term of one year. See new Delegation Plan, Article I(C).

[21] See new NASD Regulation By-Laws Article V.

[22] See new Nasdaq By-Laws Article V.

[23] See new NASD By-Laws Article IX, Section 4(d); new NASD By-Laws Article IX, Section 5(e); see also new NASD By-Laws Article VII, Section 8 (establishing quorum for transaction of business at Board meetings as a ''majority of the Board, including not less than 50 percent of the Non-Industry Governors''); new NASD Regulation By-Laws Article V, Section 5.9 (establishing quorum requirements for the NAC as ''a majority of the members, including not less than 50 percent of the Non-Industry members''); new Nasdaq By-Laws Article IV, Section 4.9 (establishing quorum for the

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representation of Non-Industry and Public committee members on the new NASD Executive Committee must be at least as great as the representation of Non-Industry and Public Governors on the NASD Board, and the quorum for the transaction of business at Executive Committee meetings must consist of a majority of its members, including at least 50 percent of the Non-Industry committee members. Similarly, a quorum for the transaction of business at Audit Committee meetings will require a majority of the Audit Committee, including at least 50 percent of the Non-Industry committee members.[24]

Finally, the definitions of Industry, Non-Industry and Public have been revised.[25] A Public participant on a board or committee is someone who has no material business relationship with the Association, or with any broker or dealer.[26] The Non-Industry category is slightly broader, permitting participation by those connected with companies listed on Nasdaq.[27] The Industry category is,[28] and includes all brokers and dealers, their officers, directors, and holding companies, large shareholders of brokers and dealers, as well as many of the people (including professionals) that work for them.[29]

In addition to revising the structure of the boards and defining the categories of participants, the NASD proposes to change the nomination process for Governors, Directors and members of the NAC and the Listing Council.[30] Compositional requirements will be introduced for the National Nominating Committee, the number of Governors and Directors serving will be limited, and specific removal provisions for National Nominating Committee members will be added.[31] In addition, the provisions through which dissident candidates can stand for election will be refined.[32] Members will be given additional time in which to propose dissident candidates, and, in their official capacities, Governors will not be allowed to express a preference for any candidate during elections involving dissident candidates.[33]

The NASD also proposes to amend the conflicts of interest provisions.[34] As revised, Governors and committee members will be prohibited from directly or indirectly participating in any adjudication of the interests of a party if they have a conflict of interest or bias, or if circumstances otherwise exist where their fairness might reasonably be questioned. Governors or committee members must recuse themselves or be disqualified in accordance with the Rules of the Association.[35] In addition, similar provisions address contracts and transactions between the NASD and any entity in which a Governor or officer is involved.[36]

1. Changes to the NASD By-Laws

In addition to the structural and related changes, the NASD is proposing several clarifying amendments to its by-laws. For example, the term ''person associated with a member'' is revised to clarify that this term includes any natural person registered under the Rules of the Association, without regard to employment responsibilities.[37] This

Board of Directors to transact business as ''a majority of the Board, including not less than 50 percent of the Non-industry Directors''.

[24] Similar quorum requirements will be imposed on the Executive Committees of the Subsidiaries, the NASD Finance Committee, the National Nominating Committee, the Management Compensation Committee, and the NAC.

[25] In addition, disqualification and removal procedures have been imposed, supporting adherence to a balanced compositional structure. Disqualification in this instance refers to a change in status from Public and/or Non-Industry to Industry. See new NASD Article VII, Section 6. Both Governors and members of the NAC and the National Nominating Committee may be removed by the Board if they refuse, fail, neglect, or are not able to discharge their duties. See NASD By-Laws, Article VII, Section 1(b) (NASD); NASD By-Laws, Article VII, Section 9(d) (NAC); See NASD Regulation By-Laws, Article V, Section 5.6 (National Nominating Committee).

[26] The new NASD By-Laws define a ''Public'' participant as one ''who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq.'' *See* NASD By-Laws Article I, Section (ff) and (gg); new NASD Regulation By-Laws Article I, Section (z); new Nasdaq By-Laws Article I, Section (s).

[27] The new NASD By-Laws define a ''Non-Industry'' participant as one ''who is: (1) a Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Governor or committee member.'' See new NASD By-Laws Article I, Section (cc) and (dd); NASD Regulation By-Laws Article I, Section (x); new Nasdaq By-Laws Article I, Section (q).

[28] Although not specifically defined as ''Industry'' participants, officers of the NASD, NASD Regulation or Nasdaq serving as members (other than ex-officio members) of a board or committee appointed under the newly revised by-laws of any of the three corporations, will be counted with the Industry participants for compositional and quorum requirements.

[29] The new NASD By-Laws define an ''Industry'' participant as one ''who: (1) Is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director, (excluding an outside director) or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenue received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years.'' See new NASD By-Laws Article I, Section (n) and (o); new NASD Regulation By-Laws, Article I, Section (q); new Nasdaq By-Laws Article I, Section (j).

[30] See new NASD By-Laws Article VII, Sections 9 and 10.

[31] See, *e.g.*, new NASD By-Laws Article VII, Section 4(a) (Board size and composition); new NASD By-Laws Article VII, Section 1(b) (removal of Governors for cause); new NASD Regulation By-Laws Article V, Section 5.2(a) (NAC size and composition); new NASD Regulation By-Laws Article V, Section 5.6 (NAC member removal provisions); new Nasdaq By-Laws Article Vi, Section 5.2(a) (Listing Council size and composition); new Nasdaq By-Laws Article V, Section 5.6 (Listing Council member removal provisions).

[32] See new Article VII, Section 10. Related to these changes, enhanced procedures for participation in annual meetings have been added. See new NASD By-Laws Article XXI, ''Meetings of Members.''

[33] See new NASD By-Laws Article VII, Section 11; new NASD Regulation By-Laws Article IV, Section 4.14; new Nasdaq By-Laws Article IV, Section 4.15.

[34] See, *e.g.*, new NASD By-Laws, Article 4, Section 4.14(a).

[35] See, *e.g.*, Rule 9160.

[36] New Article XV, Section 4(b) of the NASD By-Laws provides that a contract or transaction between the NASD and a Governor or officer, or between the NASD and any entity in which a Governor or officer is a director or officer, or has a financial interest, is not void or voidable solely for this reason, or solely because the Governor or officer is present at the meeting of the Board or committee that authorizes the contract or transaction, or solely because the Governor's or officer's vote is counted for such purposes if: (1) The material facts pertaining to such relationship or interest are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors; or (2) the contract or transaction is fair to the NASD as of the time it is authorized, approved, or ratified by the Board or committee. New Section 4(b) further provides that only disinterested Governors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction. Contracts and Transactions between the NASD and its Subsidiaries are not subject to proposed Section 4(b). See also new NASD Regulation By-Laws, Article IV, Section 4.14(b); new Nasdaq By-Laws, Article IV, Section 4.14(b).

[37] See new NASD By-Laws Article I(ee); new NASD Regulation By-Laws I(y); and new Nasdaq By-Laws Article I(r).

counters the suggestion in certain case law that any person whose job title or position is not specifically identified in the Association's definition of associated person (regardless of whether the individual is registered with an NASD member firm) may not be considered an associated person if he or she is not directly ''engaged'' in the securities business.[38]

Similarly, the revisions clarify the proceedings for obtaining relief from the Association's eligibility requirements. The current language could be read to suggest that a broker or dealer seeking admission to the Association could use such proceedings to obtain relief from the eligibility requirements as a means of gaining admission to the Association. The Association did not intend to apply this provision to applicants for membership, and the amendment removes this potential ambiguity.[39]

2. Changes to the NASD Regulation By-Laws

The current NASD Regulation By-Laws were adopted on July 19, 1996, in connection with the initial restructuring of the NASD following presentation of the Select Committee Report to the NASD Board. In addition to amending the NASD Regulation By-Laws to conform them to the changes described above, the by-laws now include recognition of the NASD as sole stockholder of NASD Regulation capital stock. Furthermore, the language describing the composition and powers of the new NAC, including procedures for district elections, are included in the NASD Regulation By-Laws. Finally, indemnification provisions protecting NASD Regulation personnel (including Directors), identical to those of the NASD and proposed for Nasdaq, have been added.[40]

3. Changes to the Nasdaq By-Laws

Nasdaq adopted its current By-Laws on October 27, 1993. The proposed amendments conform the by-laws to the changes described above. The provisions creating and defining the Listing Council are contained herein. In addition, indemnification provisions mirroring the NASD and NASD Regulation have been included.[41]

4. Changes to the Restated Certificates of Incorporation

The changes to the NASD Restated Certificate of Incorporation conform it to the NASD Board structural changes previously described.[42] Similar conforming changes will be made to the NASD Regulation and Nasdaq Certificates of Incorporation.[43]

B. The Delegation Plan

The amendments to the Delegation Plan reflect the new interlocking board structure of the NASD and its Subsidiaries, discussed above. For example, the Delegation Plan is amended to authorize the NASD Board to take action on its own initiative, either by the full board or through the NASD Executive Committee. The purpose of this amendment is to allow the Association to act quickly and decisively when necessary. Separate consideration by the Subsidiary board can be avoided without any loss of Subsidiary board input because the Subsidiary board members constitute a subset of the NASD Board. This option is not available under the current corporate structure, which requires that matters within a Subsidiary's sphere of delegated authority be considered by that Subsidiary's board before consideration by the NASD Board.

In addition, time-sensitive matters arising between regularly scheduled board meetings can be resolved by the NASD Executive Committee. Currently, the Subsidiaries' executive committees may take initial action on such matters, but the action cannot be implemented without the unanimous written consent of the NASD Board. Obtaining such consent can impede the Association's ability to respond to urgent matters. As revised, the NASD Executive Committee will be able to convene telephonically on an as-needed basis to address time-sensitive matters.

The revisions to the Delegation Plan also include provisions addressing petitions for reconsideration of NAC and Listing Council recommendations on proposed rule changes, when their recommendations are inconsistent with later action taken by their respective governing Subsidiary boards. If either the NAC or Listing Council disagrees with its respective Subsidiary board, they may now petition the NASD Board for reconsideration of the matter.[44]

In addition to the changes related to reconstitution of the governing boards, the revised Delegation Plan includes changes to several important committees. Specifically, the compositional and quorum requirements of the NASD's Management Compensation Committee, NASD Regulation's Market Regulation, National Arbitration and Mediation, and Operations Committees, as well as Nasdaq's Quality of Markets and Market Operations Review Committees, are included in the revised Delegation Plan, providing for diversity of member, non-industry and public participation.

Furthermore, the revised Delegation Plan includes an amendment requiring establishment of procedures to consider requests by members, associated persons, and members of the public to initiate formal disciplinary action.[45] This will allow the Association to be more responsive to public inquiry and/or complaints about brokers, dealers and their employees.

Finally, the oversight and management responsibilities of Stockwatch, which handles the trading halt functions for the Nasdaq market and exchange-listed securities traded in the over-the-counter market, are more clearly defined. As amended, the Delegation Plan provides that review of all questionable market activity, possible rule infractions, or any other matters that require any type of

[38] See *Slade* versus *Metropolitan Life Ins. Co.* Index No. 117688/94, Decision and Order of April 9, 1996 (Sup. Ct., N.Y. Co.), *aff'd*, 231 A.D.2d 467 (N.Y. 1996), *appeal denied*, 676 N.E.2d 500 (N.Y. 1996).

[39] See Article III, Section 3(d). The changes include deletion of Section 3(d)(2), the status of members or persons engaged in eligibility proceedings, which is not set forth in the 9520 series of the Rules of the Association. This is not a substantive change in the Association's practice. The by-law revisions also remove the requirement that members, registered representative and other associated persons release the Association from liability except for willful malfeasance. See Former Article III, ''Membership,'' renumbered as new Article IV, and former Article IV, ''Registered Representatives and Associated Persons,'' renumbered as new Article V. The Association proposes to delete Sections 1(a)(3) of Membership and 2(a)(2) of Registered Representatives and Associated Persons, which previously included the willful malfeasance release. This is not substantive revision, however. The governing state law in Delaware contains a similar release from liability under the ''business judgment'' rule, see, *Smith* v. *Van Gorkom*, 488 A.2d 858, 873 (De. 1985) (recognizing the gross negligence standard of care in the context of analyzing a corporate director's duty of care), although ''there is no protection for directors who have made 'an unintelligent or unadvised judgment.''' *Id.*, at 872 (citing Mitchell v. Highland-Western Glass, 167 A.2d 831, 833 (De. 1933)).

[40] See new NASD Revised Certificate of Incorporation Article Fifth (Indemnification; Governor Liability); new Nasdaq By-Laws Article VIII (Indemnification of Directors, Officers, Employees, Agents, Nasdaq Listing and Hearing Review Council and Committee Members).

[41] See *e.g.*, new NASD Revised Certificate of Incorporation Article Fifth (Indemnification; Governor Liability); new NASD Regulation By-Laws Article X (Indemnification of Directors, Officers, Employees, Agents, NAC and Committee Members).

[42] *See* new Article Eighth.

[43] Full text versions of these changes are contained in the Notice, see *supra* text accompanying note 5.

[44] See new sections II.B.2. and III.B.3.

[45] See new section II.A.1.f. Additional discussion of these procedures is included in the order approving SR–NASD–97–28, discussed *supra* note 6, in connection with deletion of former Rule 8120 of the Rules of the Association. See Securities Exchange Act Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997).

investigative or regulatory follow-up will be referred to and conducted by NASD Regulation, which will assume sole responsibility for the matter until resolution. This responsibility will include examinations, investigations, document requests, and any enforcement action that NASD Regulation deems necessary. In addition, the revisions provide that NASD Regulation staff at all times will have access to all records and files of the Stockwatch function.

III. Comments

The Commission did not receive comments on the NASD Proposal.

IV. Discussion

A. The Proposed Amendments

As discussed below, the Commission has determined at this time to approve the NASD Proposal. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.[46] In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the NASD Proposal.[47]

The Commission has evaluated the NASD's proposed rule change in light of the standards and objectives set forth in the Act (particularly Sections 15A [48] and 3(f) [49]), as well as the SEC Order and the 21(a) Report. The Commission believes that the changes to the Association's corporate structure are consistent with those provisions, as well as the objectives of the Undertakings and the 21(a) Report. The proposed rule change maintains a balanced governance structure by providing that the number of Public and Non-Industry members of the NASD Board exceed the number of Industry members. By providing for substantial and meaningful public and non-industry involvement, in addition to diverse representation of various sectors of the securities industry, on the governing boards, the NASD Proposal should encourage dispassionate performance of the NASD's responsibilities as an SRO.

As reconstituted under the proposed rule change, each corporation will continue to retain a clear and distinct role, with separate officers and staff. Specifically, the NASD will continue to resolve conflicts between the Subsidiaries and retain ultimate responsibility for its statutory obligations as an SRO; NASD Regulation will continue to perform the day-to-day regulation of brokers and dealers, have primary responsibility for adjudication and enforcement, and to supervise surveillance of Nasdaq and other OTC markets; and Nasdaq will continue to own and operate the Nasdaq market and develop and implement rules governing that market.[50]

The substitution of the NAC and the Listing Council for their predecessor board committees, should provide that the adjudication and listing review process is conducted by qualified individuals representing both the public and the industry. Creation of the new councils is consistent with the requirements of the Act, and with the NASD's obligations under the SEC Order and the 21(a) Report.

Finally, the various changes to the quorum provisions, the nominating procedures, and the conflicts of interest provisions contribute to and enhance the Association's ability to perform its SRO responsibilities in an objective, balanced and responsive manner.

B. Effectiveness of the Amendments

The NASD has requested varying effective dates for the amendments contained in this Order.[51] In general, those portions addressing nomination and election procedures will become effective upon issuance of this Order. Immediate effectiveness of these changes will facilitate the nomination and election of members of the NASD, NASD Regulation, and Nasdaq Boards, the NAC, and the Listing Council whose terms of office will begin in 1998.

The remaining changes will become effective at the January 1998 meeting of the NASD Board, which will itself conform to the new balanced compositional requirements contained in this Order. Allowing a period of time between approval of this Order and the effective date will give the Association adequate time to achieve the comprehensive changes to its structure.

Finally, the Commission's temporary approval of SR–NASD–96–20 and SR–NASD–96–29, which is currently scheduled to lapse on November 15, 1997 (to the extent these rule filings are not superseded by the immediately-effective nomination and election procedure amendments), is extended until the first meeting of the NASD Board of Governors in January, 1998.[52]

V. Amendment No. 2

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, Amendment No. 2 amends the time during which a member may submit agenda items for the annual meeting of NASD members. The Commission believes that this change, combined with those in the initial filing of SR–NASD–97–71 are consistent with the Act, and should enhance both the fair and efficient operation of the NASD and the dispassionate application of the rules and fairness in the NASD's adjudicatory and listing processes, as

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[46] 15 U.S.C. 78s(b).

[47] 15 U.S.C. 78*o*–3.

[48] For example, Section 15A(b)(8) requires that the rules of an association provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership, the barring of any person becoming associated with a member thereof, and for the prohibition or limitation by the association of any person with respect to access to services offered by the association. Section 15A(h)(2) requires a registered securities association when determining whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the association or member thereof, to notify such person of and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. Section 15A(h)(3) governs when a registered securities association may summarily suspend a member or a person associated with a member.

[49] In approving this proposal, the Commission notes that it has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[50] Specifically, the proposed rule changes comport with the requirements (i) by balancing the Association's boards and committees (see new NASD By-Laws Article VII, Section 4 and Article IX; new NASD Regulation By-Laws Article IV; new Nasdaq By-Laws Article IV; Delegation Plan I.C., II.C); (ii) by placing primary day-to-day responsibility for regulatory matters with NASD Regulation (see new Delegation Plan section II.A.1); (iii) by providing for the autonomy and independence of the regulatory staff of the NASD and its Subsidiaries (see *id*.); and (iv) by providing for the existence of a substantial, independent internal audit staff that reports directly to an audit committee of the NASD Board (see new NASD By-Laws Article IX, Section 5).

[51] *See* Letter from T. Grant Callery, Vice President and Generl Counsel, NADS to Katherine A. England, Assistant Director, Commission, dated November 12, 1997.

[52] Specifically, the following sections of the corporate governance documents will become effective immediately upon issuance of this Order:

- NASD By-Laws Article VII, Section 9(a), 9(e), and 10 through 14;
- NASD By-Laws Article XX and XXI;
- NASD Regulation By-Laws Article IV, section 4.16
- Nasdq By-Laws Article IV, Section 4.15.

These provisions will supersede the following provisions of the temporarily approved Plan of Allocation and Delegation of Functions by NADS to Subsidiaries: I.C.2.a; I.C.2.b.3; IC.3., II.B.2. a through II.B.2.c; and III.B.2.a.

well as other regulatory activities. Finally, the acceleration of the effectiveness of Amendment No. 2 will enable the Commission to approve its changes at the same time as the other major modifications to the NASD corporate governance procedures proposed in the Notice. Therefore, the Commission believes that granting accelerated approval to Amendment No. 2 is appropriate and consistent with Section 19(b)(2) of the Act.[53]

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change. 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 Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–71 and should be submitted by December 12, 1997.

VII. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[54] that (a) the proposed rule change (SR–NASD–97–71) is approved, including approval of Amendment No. 2 on an accelerated basis (with the effective date of the nomination and election procedures to be immediate and the effective date of the remaining provisions to occur at the time of the January 1998 meeting of the NASD Board), and (b) temporary approval of the proposed rule changes (SR–NASD–96–20 and SR–NASD–96–29), to the extent not superseded by the immediately effective amendments to SR–NASD–97–71, is extended until the January 1998 meeting of the NASD Board.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[55]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30622 Filed 11–20–97; 8:45 am]

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[53] 15 U.S.C. 78s(b)(2).

[54] 15 U.S.C. 78s(b)(2).

[55] 17 CFR 200.300–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39322; File No. SR–NASD–97–78]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Amended Interpretation of IM–8310–2, Release of Disciplinary Information, and the Implementation of Interim Pages in Forms U–4 and U–5

November 13, 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 17, 1997,[3] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. (''NASDR'').[4] 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.

[3] On November 6, 1997, the NASD Regulation, Inc. filed an amendment, which among other things, clarifies the reference to ''associated person'' and explains the absence of the term ''issuer'' in the definition of ''investment-related.'' See letter from Alden S. Adkins, General Counsel, NASD Regulations, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 6, 1997 (''Amendment No. 1''). On November 12, 1997, the NASD Regulation, Inc. amended its proposal to clarify the definition of ''appropriate signatory'' and to clarify the implementation dates of the interim Forms and the disclosure of additional information. See letter from Alden S. Adkins, General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 12, 1997 (''Amendment No. 2'').

[4] The Association submitted a similar proposal on November 25, 1996. See Securities Exchange Act Release No. 37994 (November 27, 1996) 61 FR 64549 (December 5, 1996) (SR–NASD–96–38). After several negotiations among the Commission, the NASD, and the North American Securities Administrators Association, Inc. (''NASAA''), SR–NASD–96–38 has been withdrawn and replaced in its entirety by the current filing. See letter from Joan C. Conley, Corporate Secretary, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated October 17, 1997.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDR is proposing to amend the Interpretation on the Release of Disciplinary Information, IM–8310–2 of Rule 8310 of the Procedural Rules of the NASD, to include additional information required to be reported pursuant to the amended Forms U–4, U–5, and BD. Interim pages for Forms U–4 and U–5 also have been filed to facilitate the immediate release of this additional information.[5] Below is the text of the proposed rule change. Proposed new language is an italics.

IM–8310–2. Release of Disciplinary Information

(a) The Association shall, in response to a written inquiry, *electronic inquiry*,[6] or telephonic inquiry via a toll-free telephone listing, release certain information contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD for Form U–4 and all foreign government or self-regulatory organization disciplinary actions that relate to securities or commodities transactions and are required to be reported on Form BD or Form U–4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U–4. The Association will also release information *required to be reported on Form BD or Form U–4* concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers, *pending and settled customer complaints, arbitrations and civil litigation, current investigations involving criminal or*

[5] Copies of Forms U–4 and U–5, containing the interim pages, were submitted as Attachment A to the NASD's rule proposal. A complete set of these revised forms is available for inspection and copying in the Commission's Public Reference Room and is also available from the NASD.

[6] Upon approval of this proposal, the NASD plans to begin responding to electronic inquiries via the Internet on or about January 1, 1998. *See* Amendment No. 2, p. 1.

regulatory matters, terminations of employment after allegations involving violations of investment related statutes or rules, theft or wrongful taking of property, bankruptcies less than ten years old, outstanding judgments or liens, any bonding company denial, pay out or revocation, and any suspension or revocation to act as an attorney, accountant or federal contractor.[7]

* * * * *

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 NASDR included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the NASD's Public Disclosure Program,[8] the NASD, in response to a written inquiry or telephonic inquiry via a toll-free telephone listing, releases certain information contained in the Central Registration Depository (''CRD'') regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD or Form U–4; all foreign government or self-regulatory organization disciplinary actions that relate to securities or commodities transactions and are required to be reported on Form BD or Form U–4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U–4. The Association also releases information concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers.

In 1992, the NASD began developing a replacement for the CRD system. In conjunction with that effort, the NASD worked with the NASAA, the Commission, and the New York Stock Exchange to amend Forms U–4, U–5, and BD to accommodate electronic filing of information with the new CRD when it became operational. The Commission approved the amended forms in July 1996.[9]

On November 25, 1996, the NASD filed a proposed rule change designed to permit the NASD to release additional information regarding the disciplinary history of its members and persons associated with a member as part of the Public Disclosure Program.[10] The proposed rule change would have allowed the NASD to release all information on any question on page 3 (Question 22) of the amended Form U–4 and Question 11 of the amended Form BD, as approved by the Commission in July 1996. At the time of this filing, the NASD anticipated that the new CRD system would become operational in the Spring of 1997. The additional information that the NASD proposes to disclose includes:

1. All pending arbitrations and civil proceedings that relate to securities or commodities transactions;

2. Pending written customer complaints alleging sales practice violations and compensatory damages of $5,000 or more;

3. Settlements of $10,000 or more of arbitrations, civil suits, and customer complaints involving securities or commodities transactions;

4. Current investigations involving criminal or regulatory matters;

5. Terminations of employment after allegations involving violations of investment-related statutes or rules, fraud, theft, or failure to supervise investment-related activities;

6. Bankruptcies less than 10 years old and outstanding liens or judgments;

7. Bonding company denials, pay outs, or revocations; and

8. Any suspension or revocation to act as an attorney, accountant, or federal contractor.

In January 1997, NASD Regulation senior management determined that the CRD redesign should be reassessed in light of changing business needs and rapidly advancing technology. The CRD reassessment reviewed each of the components of the CRD redesign, developed a revised Internet-based technology architecture and strategy for going forward with CRD modernization, and mapped that architecture into a series of incremental projects that will provide an overall modernization of CRD before the turn of the century.

As a result of the CRD reassessment and revised technology, the NASD is withdrawing the previously proposed rule change (SR–NASD–96–38) to the Public Disclosure Program because it was premised on the implementation of the redesigned CRD and the use of the amended Form U–4, Form U–5, and Form BD.

This filing, which replaces SR–NASD–96–38, proposes the same substantive disclosure, However, to accomplish the release of the additional information, the NASD has reformatted the questions set forth on the page 3 of amended Form U–4; questions 13 through 16 on amended Form U–5; and the Disclosure Reporting Pages for both Forms in a manner that is compatible with its current CRD technology architecture. The reformatted, interim forms contain no substantive changes to any of the questions on those pages.

The Association has clarified the definitions of ''investigation'' and ''sales practice violation'' for purposes of the Forms. For purposes of Forms U–4 and U–5 reporting, the instructions clarify that an ''investigation'' includes an NASD investigation after a ''Wells'' notice has been given or after a person associated with a member, as defined in the NASD By-Laws, has been advised by the staff that it intends to recommend formal disciplinary action. The instructions further clarify that a ''sales practice violation'' includes any conduct directed at or involving a customer that would constitute a violation of rules for which a person could be disciplined by any self-regulatory organization.

The Association also proposes a technical correction to the interim Form U–5. On the amended Form U–4,[11] the Association defined the term ''investment-related'' as pertaining to ''securities, commodities, banking, insurance, or real estate investment company, investment adviser, futures

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[7] The NASD proposes that the disclosure of this additional information will become effective on February 17, 1998. Information released from January 1 to February 17, 1998, would include only that information that currently is required to be reported on Forms U–4 and U–5. See Amendment No. 2, pp. 1–2.

[8] See Securities Exchange Act Rel. No 30629 (April 23, 1992) 57 FR 18535 (April 30, 1992); and Securities Exchange Act Rel. No. 32568 (July 1, 1993) 58 FR 36723 (July 8, 1993).

[9] See Securities Exchange Act Rel. No. 37407 (July 5, 1996) 61 FR 36595 (July 11, 1996); and Securities Exchange Act Rel. No. 37431 (July 12, 1996) 61 FR 37357 (July 18, 1996). See also Securities Exchange Act Rel. No. 37632 (September 4, 1996) 61 FR 47412 (September 9, 1996).

[10] See *supra* note 5.

[11] See *supra* note 9.

sponsor, bank, or savings association.'' The Association intended that the same definition apply for the Form U–5, but the word ''issuer'' was inadvertently omitted. Thus, on the interim Form U–5, this omission is corrected so that both the interim Form U–4 and Form U–5 set forth the same definition. Similarly, the definition of the term ''appropriate signatory'' on the interim Form U–5 is corrected to refer to ''issuer'' rather than ''issuer of securities'' because the former term was intended to be used consistently on the amended Forms U–4 and U–5. Thus, the interim Forms U–4 and U–5 have been corrected to reflect the intended reference and its consistent application.

The instructions to and reformatted pages of the proposed interim Forms U–4 and U–5 were submitted with the proposal as Attachment A.[12] The NASD proposes to make the interim Forms and the disclosure of the additional information set forth in this rule filing effective on February 17, 1998. This effective date will permit members and the NASD to complete annual registration renewals and permit the NASD to train members on the use of the interim Forms before the interim Forms are implemented. The NASD proposes to begin responding to electronic inquiries for Public Disclosure Program information via the Internet after this rule filing is approved, on or about January 1, 1998. The information that would be released from January 1 to February 17, 1998, would include only that information that currently is required to be reported on the Forms U–4 and U–5 and is currently released under IM–8310–2.[13]

2. Statutory Basis

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6)[14] and 15A(i)[15] of the Act. The NASD believes the proposed rule change will further the goals of these sections of the Act inasmuch as the increased disclosure will enhance the access of members of the public to information that will help them to determine whether to conduct or continue to conduct business with an NASD member or any of the member's associated persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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 submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30623 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

[12] See *supra* note 6.

[13] See *supra* notes 7 and 8.

[14] Section 15A(b)(6) requires that the Association amend its rules to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and in general, to protect investors and the public interest.

[15] Section 15A(i) requires the Association to: (1) Establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39328; File No. SR–PCX–97–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Incorporated Relating to Applicant Specialists on the Exchange

November 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], notice is hereby given that on November 10, 1997, the Pacific Exchange, Incorporated (''PCX'' or ''Exchange'') filed with the Securities 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 PCX. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to make technical changes to its rules on the procedures relating the approval process for applicant specialists on the Exchange. The text of the proposed rule changes is available at the Office of the Secretary, PCX, and in the Public Reference Room 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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PCX Rule 5.27(d) currently provides that an applicant for appointment as a registered specialist (the ''applicant specialist'') must function in a market making capacity at a specialist post on the floor of the Exchange for a minimum period of three months, and that the applicant specialist will be required to perform primary market making responsibilities in at least one issue throughout this minimum period. It further provides that the applicant specialists' performance will be reviewed by the Equity Allocation Committee after the first thirty days and again after the first seventy-five days. Finally, it states that the evaluation of the applicant specialist's performance will be based upon the results of an Applicant Specialist Evaluation Questionnaire Survey and, where applicable, the National Market System Quote Performance and P/COAST Limit Order Acceptance Performance.

The Exchange is proposing to eliminate the provision that states that the applicant specialists' performance will be reviewed after three months (or seventy-five days). Such reviews currently may be, and generally are, waived pursuant to Rule 5.27(e). However, as discussed below, the Exchange is proposing to add a provision to Rule 5.27(e) to permit a review of an applicant specialist's performance (*i.e.*, a review after the first thirty-day review) on a case-by-case basis. The Exchange is also proposing to eliminate superfluous language in Rule 5.25(d) that refers to the Specialist Evaluation that is conducted pursuant to Rule 5.37(a).[2] In addition, the Exchange is proposing to add a cross reference to Rule 5.37(a) in order to clarify the term ''Applicant Specialist Evaluation.''

PCX Rule 5.27(e) currently states, in part, that the Equity Allocation Committee will make recommendations with respect to each applicant specialist to the Joint Equity Floor Trading Committee based upon its review of the responses contained in the Applicant Specialist Evaluation Questionnaire Survey, National Market System Quote Performance, P/COAST Limit Order Acceptance Performance, as well as any written comments solicited or received from other floor members. The Exchange is proposing to remove the words ''Questionnaire Survey, National Market System Quote performance, P/COAST Limit Order Acceptance Performance'' from this rule because they are superfluous. In addition, the Exchange is proposing to add a cross reference in Rule 5.27(e) to Rule 5.37(a) in order to clarify the term ''Applicant Specialist Evaluation.''

PCX Rule 5.27(e) currently states, in part, that in such cases as the Equity Allocation Committee deems appropriate, the three month performance evaluation required for an applicant specialist may be waived, and that such a waiver will be based upon the Equity Allocation Committee's determination that the applicant specialist has demonstrated a degree of knowledge and experience which will enable the Committee to immediately make a favorable recommendation to the Joint Equity Floor Trading Committee concerning the applicant specialists' qualifications. The Exchange is proposing to replace those provisions with the following provisions: ''In such cases as the Equity Allocation Committee deems appropriate, the thirty-day performance evaluation required for an applicant specialist may be extended or waived. Such a waiver or extension will be based upon the Equity Allocation Committee's determination of whether the applicant specialist has demonstrated a degree of knowledge and experience that will enable the Committee to immediately make a favorable recommendation to the Joint Equity Floor Trading Committee concerning the applicant specialist's qualification.'' This new provision will allow the Equity Allocation Committee to continue to require an applicant specialist to be evaluated more than once before being approved, but it eliminates the specification of a review after 75 days in such situations.

The Exchange is also proposing to modifying Rule 5.27(d) so that it will state that applicant specialists must function in a market making capacity at a specialist post on the floor of the Exchange for a minimum period of thirty days, unless the Allocation Committee waives this requirement pursuant to Rule 5.27(e).

The purpose of the proposed rule change is to assure that Rules 5.27 (d) and (e) reflect the Exchange's current practice on approving an applicant for appointment as a registered specialist. Specifically, those rules will now reflect the fact that applicants are generally considered for appointment as registered specialists just one time, after thirty days. As under the current rule, the Allocation Committee can require an additional review of the applicant's performance, but such a review would not need to be conducted after the first 75 days. Thus, under the rule change, the Committee will have greater flexibility as to the timing of the second review. In addition, under the rule change, the Allocation Committee will be permitted to waive the first performance review (after the first thirty days.[3]

The Exchange believes the proposed rule change is consistent with Section 6(b)[4] of the Act in general and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market by clarifying the rules and making the rules better reflect how the applicant specialist review process is generally implemented.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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

Because the foregoing rule changes have been designated by the Exchange as a policy effecting a change solely in the administration of the Exchange that does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition, it has become effective pursuant to Section 19(b)(3)(A)(iii)[6] of the Act and Rule 19b–4(e)(3)[7] thereunder. At any time within 60 days of the filing of a rule change, the Commission may summarily abrogate the 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.

[2] The Commission has recently approved a PCX rule change to extend its specialist evaluation pilot program for six months and to make certain changes to the pilot program. *See* Exchange Act Release No. 38806 (July 1, 1997) 62 FR 36860 (July 9, 1997).

[3] The Exchange notes that as a matter of practice, the Allocation Committee will only waive the first performance review in situations where a specialist transfers from one post to another, and has received a performance review at the post from which he or she has transferred.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(e)(3).

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 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 of the PCX. All submissions should refer to File No. SR–PCX–97–44 and should be submitted by December 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30628 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39325; File No. SR–PHLX–97–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to a Revision to the Exchange's Equity Floor Brokerage Assessment Fee

November 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 5, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 Phlx, pursuant to Rule 19b–4 under the Act, proposes to amend the Exchange's Equity Floor Brokerage Assessment schedule which currently determines the rate of the assessment on a member's monthly equity floor brokerage based upon whether the member is a specialist with funds on deposit at the Stock Clearing Corporation of Philadelphia (SCCP) or not. The Exchange hereby proposes to change the fee to a flat rate of 1.25% of the amount that any member bills out in floor brokerage on the Phlx Equity floor each month. The schedule will be amended as follows (brackets indicate deletions, italics indicates additions):

Summary of Equity Charges

EQUITY FLOOR BROKERAGE ASSESSMENT

[5%] *1.25%* of net floor brokerage income [with specialist credits]

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

Currently, the Exchange assesses a monthly fee on the amount of money a floor broker bills to its customers each month for floor brokerage services with respect to equity securities. The rate used to calculate the fee is either 5% if the member only conducts business as a floor broker, or is discounted to 1.25% if the member also conducts business as an equity specialist with funds on deposit at SCCP. When this fee was originally adopted in 1974, the Exchange intended to encourage members who conducted business on the equity floor as floor brokers to also become specialists and open an account at SCCP. In recent years, the Exchange has observed that almost all floor brokers on the Equity floor were also specialists, thereby taking advantage of the lower rate. The Exchange has now decided that the fee should be determined solely by the amount of business a floor broker conducts. Accordingly, the Exchange is proposing to redesignate the fee as 1.25% of a member's floor brokerage on the Exchange Equity floor.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act,[2] in general, and furthers the objectives of Section 6(b)(4)[3] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

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

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (e)(2) of Rule 19b–4 thereunder.[5]

At any time within 60 days of the filing of the 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

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(e)(2).

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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–97–58 and should be submitted by December 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30624 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

United States International Telecommunications Advisory Committee (ITAC), Standardization Sector (ITAC–T) Study Groups D and CITEL AD–HOC; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee Standardization Section (ITAC–T) Study Group D and CITEL AD–HOC will meet on Monday, January 5, 1998, Room 1207 at 9:00 a.m. and Tuesday, February 17, 1998, at 9:00 a.m. in the same room at the Department of State, 2201 C Street, NW., Washington, DC 20520.

The agenda for study group D will include consideration of contributions for upcoming meetings of Study Group 9 and 16. The CITEL Ad Hoc Group will consider the Preparatory process for future CITEL meetings, review possible contributions for the tasks assigned under CITEL Restructure proposals. Any other matters within the competence of Study Group D or the CITEL Ad Hoc Group may be raised at either of those meetings.

Persons presenting contributions to Study Group D should bring 20 copies of such contributions to the meeting.

Please Note: Persons intending to attend these meetings must announce this not later than 48 hours before the meeting to the Department of State by sending a fax to 202–647–7407. The announcement must include company/agency affiliation, name, Social Security number and date of birth. The above includes government and non-government attendees. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: November 10, 1997.

Gary M. Fereno,

Chairman, U.S. ITAC for CITEL and Study Group D.

[FR Doc. 97–30582 Filed 11–20–97; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF STATE

[Public Notice No. 2634]

Shipping Coordinating Committee Subcommittee for the Prevention of Marine Pollution; Meeting Notice

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Corodinating Committee, will conduct an open meeting at 9:30 am on Monday, December 15, 1997, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC 20593–0001.

The purpose of the meeting is to present the results, and to solicit comments from the public regarding the outcome, of the Conference of Parties to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) of the International Maritime Organization (IMO) which met during the period of September 15–26, 1997, at IMO Headquarters in London, England. The Conference adopted the Protocol of 1997, including a new Annex VI to MARPOL 73/78 which contains regulations for the prevention of air pollution from ships, as well as the mandatory Technical Code on control of emissions of nitrogen oxides from new marine diesel engines. In light of these developments, the United States must decide if it should be signatory to the Protocol of 1997. The Coast Guard would, therefore, like to receive any comments from the public on how the United States should proceed with regard to ratification of the Protocol of 1997.

All members of the maritime industry are encouraged to send representatives to participate in this meeting and provide comments regarding the new Annex VI to MARPOL 73/78, and those issues affecting your maritime industry.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Wayne Lundy, U.S. Coast Guard Headquarters, Commandant (G–MSE–3), 2100 2nd Street, SW, Washington, DC 20593–0001 or by calling: (202) 267–2206.

Dated: November 10, 1997.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 97–30583 Filed 11–20–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice No. 2633]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea; Working Group on Safety of Navigation; Notice of Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Thursday, December 11, 1997, in room 6103, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC.

The purpose of the meeting is to prepare for the 44th session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) which is scheduled for July 15–19, 1998, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Routing of ships, ship reporting, and related matters
—Amendments to the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS)
—Revision of SOLAS chapter V
—Development of measures complementary to the Code for Safe Carriage of Irradiated Nuclear Fuel (INF)
—Navigational aids and related matters
—International Telecommunication Union (ITU) matters including Radiocommunication ITU–R Study Group 8
—Operational aspects of wing in ground (WIG) craft: possible amendments to COLREGS
—Revision of the High Speed Craft (HSC) Code

Members of the public may attend these meetings up to the seating

[6] 17 CFR 200.30–3(a)(12).

capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–MOV–3), Room 1407, 2100 Second Street SW, Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: November 10, 1997.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 97–30584 Filed 11–20–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Tradewinds, Inc., for Issuance of Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 97–11–29) Dockets OST–97–2794 and OST–97–2795.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Tradewinds Airlines, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate and foreign charter passenger air transportation.

DATES: Persons wishing to file objections should do so no later than November 28, 1997.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–97–2794 and OST–97–2795 and addressed to the Department of Transportation Dockets (SVC–121.30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: November 18, 1997.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–30653 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee—Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting, correction.

SUMMARY: The FAA is issuing this notice to advise the public that the December 5 meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee, scheduled to discuss Air Carrier and General Aviation Maintenance Issues (62 FR 61424, November 17, 1997) will take place at a different location. The meeting is still scheduled for December 5 from 9:00 a.m. to 1:00 p.m. and will now be held at the Air Transport Association of America, 1301 Pennsylvania Ave. NW, Suite 1100, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Carolina E. Forrester, Federal Aviation Administration (ARM-206), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9690; fax (202) 267-5075.

Issued in Washington, DC on November 17, 1997.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–30654 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 97–3046]

Notice of Request for Renewal of Existing Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to renew the information collection for the Structure Inventory and Appraisal Sheet (OMB 2125–0501).

DATES: Comments must be submitted on or before January 20, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. to 5:00 p.m., E.T; Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope. Interested parties are invited to send comments regarding any aspects of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Charles L. Chambers, Office of Engineering, Bridge Division (HNG–33), (202) 366–4618, Federal Highway Administration, Room 3203, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:00 a.m. to 3:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Structure Inventory and Appraisal Sheet.

OMB Number: 2125–0501.

Background: The collection of the bridge information contained on the Structure Inventory and Appraisal Sheet is necessary to satisfy the requirements of 23 United States Code 144 and 151, and the Code of Federal Regulations, 23 Highways—part 650, subpart C—National Bridge Inspection Standards and subpart D—Highway Bridge Replacement and Rehabilitation Program. Because of a December 1967 catastrophic bridge failure, the Congress enacted the National Bridge Inspection Standards (NBIS) which require the inspection of the condition of bridges, and the reporting of the findings of the inspections at regular intervals for all bridges located on public roads.

The collected NBIS bridge information is used as a basis for setting priorities for the replacement or rehabilitation of bridges under the Highway Bridge Replacement and Rehabilitation Program (HBRRP) and for apportioning HBRRP funds to the States for bridge replacement or rehabilitation. In addition, the information is used for

strategic national defense needs and for preparing the report to Congress on the status of the Nation's highway bridges and funding under the HBRRP.

Respondents: Transportation agencies of the 50 States and the District of Columbia and Puerto Rico.

Average Burden per Response: The average burden is two hours per response.

Estimated Total Annual Burden: The estimated total annual burden is 540,000 hours.

Frequency: Annually.

Authority: 23 U.S.C. Sections 144 and 151, and 23 C.F.R. 650.307, 650.311, and 650.407.

Issued On: October 31, 1997.

George Moore,

Associate Administrator for Administration.

[FR Doc. 97–30577 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 97–3033]

Notice of Request for Renewal of an Existing Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to renew the information collection identified below under supplementary information.

DATES: Comments must be submitted on or before January 20, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB renewal of this information collection.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Wasley, Office of Engineering, 202–366–4658, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Preparation and execution of the Project Agreement and Modifications.

OMB Number: 2125–0529.

Background: Under the provisions of 23 U.S.C. 110, a formal agreement between the State highway agency and the FHWA is required for Federal-aid highway projects. This agreement, referred to as the ''project agreement,'' is in essence a written contract between the State and the Federal government defining the extent of the work to be undertaken and commitments made concerning the project.

The requirements covering project agreements are contained in 23 CFR part 630, subpart C.

Respondents: State highway agencies.

Estimated Annual Burden on Respondents: The estimated annual reporting burden is approximately 12,040 hours.

Authority: 23 U.S.C. 110; 23 CFR 630, subpart C.

Issued On: October 31, 1997.

George Moore,

Associate Administrator for Administration.

[FR Doc. 97–30591 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3122; Notice 1]

Dan Hill & Associates, Inc.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

Dan Hill & Associates, Inc., of Norman, Oklahoma, has petitioned for a one-year temporary exemption from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection*. The basis of the petition is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

This notice of receipt of the petition is published in accordance with agency regulations on the subject and does not represent any judgment by the agency about the merits of the petition.

The applicant manufactures and sells a horizontal discharge trailer (''Flow Boy'') that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is designed to connect with and latch onto various paving machines (''pavers''). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Flow Boy trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards*. Installation of the rear impact guard will prevent the Flow Boy from connecting to the paver. Thus, Flow Boy trailers will no longer be functional and contractors will be forced to use standard dump body trucks or trailers with their inherent limitations and safety risks.

The applicant, which manufactured 81 Flow Boy trailers in 1996 (plus 21 other trailers), has asked for a year's exemption in order to explore the feasibility of a rear impact guard that will allow the Flow Boy trailer to connect to a conventional paver. In the absence of an exemption, it believes that approximately 60 percent of its work force would have to be laid off. Its gross revenues would decrease by $6,000,000 (these have averaged $13,885,000 over its 1994, 1995, and 1996 fiscal years). Present studies show that the placement of the retractable rear impact guard would likely catch excess asphalt as it was discharged into the pavement hopper. Further, the increased cost of the Flow Body would likely cause contractors to choose the cheaper alternative of dump trucks. Finally, the increased weight of the retractable rear impact guard would significantly decrease the payload of the Flow Boy.

Applicant sent its Product Specialist to Germany in 1994 to view underride protection guards installed by a German customer on Flow Boy trailers but the technology proved inapplicable because of differences between German and American pavers. Manufacturers of paving machines are not interested in redesigning their equipment to accommodate a Flow Boy with a rear

impact guard. The applicant has contacted a British manufacturer of a retractable rear impact guard but the information received to date does not look encouraging. If an exemption is granted, the applicant will continue to explore the feasibility of a retractable rear guard that allows connection with a paver.

The applicant believes that an exemption would be in the public interest and consistent with traffic safety objectives because the Flow Boy aids in the construction of the national road system. It spends very little of its operating life on the highway and the likelihood of its being involved in a rear-end collision is minimal. In addition, the design of the Flow Boy is such that the rear tires act as a buffer and reduce the likelihood of impact with the trailer.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket and notice number, and be submitted to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date below will be considered, and will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 11, 1997.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on November 13, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–30675 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Reebie Associates on behalf of Norfolk Southern Railway Company (WB484–1—11/4/97), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 565–1542.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30666 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33503]

Delaware Transportation Group, Inc.—Acquisition Exemption—Delaware Valley Railway Company, Inc.

Delaware Transportation Group, Inc. (DTGI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the Delaware Valley Railway Company, Inc. approximately 23.4 miles of rail line between approximately milepost 31.2, at Gettysburg, PA, and milepost 7.8, at Mt. Holly Springs, PA.

The transaction is scheduled to be consummated on or after October 31, 1997.

This transaction is related to two simultaneously filed notices of exemption in STB Finance Docket No. 33505, *John H. Marino—Continuance in Control Exemption—Delaware Transportation Group, Inc., Gettysburg Railway Company, Inc., and Evansville Terminal Company, Inc.,* wherein John H. Marino will continue in control of DTGI, upon its becoming a Class III rail carrier and STB Finance Docket No. 33504, *Gettysburg Railway Company, Inc.—Lease and Operation Exemption—Delaware Transportation Group, Inc.,* wherein Gettysburg Railway Company, Inc., will lease and operate the lines being acquired by DTGI.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33503, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20036.

Decided: November 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30670 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33505]

John H. Marino—Continuance in Control Exemption—Delaware Transportation Group, Inc., Gettysburg Railway Company, Inc., and Evansville Terminal Company, Inc.

John H. Marino (Marino) has filed a notice of exemption to continue in control of the Delaware Transportation Group, Inc. (DTGI), the Gettysburg Railway Company, Inc. (GRCI), and the Evansville Terminal Company, Inc. (ETCI).

DTGI and GRCI will become Class III rail carriers upon conclusion of the transactions covered by two simultaneously filed notices of exemption in (1) STB Finance Docket No. 33503, *Delaware Transportation Group—Acquisition Exemption—Delaware Valley Railway Company, Inc.*, wherein DTGI seeks to acquire certain rail lines from the Delaware Valley Railway Company, Inc., and (2) STB Finance Docket No. 33504, *Gettysburg Railway Company, Inc.,—Lease and Operation Exemption—Delaware Transportation Group, Inc.*, wherein GRCI will lease and operate the rail lines being acquired by DTGI in STB Finance Docket No. 33503. ETCI is an existing Class III rail carrier operating in the States of Indiana and Illinois.[1]

The transaction was expected to be consummated on or after October 31, 1997.

Marino states that: (i) the rail lines to be controlled do not connect with each other or any other railroads in the corporate family; (ii) the transaction is not part of a series of anticipated

[1] Marino states that he currently possesses an interest in ETCI.

transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33505, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20036.

Decided: November 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30674 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33504]

Gettysburg Railway Company, Inc.—Lease and Operation Exemption—Delaware Transportation Group, Inc.

Gettysburg Railway Company, Inc. (GRCI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Delaware Transportation Group, Inc. (DTGI), and to operate, approximately 23.4 miles of rail line between approximately milepost 31.2, at Gettysburg, PA, and milepost 7.8, at Mt. Holly Springs, PA.

The transaction is scheduled to be consummated on or after October 31, 1997.

This transaction is related to two simultaneously filed notices of exemption in STB Finance Docket No. 33505, *John H. Marino—Continuance in Control Exemption—Delaware Transportation Group, Inc., Gettysburg Railway Company, Inc., and Evansville Terminal Company, Inc.*, wherein John H. Marino will continue in control of GRCI, upon its becoming a Class III rail carrier, and STB Finance Docket No. 33503, *Delaware Transportation Group, Inc.—Acquisition Exemption—Delaware Valley Railway Company, Inc.*, wherein DTGI will acquire the lines to be operated by GRCI.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33504, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20035.

Decided: November 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30671 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33493]

RailAmerica, Inc.—Acquisition of Control Exemption—Cape Fear Railways, Inc.

RailAmerica, Inc. (RailAmerica), a noncarrier, has filed a notice of exemption to acquire, through stock purchase, the Cape Fear Railways, Inc. (CF), a Class III railroad, operating in the State of North Carolina.[1]

The transaction was expected to be consummated on or after October 17, 1997.

[1] RailAmerica will purchase the stock of CF from Seaboard Corporation.

RailAmerica directly controls 11 common carrier Class III railroads operating in 7 states: the Cascade and Columbia River Railroad Company; the Delaware Valley Railway Company, Inc.; the St. Croix Valley Railroad Company; the Gettysburg Railway; the Huron & Eastern Railway Company, Inc.; the Minnesota Northern Railroad, Inc.; the Otter Tail Valley Railroad Company; the Saginaw Valley Railway Company, Inc; the West Texas & Lubbock Railroad Company, Inc.; the Dakota Rail, Inc.; and the South Central Tennessee Railroad Company.

RailAmerica states that: (i) The rail lines to be operated by CF do not connect with any railroad in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect CF with any railroad in the corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33493, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gary Laakso, Esq., RailAmerica, Inc., 301 Yamato Road, Suite 1190, Boca Raton, FL 33431.

Decided: November 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30668 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33500]

Rutland Line, Inc.—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Rutland Line, Inc. (RLI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 23 miles of rail line from The Burlington Northern and Santa Fe Railway Company (BNSF) from milepost 42.67, at Geneseo Junction, ND, to milepost 65.60, at the North Dakota/South Dakota border (subject line).[1] RLI will also acquire BNSF's interest in certain spur trackage and real estate at Hankinson and Lidgerwood, ND. In addition, RLI will obtain incidental operating rights to operate overhead rail freight services on BNSF's lines from milepost 212.32, at Breckenridge, MN, to milepost 195.6, at Aberdeen Line Junction, MN, and from milepost 0.00, at Aberdeen Line Junction, to milepost 0.60, at BN Junction, MN. Further, BNSF will also assign to RLI its operating rights under a July 5, 1955 agreement from BNSF milepost 0.60, at BN Junction, to CPRS[2] milepost 205.6, at Hankinson, and its operating rights under a September 18, 1959 agreement from CPRS milepost 205.6, at Hankinson, to BNSF milepost 42.67, at Geneseo Junction.

The transaction was scheduled to be consummated on or after October 30, 1997. Because the exemption was filed on October 24, 1997, the transaction could not have been consummated sooner than October 31, 1997.

This transaction is related to STB Finance Docket No. 33501, *Douglas M. Head, Kent P. Shoemaker and Charles H. Clay—Continuance in Control Exemption—Rutland Line, Inc.*, wherein the named individuals have concurrently filed a petition for exemption to continue in control of RTI, upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33500, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jo A. DeRoche, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

Decided: November 14, 1997.

By the Board, Beryl Gordon, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30669 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–303 (Sub–No. 17X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Marquette and Alger Counties, MI

Wisconsin Central Ltd. (WCL) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* abandon approximately 37.3-mile line of railroad on the Marquette-Munising Line, between milepost 154, at a point east of Marquette, and milepost 116.7 in Munising Junction, in Marquette and Alger Counties, MI. The line traverses United States Postal Service Zip Codes 49806, 49822, 49855 and 49862.

WCL has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 21, 1997, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 1, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 11, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael J. Barron, Jr., Wisconsin Central Ltd., P.O. Box 5062, Rosemont, IL 60017–5062.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

WCL has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 26, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking

[1] RLI will enter into an agency agreement with Red River Valley & Western Railroad (RRVW) whereby RRVW will perform operations in RLI's name and for RLI's account on the subject line. However, RLI will retain the obligation to provide common carrier service on the subject line.

[2] This abbreviation refers to joint BNSF/Soo Line Railroad Company track.

[1] WCL has stated that it will not consummate the proposed abandonment until the pending petition to revoke in *Sault Ste. Marie Bridge Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company*, STB Finance Docket No. 33290, has been resolved, but that in no event will it consummate the abandonment before January 5, 1998.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See* Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See 49 CFR 1002.2(f)(25).*

conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WCL shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WCL's filing of a notice of consummation by November 21, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: November 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30667 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Bond Of Indemnity to the United States of America.

DATES: Written comments should be received on or before January 23, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Special Bond of Indemnity to the United States of America.

OMB Number: 1535–0062.

Form Number: PD F 2966.

Abstract: The information is requested to support a request for refund of the purchase price of savings bonds purchased in a chain letter scheme.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 665.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 17, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–30606 Filed 11–20–97; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Authorization for purchase and request for change of United States Series EE Savings Bonds.

DATES: Written comments should be received on or before January 23, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Authorization For Purchase And Request For Change United States Savings Bonds.

OMB Number: 1535–0111.

Form Numbers: SB 2152 and SB 2153.

Abstract: The information is requested to support a request by employees to authorize employers to allot funds from their pay for the purchase of savings bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 1,600,000.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 33,333.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 17, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–30607 Filed 11–20–97; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Regulations governing the offering of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

DATES: Written comments should be received on or before January 23, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing The Offering Of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

OMB Number: 1535–0127.

Abstract: The information is requested to establish an investor account, issue and redeem securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business.

Estimated Number of Respondents: 37.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 20.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 17, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–30608 Filed 11–20–97; 8:45 am]

BILLING CODE 4810–39–P

Corrections

Federal Register

Vol. 62, No. 225

Friday, November 21, 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.

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

Correction

In notice document 97–29519 beginning on page 60510, in the issue of Monday, November 10, 1997, make the following correction:

On page 60511, in the first column, in the **DATES** section ''[insert date 60 days from publication in the **Federal Register**]'' should read ''January 9, 1998''.

BILLING CODE 1505-01-D

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37 CFR Part 258

[Docket No. 96-3 CARP SRA]

Rate Adjustment for the Satellite Carrier Compulsory License

Correction

In rule document 97–28543 beginning on page 55742 in the issue of Tuesday, October 28, 1997 make the following corrections:

(1) On page 55744, in the second column, in the fourth line ''current date'' should read ''current expiration date''.

(2) On page 55745, in the second column, seven lines from the bottom ''commercial'' should read ''Commercial''.

(3) On the same page in the third column, in the first line ''collective'' should ''collectively''.

(4) On page 55746, in the first column, seven lines from the bottom ''prize'' should read ''price''.

(5) On page 55747, in the third column, in the third full paragraph, in the last line ''except'' should read ''accept''.

(6) On page 55748, in the third column, in the first full paragraph, in the sixth line ''not'' should read ''note''.

(7) On page 55750, in the third column, six lines from the bottom ''11(f)'' should read ''111(f)''.

(8) On page 55752:

(a) In the first column, in the second full paragraph, in the fifth line ''retransmission'' should read ''retransmissions''.

(b) In the second column, in the first full paragraph, in the first line ''may not'' should read ''may not be''.

(c) In the same column, in the last full paragraph, in the third line ''has'' should read ''had''.

(d) In the same column, in the same paragraph, in the tenth line ''nuclear'' should read ''unclear''.

(9) On page 55753, in the first column, in the second full paragraph, twelve lines from the bottom ''1998'' should read ''1988''.

(10) On the same page, in the third column, in the first paragraph, in the twelfth line ''retransmissions'' was misspelled.

(11) On page 55754, in the second column:

(a) Under the heading ''3. Recommendation of the Register'', in paragraph (ii), in the sixth line ''described'' should read ''describes''.

(b) In the last paragraph, in the second line ''dates'' should read ''date''.

(12) On page 55755, in the second column:

(a) In the eighth line ''696'' should read ''969''.

(b) In the first full paragraph, four lines from the bottom ''statement'' should read ''statements''.

(13) On the same page, in the third column, in the fourth line ''has'' should read ''had''.

(14) On page 55756, in the third column:

(a) In the second full paragraph, in the ninth line ''known'' should read ''know''.

(b) In the fourth full paragraph, in the sixteenth line ''to'' should read ''do''.

(15) On page 55757, in the third column, in the first full paragraph, nine lines from the bottom ''if'' should read ''it''.

(16) On page 55758, in the first column:

(a) In the first line ''the'' should read ''this''.

(b) In the first full paragraph, seven lines from the bottom ''was asked'' should read ''was not asked''.

(c) In the second full paragraph, in the fourth line ''rates'' should read ''raises''.

(d) In the same paragraph, in the tenth and eleventh lines ''McLaughin'' and ''Harin'' should read ''McLaughlin'' and ''Haring''.

(17) On the same page, in the third column, in the first line the notation for footnote ''10'' should read ''19''.

(18) On page 55759, in the first column, in the first full paragraph, in the ninth line ''hers'' should read ''her''.

BILLING CODE 1505-01-D

Friday
November 21, 1997

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 571 and 595
Air Bag On-Off Switches; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 595

[Docket No. NHTSA–97–3111]

RIN 2127—AG61

Air Bag On-Off Switches

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This final rule seeks to preserve the benefits of air bags, while providing a means for reducing the risk of serious or fatal injury that current air bags pose to identifiable groups of people, e.g., people who cannot avoid sitting extremely close to air bags, people with certain medical conditions, and young children. The benefits are substantial; current air bags had saved about 2,620 drivers and passengers, as of November 1, 1997. However, those air bags had also caused the death of 87 people in low speed crashes, as of that same date. Most of those people were unbelted or improperly belted. Although vehicle manufacturers are beginning to replace current air bags with new air bags having some advanced attributes, i.e., attributes that will automatically avoid the risks created by current air bags, an interim solution is needed now for those groups of people at risk from current air bags in existing vehicles.

This final rule exempts motor vehicle dealers and repair businesses from the statutory prohibition against making federally-required safety equipment inoperative so that, beginning January 19, 1998, they may install retrofit manual on-off switches for air bags in vehicles owned by or used by persons whose requests for switches have been approved by the agency. While the administrative process necessary to provide prior approval is more complex than the process proposed by the agency in January 1997 for enabling vehicle owners to obtain switches, prior approval is warranted by several considerations. The requirement for prior approval of requests for switches emphasizes to vehicle owners the importance of taking the safety consequences of a decision to seek and use on-off switches very seriously. While some people need and will be benefited by on-off switches, the vast majority of people will not be. Further, checking the requests for switches is more appropriately performed by the agency than by the dealers and repair businesses who will install the switches. Finally, prior approval will enable the agency to monitor directly, from the very beginning, the implementation of the regulation and the effectiveness of its regulation and the associated educational materials in promoting informed decisionmaking about on-off switches.

Under the exemption, vehicle owners can request an on-off switch by filling out an agency request form and submitting the form to the agency. On the form, owners must certify that they have read an information brochure discussing air bag safety and risks. The brochure describes the steps that the vast majority of people can take to minimize the risk of serious injuries from air bags while preserving the benefits of air bags, without going to the expense of buying an on-off switch. The brochure was developed by the agency to enable owners to determine whether they are, or a user of their vehicle is, in one of the groups of people at risk of a serious air bag injury and to make a careful, informed decision about requesting an on-off switch. Owners must also certify that they or another user of their vehicle is a member of one or the risk groups. Since the risk groups for drivers are different from those for passengers, a separate certification must be made on an agency request form for each air bag to be equipped with an on-off switch.

If NHTSA approves a request, the agency will send the owner a letter authorizing the installation of one or more on-off switches in the owner's vehicle. The owner may give the authorization letter to any dealer or repair business, which may then install an on-off switch for the driver or passenger air bag or both, as approved by the agency. The on-off switch must meet certain criteria, such as being equipped with a telltale light to alert vehicle occupants when an air bag has been turned off. The dealer or repair business must then fill in information about itself and its installation in a form in the letter and return the form to the agency.

This final rule also denies a petition for reconsideration of the agency's January 1997 decision in a separate rulemaking not to extend the option for installing original equipment manufacturer on-off switches for passenger air bags to all new vehicles equipped with air bags. As a result of that decision, the option continues to apply only to those new vehicles lacking a rear seat capable of accommodating a rear-facing infant restraint.

DATES: *Effective Date:* Part 595 is effective December 18, 1997. The agency will begin processing air bag on-off switch requests on that same date. If a form is submitted before December 18, it will be given the same priority as a form submitted after that date. Accordingly, there will be no advantage to submitting forms early. Motor vehicle dealers and repair businesses may begin installing switches on January 19, 1998.

The amendments to Part 571 are effective January 19, 1998. Compliance with those requirements is optional before that date.

Petitions: Petitions for reconsideration must be received by January 5, 1998.

ADDRESSES: Petitions for reconsideration should refer to the docket number of this rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For information about air bags and related rulemaking: For additional information, call the NHTSA Hotline at 1–800–424–9393; in the D.C. area, call 202–366–0123. In addition, visit the NHTSA Web site at http://www.nhtsa.dot.gov/airbags/. Among the available materials are descriptions of the procedures for requesting authorization to obtain an on-off switch and a list of questions and answers about air bags and on-off switches. There are also crash videos showing what happens in a crash to a belted, short-statured dummy whose driver air bag is turned off.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary of This Final Rule

A. Final Rule

This final rule seeks to preserve the benefits of air bags, while providing a means for reducing the risks that some current air bag designs pose to discrete groups of people due to their extreme proximity to air bags. This final rule exempts motor vehicle dealers and repair businesses from the statutory prohibition against making federally-required safety equipment inoperative so that, beginning January 19, 1998, they may install, subject to certain conditions, retrofit manual on-off switches for the air bags of vehicle owners whose request is approved by NHTSA. To obtain approval, vehicle owners must submit a request form to NHTSA on which they have certified that they have read an agency information brochure about air bag benefits and risks and that they or a user of their vehicle is a member of one of the risk groups identified by the agency. The agency will begin processing and granting requests on December 18, 1997.

Air bags have saved the lives of about 2,620 drivers and passengers, primarily in moderate and high speed crashes, as of November 1, 1997. However, air bags have also caused fatal injuries, primarily in relatively low speed crashes, to a small but growing number of children, and on rare occasion to adults. These deaths were not random. They occurred when people were too close to their air bag when it began to inflate. The vast majority of these fatalities could have been avoided by preventive steps such as using seat belts, moving the front seats back as much as possible, and putting children in the back seat. Nevertheless, a relatively small number of people may still be at risk, even after taking these steps, because they will be more likely than the general population to be too close to their air bags. Although advanced air bags are the ultimate answer and manufacturers are beginning to install air bags with some advanced attributes, an interim solution is needed for those identifiable groups of persons for whom current air bags in existing vehicles may pose a risk of serious or fatal injury.[1]

Under the exemption, vehicle owners[2] may request a retrofit on-off switch, based on informed decisionmaking and their certification of their membership or the membership of another user of their vehicle in one of the risk groups identified by the agency. After reading the agency information brochure, owners can fill out and sign an agency request form and submit it to NHTSA. The information brochure, which provides guidance about which groups of people may be at risk from air bags and about appropriate use of on-off switches, is intended to inform consumers about which people are at risk from air bags and to promote informed decisionmaking by consumers about whether to request an on-off switch for those persons. To increase the likelihood that the decisions are, in fact, informed, owners requesting a retrofit on-off switch must certify on the request form that they have read the information brochure. To limit the availability of on-off switches to persons at risk of serious air bag injury, the owners must also certify that they or a user of their vehicle is a member of one or more of the risk groups described on the information brochure and listed on the request form. The particular risk group in which membership is claimed must be identified. Since the risk groups for driver air bags are different from those for passenger air bags, a separate certification must be made for each air bag to be equipped with an on-off switch.

To reinforce the importance of taking great care in accurately certifying risk group membership, the agency is requiring owners to submit their requests to the agency. The agency expects that owners will accurately and honestly make the necessary certifications and statements on their request forms, but reserves the right to investigate. The prior approval procedure will also enable the agency to monitor, from the very beginning, the volume of requests and patterns in switch requests and risk group certifications. The computerization of the process of preparing authorization letters will minimize the time needed by the agency to process and respond to the requests. The precise amount of time will depend in large measure on the volume of requests.

The agency strongly urges caution in obtaining and using on-off switches. As noted above, on-off switches are not

[1] An advanced air bag senses or responds to differences in crash severity, occupant size or the distance of the occupant from the air bag at the time of a crash. The advanced air bag adjusts its performance by suppressing deployment in circumstances in which fatalities might otherwise be caused by the air bag, but not by the force of the crash or by reducing the force of deployment in those circumstances.

[2] This final rule applies to leased as well as owned vehicles. See part VIII.G.8 of this preamble. For the sake of simplicity, however, most references in this preamble are to owners only. Those references should be deemed to include lessees as well as owners.

needed for the vast majority of people since they are not at risk. Most people can take steps that will eliminate or significantly reduce their risk without turning off their air bag and losing its protective value. If they take those steps, they will be safer than if they did not take those steps and simply turned off their air bag. The most important steps are using seat belts and other restraints and moving back from the air bag. More important, people who are not at risk will be less safe if they turn off their air bag.

This exemption is subject to certain conditions to promote the safe and careful use of on-off switches. For example, the on-off switches installed pursuant to this exemption must meet certain performance criteria, such as being operable by a key and being accompanied by a telltale to alert vehicle occupants whether the air bag is ''on'' or ''off.'' In addition, to provide a reminder about the proper use of on-off switches, vehicle dealers and repair businesses must give vehicle owners an owner's manual insert describing the operation of the on-off switch, listing the risk groups, stating that the on-off switch should be used to turn off an air bag for risk group members only, and stating the vehicle specific safety consequences of using the on-off switch for a person who is not in any risk group. Those consequences will include the effect of any energy managing features, e.g., load limiters, on seat belt performance.

In response to comments indicating that the definition of ''advanced air bag'' was too vague and that dealers could not reasonably ascertain whether a vehicle was equipped with such air bags, the agency has deferred adoption of that aspect of its proposal which would have prohibited installation of on-off switches for advanced air bags. NHTSA expects to adopt such a prohibition after it develops a more complete definition of ''advanced air bags'' that applies to driver as well as passenger air bags. This deferral should have no practical significance. Although the vehicle manufacturers are beginning to introduce air bags with advanced attributes, the agency does not expect the installation of significant numbers of advanced air bags before it is ready to establish a better definition.

The agency has selected January 19, 1998, as the beginning date for the installation of retrofit on-off switches under this rule. This date allows time for completion of the design, production and distribution of on-off switches and the training of installation personnel. It also allows time for the public education campaign of the agency and other interested parties (e.g., the Air Bag Safety Campaign (ABSC),[3] American Automobile Association (AAA), Centers for Disease Control and Prevention (CDC), Insurance Institute for Highway Safety (IIHS), motor vehicle dealers, and state motor vehicle departments) to effectively reach a substantial percentage of the public before the installation of on-off switches begins. Until on-off switches become available from the vehicle manufacturer for a given vehicle make and model, NHTSA will continue to exercise its prosecutorial discretion to grant requests for deactivating the air bags in that make and model. In view of the relative inflexibility and permanence of deactivation, the discretion will be exercised on a case-by-case basis in the same limited set of circumstances in which the requests are currently granted, e.g., in cases in which unusual medical conditions suggest that deactivation is appropriate, and in cases in which infants must be carried in the front seat of vehicles lacking a rear seat capable of accommodating a rear-facing infant seat.

B. Comparison of NPRM and Final Rule

The final rule being issued today follows, in several important respects, the agency's January 1997 proposal. Most important, the rule makes a means of turning off air bags available to vehicle owners. It simplifies the current process of obtaining a means of turning off air bags. Instead of having to compose an original request letter and type or write the letter out in longhand, as they must to obtain authorization from the agency for deactivation, vehicle owners will be able to fill out an agency request form. To promote informed decisionmaking, this rule requires owners to certify on the request form that they have read an air bag information brochure prepared by NHTSA so that owners can separate fact from fiction about who is really at risk and therefore may need an on-off switch.

However, the final rule differs from the proposal in several other important respects. First, the sole means authorized for turning off air bags is a retrofit on-off switch. Deactivation (i.e., modifying the air bag so that it will not deploy for anyone under any circumstance) is not allowed under the exemption. Although the agency recognized in January 1997 that retrofit on-off switches offered some advantages, the agency proposed deactivation because the apparent unavailability of retrofit on-off switches in the near term made them impracticable. When the deactivation proposal was issued, there were indications from the vehicle manufacturers that they would not be able to provide retrofit on-off switches for existing vehicles in a timely manner. Subsequent to the January 1997 proposal, a number of major vehicle manufacturers began reassessing the practicability of on-off switches and making statements to the agency and the media that they were able to provide retrofit on-off switches for existing vehicles, and for future vehicles. The change to on-off switches in this final rule will enhance safety because the on-off switches are a more focused, flexible means of turning off air bags. They enable consumers to leave air bags on for people who are not at risk and thus will benefit from their protection, and turn them off for people at risk.

Second, vehicle owners must certify that they are a member of one of several specified risk groups or that their vehicle will be driven or occupied by a person who is a member of such a group. The agency proposed to allow any person to choose to have his or her air bags deactivated, without having to demonstrate or state a particular safety need. Under the proposal, applicants would simply have had to fill out an agency form on which they indicated that they had received and read an information brochure explaining the safety consequences of having an air bag deactivated. For the final rule, the agency has devised a new form on which owners desiring an on-off switch for either a driver or passenger air bag not only must certify that they have read the brochure, but also that they or one of the users of their vehicle fall into an identifiable risk group for that air bag. Use of the revised form will help provide reasonable assurance that the exemption is implemented in a manner consistent with safety.

Third, the agency is requiring owners to submit their filled-out forms to the agency for approval. Together with the requirement for certification of risk group membership, the necessity for obtaining agency approval will help limit the installation and use of on-off switches to people who are at risk from air bags and give the agency information about the volume of requests and patterns in switch requests and risk group certifications.

[3] The ABSC represents all automobile manufacturers (domestic and importers), air bag suppliers, many motor vehicle insurance companies and the National Safety Council.

II. Overview of Problem and the Agency's Remedial Actions

A. Introduction

While air bags are providing significant overall safety benefits, NHTSA is concerned that current air bags have adverse effects on certain groups of people in limited situations. Of particular concern, NHTSA has identified 87 primarily low speed crashes in which the deployment of an air bag resulted in fatal injuries to an occupant, as of November 1, 1997.[4] NHTSA believes that none of these occupants would have died if they had not been seated in front of an air bag.

The primary factor linking these deaths is the proximity to air bags at the time of their deployment. All of these deaths occurred under circumstances in which the occupant's upper body was very near the air bag when it deployed.

There were two other factors common to many of the deaths. First, apart from 12 infants fatally injured while riding in rear-facing infant seats, most of the fatally injured people were not using any type of child seat or seat belt. This allowed the people to move forward more readily than properly restrained occupants in a frontal crash. Further, the air bags involved in those deaths were, like almost all current air bags, so-called ''one-size-fits-all'' air bags that have a single inflation level.[5] These air bags deploy with the same force in very low speed crashes as they do in higher speed crashes.

The most direct behavioral solution to the problem of child fatalities from air bags is for children to be properly belted and placed in the back seat whenever possible, while the most direct behavioral solution for the adult fatalities is to use seat belts and move the driver seat back as far as practicable. Implementing these solutions necessitates increasing the percentage of children who are seated in the back and properly restrained in child safety seats. It also necessitates improving the current 68 percent rate of seat belt usage by a combination of methods, including the enactment of State primary seat belt use laws.[6]

The most direct technical solution to the problem of fatalities from air bags is to require that motor vehicle manufacturers install advanced air bags that protect occupants from the adverse effects that can occur from being too close to a deploying air bag.

All of these solutions are being pursued by the agency. However, until advanced air bags can be developed and incorporated into production vehicles, behavioral changes based on improved information and communication about potential hazards and simple, manually operated technology are the best means of addressing fatalities from air bags, especially those involving children.

To partially implement these solutions, and preserve the benefits of air bags, while reducing the risk of injury to certain people, NHTSA issued two other final rules in the past year. One rule requires new passenger cars and light trucks whose passenger air bags are not advanced to bear new, enhanced warning labels. (61 FR 60206; November 27, 1996) The other final rule provides vehicle manufacturers with the temporary option of ensuring compliance by conducting a sled test using an unbelted dummy instead of conducting a vehicle-to-barrier crash test using an unbelted dummy. (62 FR 12960; March 19, 1997) The purpose of the option is primarily to enable vehicle manufacturers to expedite their efforts to lessen the force of air bags as they deploy.

On the behavioral side, the agency has initiated a national campaign to increase usage of seat belts through the enactment of primary seat belt use laws, more public education, and more effective enforcement of existing belt use and child safety seat use laws.

In conjunction with the National Aeronautical and Space Administration, as well as Transport Canada, and in cooperation with domestic and foreign vehicle manufacturers, restraint system suppliers and others through the Motor Vehicle Safety Research Advisory Committee (MVSRAC), NHTSA is undertaking data analysis and research to address remaining questions concerning the development and introduction of advanced air bags. As noted above, the Federal motor vehicle safety standards have permitted, but not required, the introduction of advanced air bags. NHTSA recognizes that, if it were to require advanced air bags, it would have to take into consideration the differing leadtimes for the various kinds of advanced bags under development, and the fact that the longest leadtimes will be those for the most advanced bags. The agency also recognizes the engineering challenge and potential costs associated with incorporating some of the advanced air bag design features into the entire passenger car and light truck fleet. A proposal to require the installation of advanced air bags is expected this winter.

B. Background

1. Air Bags: Safety Issues

a. Lives Saved and Lost. Air bags have proven to be highly effective in reducing fatalities from frontal crashes, the most prevalent fatality and injury-causing type of crash. Frontal crashes cause 64 percent of all driver and right-front passenger fatalities.

NHTSA estimates that, between 1986 and November 1, 1997, air bags have saved about 2,620 drivers and passengers (2,287 drivers (87 percent) and 332 passengers (23 percent)).[7] Of the 2,620, 1,800 (69 percent) were unbelted and 700 (31 percent) were belted. These agency estimates are based on comparisons of the frequency of front seat occupant deaths in vehicles without air bags and in vehicles with air bags. Approximately half of those lives were saved in the last two years. These savings occurred primarily in moderate and high speed crashes. Pursuant to the mandate in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) for the installation of air bags in all passenger cars and light trucks, the number of air bags in vehicles on the road will increase each year. As a result, the annual number of lives saved by air bags will continue to increase each year. Based on current levels of effectiveness, air bags will save more than 3,000 lives each year in passenger cars and light trucks when all light vehicles on the road are equipped with dual air bags. This estimate is based on current seat

[4] The vast majority of the deaths appear to have occurred in crashed in which the vehicle was traveling at less than 15 miles per hour when the air bag deployed. Almost all occurred at vehicle speeds under 20 miles per hour. NHTSA notes that Federal safety standards do not specify a vehicle crash speed at which air bags must deploy.

[5] The Federal safety standards do not require a ''one-size-fits-all'' approach to designing air bags. They permit a wide variety of technologies that would enable air bags to deploy with less force in lower speed crashes or when occupants are out-of-position or suppress deployment altogether in appropriate circumstances.

[6] In States with ''secondary'' seat belt use laws, a motorist may be ticketed for failure to wear a seat belt only if there is a separate basis for stopping the motorist, such as the violation of a separate traffic law. This hampers enforcement of the law. In States with primary laws, a citation can be issued solely because of failure to wear seat belts.

[7] Studies published in the November 5, 1997 issue of the *Journal of the American Medical Association* by IIHS and by the Center for Risk Analysis at the Harvard School of Pulbic Health confirm the overall value of passenger air bags, whle urging action be taken quickly to address the loss of children's lives due to those air bags. IIHS found that passenger air bags were associated with a substantial reduction in crash deaths. The Center evaluated the cost-effectiveness of passenger air bags and concluded that they produce savings at costs comparable to many well-accepted medical and public health practices.

belt use rates (about 68 percent, according to State-reported surveys).

While air bags are saving large numbers of people in moderate and high speed crashes, they sometimes cause fatalities, especially to children, in lower speed crashes. As of November 1, 1997, NHTSA's Special Crash Investigation program had confirmed a total of 87 crashes in this country in which the deployment of an air bag resulted in fatal injuries. Forty-nine of those fatalities involved children. Three adult passengers have also been fatally injured. Thirty-five drivers are known to have been fatally injured.

In addition to the 87 confirmed air bag related deaths, there were 18 deaths under investigation, as of November 1, 1997, 1 involving a 1996 crash and 17 involving 1997 crashes. The single 1996 death still under investigation involved a driver. The 17 deaths in 1997 involved 1 infant, 11 children ranging in age from 1 to 11 years, and 5 drivers. Although the agency cannot predict how many of the deaths under investigation that will ultimately be categorized as confirmed air bag related deaths, the agency notes that roughly 80 percent of the deaths investigated to date have ultimately been confirmed.

The trends in the annual numbers of child and adult deaths differ significantly. The annual number of confirmed fatally-injured children increased significantly in 1993 through 1996 (1 in 1993, 5 in 1994, 8 in 1995 and 22 in 1996), while the number of confirmed fatally-injured drivers did not increase appreciably in the same period (4 in 1993, 7 in 1994, 4 in 1995, and 6 in 1996). As of November 1, 12 children and 6 drivers had been confirmed as having been fatally injured by air bags this year. However, as noted above, additional deaths are under investigation. The total number of confirmed deaths for this year will not be known until some time next year.

The number of vehicles with either driver air bags or both driver and passenger air bags increased steadily over the last four years. Since the fall of 1996, the number of vehicles with both driver and passenger air bags has been increasing at the rate of 1 million vehicles per month. The ratio of driver deaths to vehicles with driver air bags decreased significantly between 1993 and 1996. The ratio of child deaths to vehicles with passenger air bags also decreased, but not nearly so much.

b. Causes of Air Bag Fatalities. The one fact that is common to all who died is *not* their height, weight, sex, or age. Instead, it is the fact that they were too close to the air bag when it started to deploy. For some, this occurred because they were sitting too close to the air bag. More often this occurred because they were not restrained by seat belts or child safety seats and were thrown forward during pre-crash braking.

Air bags are designed to save lives and prevent injuries by cushioning occupants as they move forward in a front-end crash. They keep the occupants' head, neck, and chest from hitting the steering wheel or dashboard. To accomplish this, an air bag must move into place quickly. The force of a deploying air bag is greatest in the first 2–3 inches after the air bag bursts through its cover and begins to inflate. Those 2–3 inches are the ''risk zone.'' The force decreases as the air bag inflates further.

Occupants who are very close to or in contact with the cover of a stored air bag when the air bag begins to inflate can be hit with enough force to suffer serious injury or death. In contrast, occupants who are properly restrained and who sit 10 inches away from the air bag cover will contact the air bag only after it has completely or almost completely inflated. The air bag then will cushion and protect them from hitting hard surfaces in the vehicle and thus provide a significant safety benefit, particularly in moderate to serious crashes.

The confirmed fatalities involving children have a number of fairly consistent characteristics. First, all 12 infants were in rear-facing infant seats. Second, the vast majority of the older children were not using any type of restraint.[8] Third, almost all of the small number of older children who were using some type of restraint were improperly restrained or were leaning so far forward that benefits of being restrained were largely negated. For example, some were too small to be using just a vehicle lap and shoulder belt. Fourth, as noted above, the crashes occurred at relatively low speeds. If the passenger air bag had not deployed in those crashes, the children would probably not have been killed or seriously injured. Fifth, the infants and older children were very close to the dashboard when the air bag deployed. Properly installed rear-facing infant seats are always very close to the dashboard. For essentially all of the older children, the non-use or improper use of occupant restraints or the failure to use the restraints most appropriate to the child's weight and age, in conjunction with pre-impact braking, resulted in the forward movement of the children.[9] As a result, they were very close to the air bag when it deployed. Because of their proximity, the children sustained fatal head or neck injuries from the deploying passenger air bag.

As in the case of the children fatally injured by air bags, the key factor regarding the confirmed adult deaths has been their proximity to the air bag when it deployed. The most common reason for their proximity was failure to use seat belts. Only 11 of the 35 drivers were known to be properly restrained by lap and shoulder belts at the time of the crash. Moreover, of those eleven, two appeared to be out of position (blacked out, due to medical conditions, and slumped over the steering wheel) at the time of the crash. As in the case of children, the deaths of drivers have occurred primarily in low speed crashes.

The other cause of air bag fatalities is the design of current air bags. Air bag fatalities are not a problem inherent in the concept of air bags or in the agency's occupant restraint standard, Standard No. 208 (49 CFR 571.208). That standard has long permitted, but not required, a variety of design features that would reduce or eliminate the fatalities that have been occurring, e.g., higher deployment thresholds that will prevent deployment in low speed crashes,[10] different folding patterns and aspiration designs, dual stage inflators,[11] new air bag designs like the Autoliv ''Gentle Bag'' that deploys first radially and then toward the occupant, and advanced air bags that either adjust deployment force or suppress deployment altogether in appropriate circumstances. While some of these features are new or are still under development, others have been around for more than a decade. The agency identified a number of these features in conjunction with its 1984 decision concerning automatic occupant

[8] 29 (or 78%) of the 37 forward-facing children who were fatally injured by air bags were not using any type of belt or other restraint. This included 4 children who were sitting on the laps of other occupants. The remaining 8 children included some who were riding with their shoulder belts behind them and some who were wearing lap and shoulder belts but who also should have been in booster seats because of their small size and weight. Booster seat use could have improved shoulder belt fit and performance. These various factors and pre-crash braking allowed the children to get too close to the air bag when it began to inflate.

[9] For information on the restraint most appropriate for a particular child, see the table at the end of the information brochure in Appendix A in the regulatory text.

[10] Mercedes Benz offers passenger air bags whose deployment threshold is 12 mph if the passenger is unbelted and 18 mph if the passenger is belted.

[11] The air bags installed in approximately 10,000 GM cars in the 1970's were equipped with dual stage inflators. Today, Autoliv, a Swedish manufacturer of air bags, has a ''gas generator that inflates in two steps, giving the bag time to unfold and the vent holes to be freed before the second inflation starts. Should the bag then encounter an occupant, any excessive—gas indeed bag pressure—will exit through the vent holes.''

protection and noted that vehicle manufacturers could choose among those features to address the problems reported by those manufacturers concerning out-of-position occupants.

Although Standard No. 208 permits vehicle manufacturers to install air bags incorporating those advanced features, very few current air bags do so. Instead, vehicle manufacturers have thus far used designs that inflate with the same force under all circumstances. Although the vehicle manufacturers are now working to incorporate advanced features in their air bags, the introduction of air bags with those features is only just beginning. Introduction of significant numbers of advanced air bags may not begin for another several model years.

With the help of a recent amendment to Standard No. 208, vehicle manufacturers have been able to expedite the introduction of depowered air bags. While these new air bags will reduce, but not eliminate, the likelihood of air bag-caused deaths, they still deploy with the same force in all crashes, regardless of severity, and regardless of occupant weight or location. Many manufacturers have introduced substantial numbers of these less powerful air bags in the current model year (1998).

2. Air Bag Requirements

Today's air bag requirements evolved over a 25-year period. NHTSA issued its first public notice concerning air bags in the late 1960's. However, it was not until the fall of 1996 that manufacturers were first required to install air bags in any motor vehicles.[12]

When the requirements for automatic protection (i.e., protection by means that require no action by the occupant) were adopted in 1984 for passenger cars, they were expressed in broad performance terms that provided vehicle manufacturers with choices of a variety of methods of providing automatic protection, including automatic belts and air bags. Further, the requirements allowed broad flexibility in selecting the performance characteristics of air bags.

Later, those requirements were extended to light trucks. Ultimately, strong market demand led manufacturers to begin to install air bags in all of their passenger cars and light trucks.

In 1991, Congress included a provision in ISTEA directing NHTSA to amend Standard No. 208 to require that all passenger cars and light trucks provide automatic protection by means of air bags. ISTEA required at least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996, and before September 1, 1997, to be equipped with an air bag and a manual lap/shoulder belt at both the driver and right front passenger seating positions. Every passenger car manufactured on or after September 1, 1997, must be so equipped. The same basic requirements are phased-in for light trucks one year later.[13] The final rule implementing this provision of ISTEA was published in the **Federal Register** (58 FR 46551) on September 2, 1993.

Standard No. 208's automatic protection requirements, whether for air bags or (until the provisions of ISTEA fully take effect) for automatic belts, are performance requirements. The standard does not specify the design of an air bag. Instead, vehicles must meet specified injury criteria, including criteria for the head and chest, measured on test dummies. Until recently, these criteria had to be met for air bag-equipped vehicles in barrier crashes at speeds up to 30 mph, both with the dummies belted and with them unbelted.

However, on March 19, 1997, the agency published a final rule amending Standard No. 208 to temporarily provide the option of testing air bag performance with an unbelted dummy in a sled test incorporating a 125 millisecond standardized crash pulse instead of in a vehicle-to-barrier crash test. This amendment was made primarily to expedite manufacturer efforts to reduce the force of air bags as they deploy.

Standard No. 208's current automatic protection requirements, like those established 13 years ago in 1984, apply to the performance of the vehicle as a whole, and not to the air bag as a separate item of motor vehicle equipment. The broad vehicle performance requirements permit vehicle manufacturers to ''tune'' the performance of the air bag to the specific attributes of each of their vehicles.

The Standard's requirements also permit manufacturers to design seat belts and air bags to work together. Before air bags, seat belts had to do all the work of restraining an occupant and reducing the likelihood that the occupant will strike the interior of the vehicle in a frontal crash. Another consequence of not having air bags was that vehicle manufacturers had to use relatively rigid and unyielding seat belts that can concentrate a lot of force along a narrow portion of the belted occupant's body in a serious crash. This concentration of force created a risk of bone fractures and injury to underlying organs. The presence of an air bag increases the vehicle manufacturer's ability to protect belted occupants. Through using energy managing devices, such as load limiters, a manufacturer can design seat belts to give or release additional belt webbing before the belts can concentrate too much force on the belted occupant's body. When these new belts give, the deployed air bag is there to prevent the belted occupant from striking the vehicle interior.

Further, Standard No. 208 permits, but does not require, vehicle manufacturers to design their air bags to minimize the risk of serious injury to unbelted, out-of-position occupants, including children and small drivers. The standard gives the manufacturers significant freedom to select specific attributes to protect all occupants, including attributes such as the crash speeds at which the air bags deploy, the force with which they deploy, air bag tethering and venting to reduce inflation force when a deploying air bag encounters an occupant close to steering wheel or dashboard, the use of sensors to detect the presence of rear-facing child restraints or the presence of small children and prevent air bag inflation, the use of sensors to detect occupant position and prevent air bag inflation if appropriate, and the use of dual stage

[12] *Air bag firsts*—In view of the confusion evident in some public comments on this rulemaking and even now in some media accounts about when air bags were first required, and by whom, the agency has set forth a brief chronology below:

- 1972 *First year* in which vehicle manufacturers had the *option of installing air bags* in passenger cars as a mean of complying with Standard No. 208. Vehicle manufacturers also had the option of complying by means of installing manual lap and shoulder belts. GM installed driver and passenger air bags in approximately 10,000 passenger cars in the mid-1970's.
- 1986 *First year* in which vehicle manufacturers were *required to install some type of automatic protection* (either automatic belts or air bags) in passenger cars. This requirement was issued by Secretary Dole in 1984. At the time of issuance, the agency expressly noted the concerns expressed by vehicle manufacturers about out-of-position occupants. In response, NHTSA identified a variety of technological remedies whose use was permissible under the Standard. Between 1986 and 1996, vehicle manufacturers chose to comply with the automatic protection requirements by installing over 35 million driver air bags and over 18 million passenger air bags in passenger cars. Another 12 million driver air bags and almost 3 million passenger air bags were installed in light trucks in that same time period.
- 1996 *First year* in which vehicle manufacturers were *required to install air bags* in passenger cars. this requirement was mandated by the 1991 Intermodal Surface Transportation Efficiency Act.

[13] At least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 must be equipped with an air bag and a manual lap/shoulder belt. Every light truck manufactured on or after September 1, 1998 must be so equipped.

versus single stage inflators. Dual stage inflators enable air bags to deploy with lower force in low speed crashes, the type of crashes in which children and drivers have been fatally-injured, and with more force in higher speed crashes.

C. Comprehensive Agency Plan to Address Air Bag Fatalities

In late November 1996, NHTSA announced that it would be implementing a comprehensive plan of rulemaking and other actions (e.g., consumer education and encouragement of State seat belt use laws providing for primary enforcement of their requirements) addressing the adverse effects of air bags.[14] While there is a general consensus that the best approach to preserving the benefits of air bags while preventing air bag fatalities will ultimately be the introduction of advanced air bags, those air bags will not be widely available in the next several years. Accordingly, the agency has focused on rulemaking and other actions that will help reduce the adverse effects of air bags in existing vehicles as well as in vehicles produced during the next several model years. The actions which have been taken, or are being taken, include the following:

1. Interim Rulemaking Solutions

a. Existing and Future Vehicles-in-Use. This final rule exempts, under certain conditions, motor vehicle dealers and repair businesses from the ''make inoperative'' prohibition in 49 U.S.C. 30122 by allowing them, beginning January 19, 1998, to install retrofit manual on-off switches for air bags in vehicles owned by people whose request for a switch is approved by NHTSA. The purpose of the exemption is to preserve the benefits of air bags while reducing the risk that some people have of being seriously or fatally injured by current air bags. The exemption also allows consumers to have new vehicles retrofitted with on-off switches after the purchase of those vehicles. It does not, however, allow consumers to purchase new vehicles already equipped with on-off switches.

b. New Vehicles. On March 19, 1997, NHTSA published in the **Federal Register** (62 FR 12960) a final rule temporarily amending Standard No. 208 to facilitate efforts of vehicle manufacturers to depower their air bags quickly so that they inflate less aggressively. This change, coupled with the broad flexibility already provided by the standard's existing performance requirements, provided the vehicle manufacturers maximum flexibility to quickly reduce the adverse effects of current air bags.

On November 27, 1996, the agency published in the **Federal Register** (61 FR 60206) a final rule amending Standards No. 208 and No. 213 to require improved labeling on new vehicles and child restraints to better ensure that drivers and other occupants are aware of the dangers posed by passenger air bags to children, particularly to children in rear-facing infant restraints in vehicles with operational passenger air bags. The improved labels were required on new vehicles beginning February 25, 1997, and were required on child restraints beginning May 27, 1997.

On January 6, 1997, the agency published in the **Federal Register** (62 FR 798) a final rule extending until September 1, 2000, an existing provision in Standard No. 208 permitting vehicle manufacturers to offer manual on-off switches for the passenger air bag for new vehicles without rear seats or with rear seats that are too small to accommodate rear-facing infant restraints.

2. Longer-Term Rulemaking Solution

The longer term solution is advanced air bags. The agency has established a working group under the Crashworthiness Subcommittee of MVSRAC to work cooperatively with the vehicle manufacturers, restraint system suppliers and other organizations regarding advanced air bags. Activities include sharing data and information from research, development and testing of advanced air bags and providing test procedures that could be used in evaluating the advanced air bag technologies. While some of these technologies are complex, others are relatively simple and inexpensive. NHTSA plans to issue an NPRM to require a phasing-in of advanced air bags and to establish performance requirements for those air bags. While Standard No. 208 has provided vehicle manufacturers with the flexibility necessary to introduce advanced air bags, the Standard has not required them to take advantage of that flexibility. Among other things, the agency anticipates proposing tests using a 5th percentile female dummy[15] and advanced child dummies and specify appropriate injury criteria for those dummies, including neck injury criteria, as part of its rulemaking regarding advanced air bags.

3. Educational Efforts; Child Restraint and Seat Belt Use Laws

In addition to taking these actions, and conducting extensive public education efforts, the Department of Transportation announced this past spring a national strategy to increase seat belt and child seat use. Higher use rates would decrease air bag fatalities and the chance of adverse safety tradeoffs occurring as a result of turning off air bags. The plan to increase seat belt and child seat use has four elements: stronger public-private partnerships; stronger State seat belt and child seat use laws (e.g., laws providing for primary enforcement of seat belt use requirements); active, high-visibility enforcement of these laws; and effective public education. Substantial benefits could be obtained from achieving higher seat belt use rates. For example, if observed belt use increased from 68 percent to 90 percent, an estimated additional 5,536 lives would be saved annually over the estimated 9,529 lives currently being saved by seat belts. In addition, an estimated 132,670 injuries would be prevented annually. The economic savings from these incremental reductions in both fatalities and injuries would be $8.8 billion annually.

III. Deactivation Proposal (January 1997)

On January 6, 1997, NHTSA published an NPRM (62 FR 831) to exempt motor vehicle dealers and repair businesses conditionally from the statutory ''make inoperative'' prohibition of 49 U.S.C. § 30122, so that they could deactivate either or both the driver and passenger air bags at the request of a vehicle owner. As noted above, this proposal was issued to help reduce the fatalities and injuries that current air bags are causing to persons who may be facing special risks from air bags.

The agency stated that, while it expected that advanced air bags will offer means for significantly reducing or eliminating the risk of adverse side effects from air bags, advanced air bags will not be widely available in the next several years. The agency said it believes that, in the interim, steps need to be taken to minimize the possibility that air bags will cause harm in existing vehicles and in new vehicles produced prior to the availability of advanced air bags. Just as depowering will provide a technological solution that will prevent a significant number of the air bag fatalities that might otherwise have

[14] For a discussion of the actions taken by NHTSA before November 1996 to address the adverse effects of air bags, see pp. 40787–88 of the agency's NPRM published August 6, 1996 (61 FR 40784).

[15] A 5th percentile female dummy has a standing height of 5 feet and a weight of 110 pounds.

occurred in new vehicles, so deactivation would provide a technological solution for persons facing special risks in existing vehicles. Although the agency recognized that retrofit on-off switches offered certain advantages, the agency proposed deactivation instead of installation of retrofit on-off switches based on information from the vehicle manufacturers indicating that they could not provide retrofit on-off switches for existing vehicles in a timely manner.

Noting that a depowered passenger air bag may not completely eliminate the risk to an infant in a rear-facing infant seat or to an unrestrained child who is near the dashboard as a result of pre-crash braking, the agency stated that deactivation of depowered passenger air bags would be permitted. However, since on-off switches and advanced air bags could be used to essentially eliminate the risks to children, deactivation of a passenger air bag would not be permitted under the proposal if that air bag were equipped with such an on-off switch or if the air bag were an advanced air bag.

NHTSA proposed to limit authorization to deactivate driver air bags to existing vehicles and vehicles lacking advanced driver air bags. The agency indicated that it might further restrict authorization to deactivate driver air bags by excluding vehicles with depowered driver air bags.

NHTSA noted that there were safety tradeoffs associated with air bag deactivation. The agency strongly recommended that air bag deactivation be undertaken only in instances in which the vehicle owner reasonably believes that the air bag poses a significant risk, based on the individual's particular circumstances. The agency indicated that there would be limited need for passenger air bag deactivation and even less need for driver air bag deactivation.

The mechanics of the proposed exemption from the make inoperative prohibition were based in large measure upon recommendations from BMW and Volvo in 1996 that the agency develop procedures similar to those being used in Europe for temporarily deactivating air bags. According to BMW,

> (I)n Europe, a BMW dealer is allowed to temporarily deactivate the passenger air bag for individuals who may have a special need or normally transport children after advising them of the benefits of air bags and approval forms are signed.

Given the administrative complexity and time that would be associated with reviewing individual applications, the agency proposed to allow any person to choose to deactivate, without having to demonstrate a particular safety need. However, applicants would have had to submit a written authorization to the dealer or repair business performing the deactivation and indicate that they had received and read an information brochure explaining the consequences of having an air bag deactivated.

NHTSA requested commenters to provide views regarding a number of specific issues, including—

- Should deactivation of air bags be allowed at the owner's option in all cases or should deactivation be limited to situations in which death or serious injury might reasonably be expected to occur?
- Would the administrative details involved in establishing and implementing limitations on eligibility overly complicate the availability of deactivation?
- If it becomes permissible to deactivate air bags, with the result that an air bag could be turned off permanently, should the agency permit lesser measures as well, such as an on-off switch?
- Should there be a requirement that deactivation be performed in a manner that facilitates reactivation?
- In the rulemaking regarding OEM on-off switches, the agency estimated that there would be more benefits than losses if the misuse rate were less than 7 percent. Since a seat with a deactivated air bag may sometimes be occupied by a person who would benefit from the air bag, is there a percentage of such occupancy that would result in the losses from deactivation outweighing the benefits?
- Should a vehicle lessee be allowed to seek deactivation?

IV. Summary of Public Comments on Proposal

There were approximately 700 comments on the NPRM. About 600 of those were from members of the general public. The rest were from companies or trade associations representing vehicle manufacturers, dealers and repair businesses, fleet managers and owners, equipment manufacturers, consumer safety groups, insurance companies, physicians and health-related groups, former NHTSA administrators, and miscellaneous other organized groups. Because so many commenters took the same or similar positions on the issues, the commenters are not identified in this preamble unless there is some special significance to their identity. Instead, they are referred to simply as ''general public'' commenters and ''company and group'' commenters (even if some of the ''company and group'' comments are from individual companies).

The general public commenters supported, and the company and group commenters did not oppose, the agency's exempting dealers and repair businesses from the make inoperative prohibition so that air bags could be turned off. However, the commenters were divided on many of the details of how this should be accomplished and on the breadth of the exemption.

Almost all commenters supported deactivation as a means for turning off air bags. Most of the companies and groups also supported permitting retrofit on-off switches at least as an alternative to deactivation. GM, a dealer's group, a service group, and a number of safety groups went further, stating that on-off switches should be the only permitted way of turning off an air bag. About one in six of the general public commenters also stated that on-off switches should be installed in lieu of, or as a preferred means of, turning off air bags. IIHS, which supported deactivation, stated that it reluctantly supported on-off switches as well. Its reluctance arose in large part from the amount of apparent interest in on-off switches. Based on a January 1997 public opinion survey that it commissioned showing a strong public preference for on-off switches over deactivation, IIHS suggested that more people would choose to have on-off switches installed than would choose to have deactivations performed. A few commenters opposed on-off switches. BMW stated that on-off switches should not be allowed because their development will divert resources from development of advanced air bags, conflict with the decision not to require them on new vehicles, and introduce complexity for service and repair, compared with the ''simple reprogramming'' necessary for temporary deactivation of its air bags. Both BMW and IIHS expressed concern that allowing on-off switches would encourage placing children in front where the risk of serious injury is greater, with or without air bags. Most company and group commenters thought that on-off switch misuse would be a significant problem.

The issues which drew the most comments were ''who should be allowed to have their air bags deactivated, and under what procedure?'' [16] The general public

[16] In expressing their views on these issues, even those commenters who discussed on-off switches as a means that should be available under the

Continued

commenters almost universally favored allowing air bag deactivation for anyone who wants it, i.e., regardless of whether a person is actually in a risk group. Both the National Transportation Safety Board (NTSB) and IIHS also supported deactivation for any vehicle owners who want it, i.e., without requiring membership in a risk group. In addition, one equipment manufacturer, and three groups supported deactivation for owners who want it and based their support on personal liberty arguments. However, most of the other company and group commenters were opposed to deactivation for everyone who wants it.

The main argument given by the general public commenters for broad availability of deactivation was that there should be personal choice as to whether to turn one's air bag on or off. These commenters emphasized the danger that they believe air bags pose and many mentioned media reports that they had seen. They frequently noted that there were circumstances that they believed would tend to put them or their family members at risk. Generally, these circumstances included short stature, pregnancy, being elderly, needing to transport children, and certain medical conditions. Many stated that they wore their seat belts, and that they believed that the air bags were of marginal benefit.

IIHS said that it supported broad availability because of the apparent extent of public interest in turning off air bags for at least some vehicle occupants. The organization suggested that trying to limit the availability of deactivation would create an adverse public reaction. In support of this suggestion, IIHS cited its January 1997 survey indicating that 30 percent of their respondents would like an on-off switch for the driver air bag, and 67 percent would like one for the passenger air bag. Thirteen percent said they would like a permanent deactivation of the driver air bag, and 19 percent wanted permanent deactivation for the passenger air bag.

The main argument of the company and group commenters against relying on informed decisionmaking in allowing deactivation was that there would be widespread deactivation by frightened and misinformed consumers who were not actually at risk. Many company and group commenters expressed concern that the issues relating to air bag risks might be too complex for the general public to comprehend so that it would be difficult for the public to make informed decisions. Some commented that allowing deactivation for everyone would even encourage deactivations by implying that air bags were so dangerous that they generally should be disconnected. The great majority of company and group commenters favored a continuation of NHTSA's current practice of authorizing deactivations only in limited circumstances and solely on a case-by-case basis. In August 1997, a broad coalition of vehicle manufacturers, dealers, insurers, public interest groups, medical societies and others met first with the Office of Management and Budget (OMB) and later with NHTSA to urge that eligibility under the exemption be limited to persons in risk groups identified by the agency and that the agency approve each request for an on-off switch before a switch can be installed. The coalition re-iterated its concerns in a mid-October meeting with OMB.

Several individual vehicle manufacturers, and the industry associations representing all domestic and foreign vehicle manufacturers, said that NHTSA does not have the statutory authority to allow deactivation based on informed decisionmaking. General Motors (GM) argued that the proposal did not meet the three tests which it believes are implicit in the statute: (1) an exemption must be for a single individual, not classes of people; (2) an exemption for a specific individual must be based on the agency's judgment, not the individual's judgment; and (3) an exemption must be consistent with vehicle safety. These commenters noted that the agency emphasized in the NPRM that only in limited instances would deactivation be, on balance, in the best interests of a driver or passenger. They argued that the predicted widespread deactivations provided to anyone who wanted one would result in more people being killed and injured in situations in which the air bag might have saved them, thus resulting in a reduction of motor vehicle safety. Finally, Ford argued that the agency's desire for administrative simplicity does not overcome the necessity for complying with the statute.

The company and group commenters advanced a number of safety arguments against allowing deactivation based on informed decisionmaking. Some of them suggested that depowering air bags would obviate the need for a broad availability of deactivation. Several stated that occupant restraint systems are integrated. Seat belts designed to work with air bags may not work so well as conventional seat belts if the air bags are deactivated. In particular, it was stated that, depending on how it was performed, deactivating the air bag could also deactivate seat belt pretensioners that use the same crash sensors as the air bag. GM suggested that it is the safety conscious people who already buckle themselves and their children who will tend to deactivate their air bags in reaction to media reports of air bag deaths and injuries. Because people who wear belts are seldom harmed by air bags, GM concluded that, ironically, many or most who disconnect will be at increased risk. A majority of the company and group commenters stated that vehicles with deactivated air bags would be sold to other parties who might not know of the deactivation, or in the case of vehicles with retrofit on-off switches, might misuse the on-off switch.

The company and group commenters almost universally stated that deactivation was, given its permanency, appropriate only in rare circumstances. Most of these commenters did not identify those circumstances, but stated that NHTSA should determine the proper categories of persons who would be better off without the air bag, based on its expertise and data. To the extent that the circumstances were noted, they are discussed briefly below.

There was universal agreement that certain young children riding in the front need to be protected from the risk of serious injury from air bags. Nearly all commenters said that owners and lessees who have vehicles lacking a rear seat capable of accommodating a rear-facing infant restraint and who need to transport infants in such restraints should be able to have the passenger air bag deactivated. Some commenters suggested that air bags should be turned off for young children with medical conditions that need frequent monitoring by the driver. In contrast, the American Academy of Pediatrics stated that situations in which a child needs immediate attention are very rare, and that it was more dangerous to attend to them while driving. Another circumstance suggested by some commenters is the presence of too many children in a vehicle to place all of them in the back seat.

Other categories mentioned by some of the commenters include people of short stature, the elderly, and people with certain medical conditions or disabilities. These categories were also mentioned extensively in the general public comments. However, the company and group commenters tended

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exemption for turning off air bags generally discussed the eligibility and procedural issues in terms of deactivation alone. NHTSA understands that the commenters generally intended those views regarding eligibility and procedure to apply equally to deactivation and on-off switches.

to minimize the risk to these categories of people. They generally did not include the elderly as a category, and some of them suggested that exemptions for medical reasons should be accompanied by a doctor's note. One safety group suggested NHTSA employ a licensed medical professional or panel to examine requests. One medical group suggested that NHTSA and a panel of medical professionals define qualifying medical conditions. While some commenters agreed that short people were in danger, they emphasized the difficulty of determining how short was too short.

More recent submissions and statements from the company and group commenters argue that the issue is not occupant height, but sitting distance from the air bag module. IIHS submitted a survey indicating that only 5 percent of female drivers (approximately 2.5 percent of all drivers) are accustomed to sitting within 10 inches of their air bag module. Of those 5 percent of female drivers, 66 percent normally sit 9–10 inches from their air bag, and an additional 17 percent normally sit 8–9 inches away. The remainder, accounting for less than 1 percent of female drivers, normally sit within 8 inches of their air bag.

IIHS also found that a high percentage of short-statured female drivers could adjust their driving position to achieve a 10-inch distance. This finding was based on 13 women, from 4 feet, 8 inches tall to 5 feet, 2 inches tall, who were asked to try to achieve that distance in a dozen vehicles of varying sizes. Ten of the women achieved 10 inches in all of the vehicles; the remaining 3 did so in all but a few of the vehicles. All drivers were able to achieve at least 9 inches in all vehicles.

Other reasons given for not allowing deactivation based on informed decisionmaking were assertions that NHTSA's current system of case-by-case determinations was believed to work well and only needed unspecified streamlining; that the few deactivation requests NHTSA received until recently proved that actual need was low; and that the authorization form would be ineffective, especially with respect to subsequent purchasers of vehicles with deactivated air bags, as a means of alleviating the liability concerns of the manufacturer, dealer, and repair business groups. In an August 1, 1997 letter, a broad coalition of company and group commenters argued that since the agency was reportedly answering all deactivation requests within 72 hours and had no backlog of unanswered requests, the agency should be able under the final rule to continue its current practice of reviewing and approving each deactivation request.

In addition to objecting generally to the proposal for deactivation based on informed decisionmaking, many of the company and group commenters expressed concerns about particular aspects of the proposed process for implementing the exemption from the make inoperative prohibition. The dealer and repair business groups, and generally also the vehicle manufacturers and safety groups, were opposed to the dealers having any role in the process of distributing information brochures or making any kind of decision in the process. They indicated that it would be difficult to reject the request of an owner who wanted deactivation or advice on whether to deactivate, yet the dealers did not have the expertise to advise owners on deactivation. Dealer and vehicle manufacturer groups also stated that the existing definition of ''advanced air bags'' was too vague and that a dealer could not be expected to determine whether a vehicle was equipped with one, and therefore ineligible for deactivation.

Some of the company and group commenters stated that NHTSA should require guidance from the vehicle manufacturers on how to perform deactivations. A dealers' group commented that if NHTSA did not require the vehicle manufacturers to provide procedures, dealers/repairers might perform improper repairs, and that deactivations should be done only by factory trained and certified deactivation technicians at a franchised dealership. Two manufacturers suggested that NHTSA require manufacturers to provide such procedures, and one suggested requiring deactivation kits. Ford commented that NHTSA should require deactivation to be done in accordance with ''manufacturer recommendations.''

A large majority of company and group commenters also stated that any recordkeeping under the exemption from the make inoperative prohibition should be done by NHTSA. Vehicle manufacturers uniformly stated that NHTSA should keep the records because the agency could provide a centralized information clearinghouse on air bag deactivations. Vehicle manufacturers also commented that since they have no role in authorizing or performing deactivations, or in enforcement, they should not have recordkeeping responsibilities. Multinational Business Services (MBS) stated that the agency should be the recordkeeper so that it could analyze trends among the requests for deactivation and make any appropriate policy adjustments. The insurance and safety groups suggested that NHTSA notify insurers of any deactivations, because permanent deactivation would eliminate the basis for the air-bag discount many insurance companies offer. GM suggested that recordkeeping would be totally unnecessary if on-off switches were installed.

Many of the company and group commenters opposed an immediate effective date. Jaguar suggested at least 60 days would be needed for label printing, software development, preparations of procedures for disconnect/reconnect, and training. Other manufacturers, who urged that retrofit on-off switches be allowed as an alternative to permanent deactivation, stated that additional time would be needed for development of on-off switches. Ford said that it would need 5–6 months to have a large supply of retrofit on-off switch kits in dealer inventory. In an August 29, 1997 meeting with NHTSA representatives, a broad coalition of company and group commenters urged that adequate leadtime be provided to give the government as well as many of the company and group commenters sufficient opportunity to communicate their safety messages about air bag safety and risks to the public.

Opinion about sunsetting (i.e., terminating) the exemption was divided. GM opposed sunsetting the exemption when ''smart air bag,'' i.e., advanced air bags, are introduced. The company said that until the term can be adequately defined, NHTSA should remove the term from the rule, along with any sunsetting associated with it. Advocates for Highway and Auto Safety commented that sunsetting the exemption was appropriate.

Some company and group commenters discussed the costs associated with deactivation. Some manufacturers merely stated that additional parts and extensive labor would be required for both deactivation and reactivation. Only Ford gave specific cost estimates. Ford estimates for parts and labor (but not including profit) ranged from $16 for a simple shorting bar removal, to $124 for an on-off switch. The NTSB commented that some manufacturers had indicated to it that the cost of on-off switches would be $300–400 per on-off switch. Some insurance groups indicated that insurers might eliminate the air bag discount, even with on-off switches, because they would be unable to identify deactivated vehicles. This would penalize those who do not disconnect.

IIHS submitted a July 1997 report in which that organization concluded the

results of 40 mph offset frontal crash tests demonstrate that turning off an air bag increases the risk that a belted driver will be seriously injured in a crash. Crash tests using dummies representing an average size male driver indicated that without an air bag, the safety belts alone would not have prevented a belted driver from suffering ''life-threatening'' head and neck injuries. Similarly, another July 1997 IIHS report concerning 35 mph barrier crash tests with 5th percentile female dummies indicated that short-statured women can obtain significant protection from an air bag even when the driver's seat is moved all the way forward. The tests indicated that without air bags to spread the crash forces over the entire head, the crash forces would instead be concentrated on a narrow portion of the middle or lower portions of the face where the bones are more fragile. IIHS noted that a study of 15 restrained drivers fatally injured in frontal crashes with head injuries of AIS 4 or greater, found that steering wheels were the sources of head injuries for 9 of these drivers, and that 13 drivers suffered their head injuries from loading to the facial bones.

Some company and group commenters noted that the adverse effect of turning off air bags would be greater for some vehicles equipped with seat belts specially designed to work with air bags. If the crash forces become too great, these new seat belts ''give'' or yield to avoid concentrating too much force on the chest. Some of these belt systems yield by allowing more belt webbing to spool out when a predetermined force level is reached. The inflated air bag prevents the occupant from moving too far forward after the seat belts give. Without the air bag, the new belts allow the occupant to move farther forward in moderate and high speed crashes.

Commenters addressed the conditions that should apply to deactivations. A wide variety of companies and groups commented that, whatever the method of deactivation, it should be done in a manner that facilitates reactivation. All commenters who addressed the question stated that the air bag readiness indicator should have to remain functional for the remaining air bag, even if one air bag were deactivated. The companies and groups also generally commented that if both air bags have on-off switches, the air bags should be individually controllable.

Nearly all company and group commenters emphasized the importance of the information brochure in promoting an informed decision by individual members of the public about deactivation. Many said improvements were needed in the information brochure. The most common assessment was that the brochure was too long and technical. Others commented that NHTSA should focus-group test the effectiveness of the brochure prior to distributing it. Several suggested that the information be provided in a video.

Many company and group commenters argued that the agency significantly underestimated the number of people who would seek deactivation under the proposal. Many commenters argued that the agency should consider public opinion surveys in making a new estimate. One commenter urged the agency to base its estimates on the IIHS' January 1997 survey. The most recent survey, an August 1997 survey from IIHS, indicated that 12 percent of vehicle owners were interested in obtaining an on-off switch for the driver's air bag and 16 percent for the passenger's air bag. Based on early 1997 surveys, that commenter contended that the proposal would have significant net adverse effects on safety. In an August 1, 1997 letter, the vehicle manufacturers argued that the net effects must be assessed in order to ensure that the exemption meets the statutory criterion of consistency with safety.

V. NHTSA's Use of Prosecutorial Discretion to Provide Case-by-Case Authorization of Air Bag Deactivation

From October 1, 1996, through October 30, 1997, NHTSA received 11,838 written requests for air bag deactivation. The volume of these requests peaked in the spring, possibly in response to the extensive publicity surrounding the NTSB hearings in mid-March, then fell steadily until the last month. In April–May, the agency received approximately 400 letters per week. In August, the weekly volume fell to slightly less than 300 letters. By mid-September, the volume bottomed out at slightly above 100. During October, the volume rebounded, averaging slightly less than 200 letters per week. That increase followed the media's reporting of the agency's submission of a draft final rule to the Office of Management and Budget on October 2.

Since October 29, 1996, the NHTSA Hotline has received over 27,000 calls seeking information about air bags. Approximately 13,500 of them were from people interested in deactivating their air bags.

More than 60 percent of the written requests, approximately 7,100 out of 11,838, concerned short adults. The vast majority of the remaining 4,738 requests concerned adults (many of whom were short) with certain medical conditions. The rest concerned children. Of those remaining requests, approximately 4,200 were granted, and 500 denied, by the agency. Approximately 85 percent of the grants were for adult medical conditions. The remaining approximately 15 percent involved children, including both children with medical conditions and children riding in vehicles lacking a rear seat capable of accommodating a rear-facing infant seat.

In its grant letters to persons with medical conditions, the agency told owners that if their physicians concluded that the risks associated with their medical condition and the deployment of their driver air bag exceeded the risks to their safety from the air bag's not deploying, NHTSA would not regard deactivation of the air bag as grounds for an enforcement proceeding.[17] Similarly, NHTSA told vehicle owners whose vehicle lacked a back seat in which to carry an infant or who needed to monitor closely a child with a special medical condition [18] that the agency would not regard the deactivation of the passenger air bag by a dealer or repair business as grounds for an enforcement proceeding against the dealer or repair business. The agency urged that the air bag be reactivated when the circumstances necessitating its deactivation ceased to exist.

Based on the current procedures for handling these requests, it is estimated that an average of about one hour is spent on each letter. This estimate covers time spent categorizing letters, making a decision whether to grant or deny, typing a response, keeping track of the letters in a data base, reviewing the response, having the response signed, mailing it, etc. Based on a weighted average of salaries of those involved, plus 15 percent overhead, and the costs of paper and postage, it is estimated that the cost to the agency of

[17] In the absence of any other source of expertise, such as the July 1997 National Conference on Medical Indications for Air Bag Disconnection, described below, the agency has relied in the past almost solely upon statements from the physicians of persons requesting disconnection of air bags. While many of the requests were granted based upon a physician's statement, some were granted notwithstanding the absence of a physician's statement. In those cases, the grant was based upon either the unique characteristics of the medical condition involved or the existence of physician's statements attached to earlier deactivation requests of other individuals with the same medical condition. As discussed below in part IX.A, the agency has changed its practices with respect to physicians' statements in response to the National Conference.

[18] The majority of medical conditions were related to apnea, although exemptions have also been granted for children in wheelchairs, and children with a tendency to spit up and choke.

responding to these requests is about $30 per request.

VI. Focus Group Testing of Public Education Materials (June 1997)

To aid the agency in assessing the effectiveness of the materials it was developing to increase the public's understanding of air bags risks, and ways of reducing or eliminating those risks, NHTSA conducted nine focus groups in three cities to test consumer reaction to those materials. As noted above in the summary of public comments, a number of commenters urged that the agency take the time to enlist the help of focus groups.

Two focus groups were conducted in each of the following cities: Chicago, Illinois, on June 16, 1997, and Greenbelt, Maryland, and Sarasota, Florida, on June 18. Three more focus groups were conducted in Greenbelt on June 24 to look at educational materials concerning air bags. Since public concern about air bag safety has tended to be concentrated in three categories of vehicle owners, i.e., parents of young children, short-statured adults, and older adults, the focus group participants were evenly drawn from those categories. There were three parent focus groups, three short-statured adult focus groups, and three older adult focus groups. Each group had about 10 participants.

The knowledge and views of the various groups were fairly similar. While they had heard about some aspects of the air bag safety story, they did not know significant parts of it. They said that while they had heard or seen media reports about risks that air bags can pose for children, they had received little information about the reasons for those risks, the life-saving benefits of air bags and the methods of reducing risk for people of different ages. Early in each focus group session, and before examining any agency materials, some participants made remarks critical of the media for using what they called scare tactics and for focusing almost exclusively on the negative, eye-catching aspects of the air bag story. They said that media attention to air bag dangers for young children had created an atmosphere of fear and mistrust of air bags. They stated that many of their perceptions had been shaped by those media reports. They had many detailed questions about air bags, including air bag designs, deployment speed and force, severity and types of crashes in which they deployed, life-saving benefits, risk factors, types of injuries, and correct seating adjustments. They emphasized that public information and education would reduce misconceptions about air bags and the associated fear.

Among the very important safety messages that had not yet reached many of the focus group participants was that the recommendation for children to sit in the back seat applies to all children aged 12 and under, not just infants. In an attempt to get this message to vehicle owners last fall, the agency issued a final rule requiring labels in new vehicles expressly warning purchasers about air bag dangers for children aged 12 and under and recommending that children sit in the rear.[19] Further, the vehicle manufacturers' distributed copies of these labels to virtually all owners of existing vehicles with passenger air bags. Many participants were also unaware that proximity to the driver air bag at the time of deployment is the primary source of the risk to drivers of serious air bag-related injuries. They were pleased to be provided with a specific recommendation (10 inches) about the distance that drivers should sit from their air bags. Many participants said that they would attempt to change their driving position.

To determine how much air bag information the public really wants, the three June 24 focus groups were asked to compare a short brochure (essentially a 3-fold accordion brochure) and a long brochure (i.e., an earlier draft of the information brochure in Appendix A of the rule) concerning air bags and on-off switches. Each of the three groups unanimously endorsed the long brochure. These groups, consisting of an older adult group, a short-statured adult group and a parents group, stated that they wanted a lot of detailed, balanced information concerning air bags and air bag safety so that they could make up their own minds about seriousness and sources of the risks, and about their ability to avoid those risks. For example, they wanted to know why the upper limit on the group of children who should sit in back was stated in terms of age, instead of height or weight.

The educational value of the additional detailed information in the draft long brochure was demonstrated in a number of instances. For example, about 30–40 percent of the participants expressed surprise at learning that air bags differ in design and performance from vehicle model to vehicle model. They asked for more detailed information on how and why the air bags differed. An equal number were surprised to learn that air bags were vented and deflated in seconds after a crash. Before learning that, they thought that an air bag would remain inflated and could smother them or prevent their exiting from their vehicle after a crash. They expressed relief when they were informed that if they had to transport too many children to place them all in the rear seat, they could virtually eliminate any risk by placing a child (preferably the eldest) in the front seat, ensuring that the child properly used the seat belts and remained sitting upright against the back of the vehicle seat, and moving the seat all the way back.

VII. Physicians' Conference on Medical Conditions That Warrant Turning Off an Air Bag (July 1997)

At the request of NHTSA, the Ronald Reagan Institute of Emergency Medicine at George Washington University conducted a National Conference on Medical Indications for Air Bag Disconnection on July 16–18, 1997. The purpose of the conference was to make recommendations on specific medical indications, i.e., conditions, that might warrant disconnecting an air bag. The conference consisted of a panel of representatives of 17 medical specialty societies or organizations. NHTSA selected the societies and organizations, in consultation with the University, based on the types of medical indications that vehicle owners were citing in their letters to NHTSA as possible justification for air bag disconnection. Each society and organization, in turn, selected a representative to attend the conference. Among the specialty areas and types of physicians represented were cardiology, ophthalmology, otolaryngology (ear, nose and throat), obstetrics and gynecology, physical and rehabilitative medicine, general surgeons, plastic and reconstructive surgery, orthopaedic surgery, neurological surgery, pediatrics, geriatrics, and emergency physicians. The American Medical Association was also represented.

The agency arranged for this conference for several reasons. First, informal agency conversations with emergency room physicians and surgeons familiar with the trauma caused by motor vehicle crashes had suggested to the agency that very few medical conditions warrant turning off an air bag. Second, several commenters on the January NPRM urged that the medical profession be enlisted to help identify those conditions. The American Academy of Pediatrics said that such

[19] As noted more fully in footnote 23 below, it is safer for children sit in the rear seat in all passenger vehicles, even if the vehicle does not have a passenger air bag. NHTSA recommends that all children aged 12 and under sit in the rear, regardless of whether there is a passenger air bag in the front seat.

professional guidance was needed to educate dealers, repair businesses and some parts of the medical community itself about the circumstances under which it is appropriate to turn off an air bag. Advocates for Highway and Auto Safety urged that a panel of medical experts be convened to examine each vehicle owner request to turn off an air bag based on medical reasons.

While the agency does not believe that it is necessary or desirable for a panel of medical experts to review each such request, the agency did agree that general authoritative advice is needed to answer the concerns of some vehicle owners about air bags and help guide their actions. Since individuals with particular medical conditions can be expected to consult their physician prior to deciding whether to have an on-off switch installed, the medical profession also needs some guidance on when deactivation would be indicated.

In preparation for the conference, the representatives reviewed the available medical and engineering literature about air bag technology and injury risk and prevention. At the conference, the 17 representatives were divided into subpanels. Based on their literature review and clinical experience, the subpanels addressed each medical indication with respect to seven factors: known data, unknown data, recommendation, level of confidence in the recommendation, rationale for the recommendation, specific concerns about the recommendation, and stakeholders. The entire panel then discussed the work of the subpanels and adopted final recommendations.

General Panel Conclusions

Air bags are effective lifesavers whose benefits exceed the risks for most of the medical conditions considered by the panel. A medical condition does *not* warrant turning off an air bag *unless* the condition makes it *impossible for a person to maintain an adequate distance* from the air bag. NHTSA believes that 10 inches is an adequate distance.

Specific Recommendations

Excerpts from the panel's specific recommendations follow, beginning with the recommendations regarding the medical indications most commonly cited by persons who have written to NHTSA requesting deactivation based on a medical indication. Unless specifically indicated, the recommendations relate to drivers.

Medical Indications Not Warranting Disconnection of Air Bags

Medical Indications Most Commonly Cited by Vehicle Owners

- Osteogenesis Imperfecta

The panel recommends air bag not be disconnected for persons with osteogenesis imperfecta.

While there is little population-based data in the crash experience of this group, it is anticipated that the injury risk to these persons is higher without an air bag and proper restraint than with an air bag.

- Osteoporosis/Arthritis

For persons with osteoporosis, arthritis, and other skeletal conditions, air bags should not be disconnected unless the person cannot sit back a safe distance from the air bag.

Persons with specific conditions, such as ankylosing spondylitis, may have a relatively stiff spine and thus may be unable to place themselves an acceptable distance from the steering wheel while driving. Other than in this specific circumstance, persons with osteoporosis and types of arthritis are generally benefitted by the presence of an air bag.

- Pacemakers

There is no evidence to support disconnecting airbags for occupants who have pacemakers, implantable defibrillators, or similar devices.

Pacemakers and similar hardware are specifically designed to withstand impact. The forces associated with air bag deployment are typically distributed throughout the chest and are not directed at one specific area. The impact suffered without an air bag may in fact be more severe and more localized than that with an air bag. Clinical experience does not demonstrate any significant concern about the effects of air bag deployment on this type of hardware when properly installed. As forces to the chest in areas directly contacted by seatbelts may exceed forces from air bags, it is important the belts be placed properly and not directly over these devices.

- Median Sternotomy

We recommend that persons who have undergone median sternotomy not disconnect air bags.

Uneven pressure on the chest can harm a patient with a recent median sternotomy because the external wound may be opened. An air bag does not cause this uneven force; seatbelts or striking an object like a dashboard can cause this uneven force.

- Chronic Obstructive Pulmonary Disease/Emphysema/Asthma

We recommend not to disconnect air bags for patients with these chronic lung diseases.

There is no risk of oxygen deprivation during air bag deployment because of the quick deflation of the device. There is some equivocal evidence to suggest that the chemical irritants produced may precipitate bronchospasm in persons with asthma. However, there is no evidence to suggest that this phenomenon is occurring with any greater frequency in the presence of air bags. There is no reason to suspect that persons with any type of chronic lung disease will be adversely affected by an air bag deployment sufficiently enough to justify disconnection of the device.

- Short Stature

We are not able to determine an absolute cut-off height and weight for disconnection of air bags.

Short stature is a common area of concern for the public in regard to air bag deployment. As proximity to the air bag is the major issue, the passenger-side air bag should not be disconnected for a passenger of short stature. Beyond just short stature, weight, arm length, and leg length also play important roles in driver positioning. We know that a disproportionate number of the deaths attributed to air bag deployment have occurred in persons of short stature. However, of the 150,000 estimated air bag deployments involving persons of short stature, only 14 are known to have been fatal.

Some of the Less Commonly Cited Medical Indications

- Eyeglasses

There is no reason to recommend disconnection of air bags for persons wearing eyeglasses.

There are a number of anecdotal cases of eye injuries after air bag deployment, both with and without eyeglasses. Eyeglasses may, in fact, be protective during air bag deployment. There is no obvious increased risk of injuries in the presence of eyeglasses; moreover, impact with the steering column or dashboard may be more dangerous to someone wearing eyeglasses than impact with an air bag. Persons who need eyeglasses should wear them to drive and should not have air bags disconnected solely because of the eyeglasses.

- Hyperacusis or Tinnitus

We recommend not to disconnect air bags for persons with hyperacusis or tinnitus.

(T)he phenomenon of hearing loss has not been noted to occur due to air bags. The specific conditions of hyperacusis and tinnitus are not associated with hearing loss and persons with these conditions would have no greater likelihood of hearing loss from air bag deployment than any other persons. Some persons with tinnitus report that noise triggers attacks of tinnitus; however, it is difficult to separate the noise of an air bag from the noise of a crash in many situations.

• Advanced Age

Advanced age by itself does not suggest the need for air bag disconnection.

It is known that older persons are at greater risk of injury in all types of crashes. The data suggests that air bags may be less effective in the older population although the cause of this finding is unclear. There is no evidence to suggest that advanced age by itself, in the absence of other potential risk factors examined here, warrants air bag disconnection.

With respect to passenger seat occupants in general, the conference participants said:

Under most circumstances, with the notable exception of infants in rear-facing infant seats, the person in the passenger position can be made safe from inadvertent injury by the use of proper restraint and placement of the seat in the most rear position. Certain vehicles with bench seats may complicate this issue and may need to be considered carefully on a case-by-case basis.

Medical Indications Warranting Disconnection of Air Bag

• Osteoporosis/arthritis

For persons with osteoporosis, arthritis, and other skeletal conditions, air bags should not be disconnected *unless the person cannot sit back a safe distance from the air bag.*[20] (Emphasis added.)

• Scoliosis

If capable of being positioned properly, persons with scoliosis should keep air bag connected in their vehicles.[21] (Emphasis added.)

This specific condition might make it impossible for a person to sit upright and away from the air bag. This very small portion of the population of persons with scoliosis might be candidates for disconnection. It must be remembered that a person sitting far forward in either the driver or passenger seat is also at increased risk of injury from other structures (steering column, dashboard) in front of them.

This specific condition might make it impossible for a person to sit upright and away from the air bag. This very small portion of the population of persons with scoliosis might be candidates for disconnection. It must be remembered that a person sitting far forward in either the driver or passenger seat is also at increased risk of injury from other structures (steering column, dashboard) in front of them.

• Wheelchairs

For persons in wheelchairs the decision to allow disconnection of the air bag should be handled on a case-by-case basis. Disconnection may be needed if installation of special equipment requires removal of the air bag. If wheelchair installation or steering column configuration does not necessitate air bag removal, we recommend not to disconnect air bags.

• Achondroplasia

In persons with achondroplasia we recommend allowing disconnection of driver-side air bag *only if the person is unable to sit back from the air bag.*

Persons with significantly congenitally shortened limbs may be required to sit very close to the steering wheel in order to operate a vehicle. In this situation, pedal-extenders will offer limited assistance as the arms are also affected. However, there is no reason to disconnect the passenger-side air bag for an occupant with achondroplasia. (Emphasis added.)

• Down syndrome and atlantoaxial instability

Disconnection of the passenger air bag is warranted *if a person with this specific condition cannot reliably sit properly aligned in the front seat,* such as in those with developmental delay.

Children and adults with severe developmental delay, including some with Down syndrome, may be incapable of consistently maintaining a position away from a passenger-side air bag. If these individuals cannot ride in a back seat, air bag disconnection may be warranted.

While there is no known data on this specific situation in relation to air bags, atlantoaxial instability is present in 20% of persons with Down syndrome. This instability creates the clear risk of atlantoaxial subluxation. Persons with this condition should clearly sit properly restrained in the back seat of a vehicle. In situations in which they must sit in the front seat, air bag disconnection may be warranted because of the risk of cervical injury, particularly if these individuals have developmental delay which prevents them from consistently maintaining proper positioning. (Emphasis added.)

• Monitoring of Infants and Children

The panel recognizes that there are a few specific medical conditions in which infants and young children must be in the front seat for monitoring by the adult driving. In such situations, the passenger side air bag may need to be disconnected.

Parents are frequently concerned that they will be unable to properly monitor their infants if the infants are in the back seat without an adult. The American Academy of Pediatrics has clearly recommended that infants without underlying medical conditions can safely ride alone in the back seat properly restrained in a rear-facing restraint. The data shows that in the absence of an air bag, the injury risk in the back seat is 30% less than the risk in the front seat. The panel recognizes that certain vehicles do not have back seats. In these vehicles the option of on-off switches is already available.

Monitoring of certain infants may require placement of the car seat in the front passenger seat when the only adult in the vehicle is the driver. These situations may warrant air bag disconnection or an on-off option. Parents should clearly recognize that distraction while driving significantly increases the risk of a crash. Ideally, if a child needs attendance in a vehicle, someone other than the driver should be available. It is anticipated that the American Academy of Pediatrics will make recommendations regarding which specific conditions warrant close monitoring while driving.

VIII. Agency Decision To Issue Exemption Authorizing Installation of Retrofit On-Off Switches

A. Summary

This final rule exempts, under certain conditions, motor vehicle dealers and repair businesses from the ''make inoperative'' prohibition in 49 U.S.C. 30122 by allowing them, beginning January 19, 1998, to install retrofit manual on-off switches for air bags in vehicles owned by people whose request for a switch is approved by NHTSA. The purpose of the exemption is to preserve the benefits of air bags while reducing the risk that some

[20] NHTSA believes that the safe distance for drivers with osteoporosis/arthritis is the same as that for persons without any medical indications, i.e., 10 inches between the center of the driver air bag cover and the center of the driver's breastbone.

[21] NHTSA defines *properly positioned* to mean positioned so that there is at least 10 inches between the center of the air bag cover and the center of the driver's breastbone.

people have of being seriously or fatally injured by current air bags.

Although the agency still believes that it is appropriate to exclude vehicles with advanced air bags from the exemption, it has not done so in this final rule. It is not necessary to do so yet since widespread introduction of advanced air bags is not expected during the next several years. This will give the agency time to develop an improved definition of ''advanced air bag'' and to address how dealers and repair businesses will be able to ascertain whether a particular vehicle has advanced air bags.

The agency has decided not only to authorize retrofit on-off switches, but to specify that they will be the only means authorized under the exemption for turning off an air bag.[22] The agency has made that choice because on-off switches are a more flexible and focused solution than deactivation to the risks which air bags may pose to certain people and thus are significantly more consistent with safety than deactivation. With retrofit on-off switches, air bags can be left on for the vast majority of the persons who will benefit from air bag protection and turned off for the relatively few persons at risk. By contrast, deactivation is essentially permanent and makes no distinction between vehicle users who are at risk from air bags and those who are not at risk from air bags and who will benefit substantially from them.

Under the exemption, vehicle owners can obtain a retrofit on-off switch from a dealer or repair business after filling out and submitting a request form to the agency and obtaining the agency's approval. The agency will begin processing and granting requests on December 18, 1997.

To promote the making of informed decisions about requesting and using on-off switches, consumers must certify on the form that they have read an agency information brochure providing guidance about the risks created by current air bags and describing the groups of people for whom it may be appropriate to obtain and use on-off switches to turn off air bags. The requirement for this certification is intended to help encourage persons considering on-off switches to focus on the factors that create risk from air bags and to reflect on whether they or their passengers are really at risk. Owners must also certify that they or another user of their vehicle is a member of one of the particular risk groups identified by the agency. Since the risk groups for drivers are different from those for passengers, a separate certification must be made for each air bag to be equipped with an on-off switch.

The agency strongly urges caution in obtaining and using on-off switches to turn off air bags. While on-off switches may be needed by a limited number of people in particular circumstances, they are not needed for the vast majority of people since they are not in a risk group. In fact, if people not at risk were to turn off their air bags, they would be less safe, not safer. Even those people in a risk group can take steps that will eliminate or significantly reduce any risk they might currently have without going to the extreme of turning off their air bag and losing its protective value. The easiest way of eliminating the risk for children is to place them in the back seat and buckle them up.[23] Those drivers who are at risk can eliminate that risk by using their seat belts and by moving the driver's seat rearward and/or tilting the back of the driver's seat so that there is 10 inches or almost 10 inches between the center of their breastbone and the center of the driver air bag. The primary risk of injury occurs 2–3 inches from the air bag cover because that is where the force of a deploying air bag is greatest.[24]

This exemption will be subject to certain conditions to promote the safe use of on-off switches. Each on-off switch must meet certain performance criteria similar to those applicable to the manual on-off switches that vehicle manufacturers may currently install for passenger air bags in new vehicles that do not have a rear seat capable of accommodating a rear-facing infant seat. One is that the on-off switch be operable by a key. Another is that there be a telltale light to indicate to vehicle occupants whether an air bag equipped with an on-off switch is on or off. As a reminder about the proper use of on-off switches, the agency is requiring that vehicle dealers and repair businesses give owners an owner's manual insert describing the operation of the on-off switch, listing the risk groups, stating that the on-off switch should be used to turn off an air bag for risk group members only, and stating the vehicle specific safety consequences of using the on-off switch for a person who is not in any risk group.[25] Those consequences

[22] As explained below, full deactivation will continue to be available in limited circumstances through the agency's exercise of its prosecutorial discretion.

[23] Contrary to some media reports, the back seat has always been much safer than the front seat. Sitting in the back seat significantly reduces the likelihood of fatal injury for children, even in vehicles without air bags. Further, sitting in the back seat helps restrained children just as much as it helps unrestrained children. To quantify the benefits of sitting in the back seat, NHTSA analyzed data from vehicle crashes in 1988–1994. *Very few* of the vehicles in those crashes had passenger air bags. The agency concluded that placing children in back reduced the risk of death in a crash by 27 percent. This conclusion applies to restrained as well as unrestrained children. The size of this reduction can be appreciated from considering the following example. The number of children killed each year while riding in the front seat of a vehicle is over 500. If those 500 children had instead been sitting in the back seat, 135 of those children would still be alive because the back seat is a much safer seating environment for reasons having nothing to do with air bags. A new study of IIHS reaches a similar conclusion about the benefits of sitting in the back seat. After examining data from essentially the same time period regarding more than 26,000 children riding in vehicles that were involved in fatal crashes and *lacked* passenger air bags, IIHS concluded that sitting in the back seat reduced the death rates by more than 27 percent, whether the children were restrained or not. The safest position of all was the center rear seat.

[24] NHTSA is recommending 10 inches as the minimum distance that drivers should keep between their breastbone and their air bags for several reasons. First, the agency believes that drivers who sit 10 inches away and buckle up will not be at risk of serious air bag injury. Drivers who can maintain that distance will be much safer if they keep their air bags on.

The 10-inch distance is a general guideline that includes a clear safety margin. IIHS recommended the same distance in its comments. The 10-inch distance ensures that vehicle occupants start far enough back so that, between the time that pre-crash braking begins and time that the air bag begins to inflate, the occupants will not have time to move forward and contact their air bag until it has completed or nearly completed its inflation. The 10-inch distance was calculated by allowing 2–3 inches for the size of the risk zone around the air bag cover, 5 inches for the distance that occupants may move forward while the air bags are fully inflating, and 2–3 more inches to give a margin of safety. The 5–inch rule of thumb commonly used in air bag described in the paper, ''How Airbags Work (Design, Deploying Criteria, Costs, Perspective)'' presented by David Breed at the October 19–20, 1992 Canadian Association of Road Safety Professional International Conference on Airbags and Seat Belts.

Second, the agency is focusing attention on the 10-inch distance because it wants drivers to strive to get back 10 inches. NHTSA believes that almost everyone can achieve at least 10 inches and get the extra margin of safety that comes from sitting that far back. See the July 1997 survey submitted by IIHS.

However, some drivers who cannot get back a full 10 inches will still be safer, on balance, if they are protected by their air bag. The nearer that these drivers can come to achieving the 10-inch distance, the lower their risk of being injured by the air bag and the higher their chance of being saved by the air bag. Since air bag performance differs among vehicle models, drivers may wish to consult their vehicle manufacturer for additional advice.

NHTSA considered an alternative suggestion by Ford in late August 1997 meeting with the agency that the 10-inch distance be measured from the air bag to the chin instead of the breastbone. The agency has decided to use the breastbone as the measuring point because of the greater safety margin provided.

[25] Vehicle manufacturers that install on-off switches in new vehicles lacking a rear seat capable of accommodating a rear-facing infant seat must, among other things, include in the owner's manual a statement of the safety consequences of using the on-off switch to turn off the passenger air bag for persons other than infants in such seats. See S4.5.4 and S4.5.4.4 of Standard No. 208. To comply with

would include the effect of any energy managing features, e.g., load limiters, on seat belt performance. NHTSA anticipates that the inserts would be obtained primarily from the vehicle manufacturers, although in some cases the inserts might be obtained from independent switch manufacturers.

As noted above, the agency is setting January 19, 1998 as the date on which dealers and repair business may begin to install switches. This date was selected to allow time for the design and production of on-off switches and the proper training of installation personnel. Until then, NHTSA will continue its current practice of using its prosecutorial discretion to grant requests for deactivation on a case-by-case basis in a limited set of circumstances, e.g., unusual medical conditions. Beginning on January 19, vehicle manufacturers and aftermarket parts manufacturer may make on-off switches available to vehicle owners who have an agency authorization letter. NHTSA expects that vehicle manufacturers will make on-off switches available for the majority of vehicle makes and models. The agency will continue to consider deactivation requests after January 19 only for vehicles for which retrofit on-off switches are not available from the vehicle manufacturer. If aftermarket parts manufacturers make on-off switches available for any of those vehicles after January 19, motor vehicle dealers and repair businesses may install such switches for owners who have an agency authorization letter.

B. The Challenge and Overall Rationale

1. Risk Versus Perception of Risk

While air bags have proven to be highly effective in reducing fatalities in frontal crashes, and have saved about 2,287 drivers and 332 passengers (as of November 1, 1997), they are also known to have killed 35 drivers, 49 children, and 3 adult passengers (as of November 1, 1997). As discussed above, all of these fatalities occurred because of extreme proximity to the air bag, and almost all could have been prevented by behavioral changes, such as not placing infants in rear-facing infant restraints in the front seat, placing all children in the back seat, moving front seats farther back, and ensuring that all occupants are properly restrained.

As a whole, media reports about air bag fatalities have contributed to the heightening of the public's concerns about air bags, and of their desire to deactivate their air bags. Those reports deserve credit for helping spread the word about the real risks associated with air bags for some people. Increased public knowledge about the risks has helped induce changes in behavior to reduce or even eliminate those risks, e.g., by putting children in the back seat of vehicles.

However, some behavioral effects of those accounts may not be positive. Some media accounts which initially served the public by drawing attention to an initially unknown or underappreciated risk may ultimately have had the unintended consequence of causing people to generalize and exaggerate those risks. Unfortunately, many members of the public have focused their attention on the possibility of being killed by an air bag, to the exclusion of other factors that may be more determinative of their overall safety. These factors include the very small magnitude of risk from the air bag, the ability of teenagers and adults to preserve the benefits of air bags and nearly eliminate any risk by behavioral actions such as wearing safety belts and moving front seats back, and the much greater risk, almost always faced by the same occupants in the absence of an air bag, of hitting their heads, necks or chests on the steering wheel or dashboard in a moderate or serious crash.

By focusing on only one of an interrelated set of risks which consumers face while traveling by motor vehicle, and thus magnifying that one risk out of proportion to those other risks, some media accounts may also have had the effect of obscuring those other risks. Those accounts may cause some people to so focus on that one risk to the exclusion of the other risks that they induce those people to take actions that increase, instead of decrease, their overall risk of injury in a motor vehicle. The potential exists for a significant number of people doing just that. As noted elsewhere in this notice, several public opinion surveys indicate that the extent of the public interest in turning off air bags exceeds the number of persons actually at risk from them. For many of the teenagers and adults among these people, concern about air bags apparently tends to overshadow a much greater risk faced by these same occupants, i.e., the risk that, in the absence of an air bag, they will strike their head, neck or chest on the steering wheel or dashboard in a moderate to severe crash. This risk exists even for properly belted occupants.

2. Which Groups Are Really at Risk?

As noted above, air bag-related deaths are not random. They tend to involve particular groups of people who share common behavioral or other characteristics. The relatively few people who share those characteristics will be safer overall if they turn off their air bags. Conversely, people who do not share those characteristics would be less safe overall if they did so.

The primary source of risk is contact with or close proximity to the air bag module at the initial instant of deployment. The deploying force is the greatest in the first 2–3 inches of deployment.

On the passenger side, it is primarily children who get too close to the air bag. Infants get too close by being placed in a rear-facing infant restraint. That positions the child's head so that it is very close to the dashboard where the air bag is stored. Older children, i.e., children age 1–12, get too close typically because they are allowed to ride completely unrestrained. During pre-crash braking, these unrestrained children slide forward and are up against or very near the dashboard when the air bag begins to deploy. A few children have gotten too close because although they were placed in lap and shoulder belts, they either removed their shoulder belt or leaned far forward.

On the driver side, the fatally-injured drivers are believed to be people who sat close to their steering wheels primarily out of habit, although some may have done it out of necessity. Some may have been drivers who were physically unable to maintain a 10-inch distance between their air bag cover and their breastbone because of the limits of their reach (arm and leg length) or because of fatigue or other physical factors. However, they were generally tall enough that all or almost all of them should have been able to get back 10 inches. While they may have been able to maintain that distance, perhaps they did not do so because they had grown accustomed to sitting close to their steering wheel as matter of a preference. A few of the drivers were slumped over their steering wheel at the time of deployment due to medical conditions.

A second source of potential risk is a very limited number of medical conditions. Apart from the medical conditions which caused several drivers to lose consciousness and slump over their steering wheels, none of the air bag

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that requirement, manufacturers must state that the air bag will not inflate in a crash and that the occupant therefore will not have the extra protection of the air bag. To conform S4.5.4.4 to this final rule, NHTSA has amended that provision in this final rule so that the provision requires the listing the same risk groups listed in the information brochure and requires a statement of the vehicle specific safety consequences of using the on-off switch for persons not listed in those groups.

fatalities confirmed to date has been attributed to the existence of a pre-existing medical condition that made the fatally-injured person more susceptible than the average person to injury from an air bag.[26] To provide vehicle owners and their physicians with guidance concerning which medical conditions warrant turning off an air bag, NHTSA arranged for the convening of representatives of the medical community in July 1997. The results of their deliberations are discussed above. Briefly, it appears that, in a very small number of cases in which a medical condition prevents a person from getting back 10 inches, a medical condition might, in combination with an air bag, present enough of a risk to warrant turning off either a driver or passenger air bag.

3. Agency Actions to Minimize Risks

In the longer term, the problems associated with air bags will be addressed and largely eliminated by changes in technology, initially by depowering and making various incremental improvements to air bags, and ultimately by installing advanced air bags. Standard No. 208 has provided all the flexibility necessary to enable vehicle manufacturers to develop and introduce those air bags, but thus far has not required their introduction. However, the challenge now facing NHTSA and the public is how to preserve the life-saving benefits of current air bags, while addressing the needs of the relatively small number of persons facing risks from these air bags as well as the fears being experienced by a much larger number of persons.

In meeting this challenge, NHTSA believes that it is essential to consider safety benefits in both the shorter term and longer term. The agency recognizes that, given the small number of fatalities associated with air bags as compared to the number of lives saved, the short-run safety benefits of air bags would be best preserved by minimizing the situations in which air bags are turned off, i.e., limiting the situations to the relatively rare ones where a person is actually better off with his or her air bag turned off.

However, the agency believes that great care must be taken with respect to *how* this is accomplished, to avoid a potentially much greater loss of safety benefits in the longer run. As the agency discussed in the depowering final rule, the continued availability of any safety device as standard equipment, whether provided voluntarily by manufacturers or pursuant to a regulation, is ultimately dependent on public acceptability. The agency believes that air bags which fatally injure occupants, particularly children in low speed crashes, place the concept of air bags at risk despite their overall net safety benefits. Thus, the agency believes it must take great care in how it responds to requests for turning off air bags, lest its actions have the unintended effect of reducing the public acceptability of air bags and their potential as a life-saving device.

Mindful of these considerations, the agency is taking the following actions:

1. In light of changed circumstances which make retrofit on-off switches a much more readily available option, NHTSA is specifying that they will be the only means authorized under the exemption for turning off an air bag. This will ensure that any air bag which is turned off for an occupant at risk can be readily turned on again for occupants who are not at risk. (In very limited cases, deactivation will continue to be available through the agency's exercise of its prosecutorial discretion.)

2. NHTSA has taken a balanced approach in establishing the process for determining which vehicle owners may have a dealer or repair business install an on-off switch. The agency is not going to insist that facts establishing the need for turning off an air bag be documented by the vehicle owner. Instead, the agency is requiring owners who wish to obtain on-off switches to certify, by marking a box on a request form developed by the agency, that they have read an agency information brochure providing guidance about the risks created by current air bags and discussing the circumstances in which it may be appropriate to use on-off switches. Owners must also certify that they or a user of their vehicle belongs to one of the risk groups identified by the agency. NHTSA is also requiring that vehicle owners submit their completed request forms to the agency for approval. This requirement will help reinforce the need for care and accuracy by owners in certifying risk group membership. The requirement will also enable the agency to monitor, from the very beginning, the patterns in switch requests and risk group certifications.

The agency has identified four risk groups. Based on the agency's assessment of risk, persons in the first two groups have a high enough risk that they would *definitely* be better off if an on-off switch is used to turn off their air bag:

- *Infants in rear-facing infant seats.*

A rear-facing infant seat must *never* be placed in the front seat unless the air bag is turned off. If a vehicle owner *must* transport an infant in the front seat, the owner is eligible for an on-off switch for the passenger air bag. The owner should get an on-off switch and turn off the air bag when the infant rides in front.

Note: NHTSA emphasizes that air bag-related risks for infants can be completely avoided by placing them in the back seat. The back seat has always been a much safer place for children than the front seat, even before there were any passenger air bags.

- *Drivers or passengers with unusual medical or physical conditions.*

These are people who have been advised by a physician that an air bag poses a special risk to them because of their condition. However, they should not turn off their air bag unless their physician also has advised them that this risk is greater than what may happen if they do turn off their air bag. Without an air bag, and even if belted, such persons could hit their head, neck or chest on the steering wheel in a crash. Medical conditions will not pose special risks unless the conditions make it impossible to sit 10 inches from the air bag. Only a few conditions have that effect. See the above discussion of the national conference of physicians.

Persons in the two other groups of people may be better off using an air bag on-off switch.

- *Children ages 1 to 12.*

Children in this age group can be transported safely in the front seat *if* they are properly belted, they do not lean forward, *and* their seat is moved all the way back. Almost all fatally injured children in this age range were *completely unrestrained*. But children, even when properly restrained, sometimes sit or lean far forward. The simple act of leaning forward to see out of the window or to change the radio station can place even a belted child in danger. They may also slip out of their shoulder belts, putting themselves at risk. If a vehicle owner *must* transport a child in the front seat, the owner is eligible for an on-off switch for the passenger air bag.[27] Since air bag performance differs from vehicle model to vehicle model, the vehicle owner may

[26] Two of the fatally-injured drivers were diabetics. While diabetes did not by itself make those persons more prone to injury, it did cause them to black out and slump over their steering wheel prior to the fatal crash.

[27] In its August 1997 survey concerning public interest in turning off air bags, IIHS asked the 137 respondents who owned dual air bag vehicles and said they carried children in the front seat why they carried children in that location. Approximately 20 percent of the respondents gave answers indicating that they carried children in the front seat out of necessity, e.g., ''no room in back seat,'' ''big family,'' ''car pool,'' and ''no rear seats in vehicle.'' Over half of the remaining 80 percent of the respondents said either ''child wants to ride in front seat,'' or ''driver wants child in front seat.''

wish to consult the vehicle manufacturer for additional advice.

Note: The air bag related risks for these children can be avoided completely by placing them in the back seat.

• *Drivers who cannot get back 10 inches.*

Ideally, drivers should sit with at least 10 inches between the center of their breastbone and the cover of their air bag. Since the risk zone at the time of deployment is the first 2–3 inches from the air bag cover, sitting back 10 inches provides a clear margin of safety. By using their seat belts and sitting at that distance, drivers will eliminate the risk of serious air bag injury, and thus any need for an on-off switch.

Very few drivers are unable to achieve and maintain the 10-inch distance. The vast majority of drivers already sit that far or farther from their air bag.[28] The vast majority of those drivers who do not now sit that far back can change their position and achieve that distance. (See the information brochure for advice about changing position.)[29] Drivers unable to get back 10 inches, even after following that advice, should consult their dealer or vehicle manufacturer for additional advice or for information regarding vehicle modifications to help them to move back.

Drivers who cannot get back 10 inches, despite all efforts, may wish to consider an on-off switch. However, the nearer they can come to getting back that distance, the less likely the air bag will injure them and the less need there will be to get an on-off switch. If drivers can get back almost 10 inches, the air bag is unlikely to seriously injure them in a crash and they probably do not need an on-off switch. These drivers, plus those who cannot get back almost 10 inches, may wish to consult the vehicle manufacturer for additional advice since air bag performance differs among the various vehicle models.

3. Finally, the agency plans, in conjunction with other organizations, a public education information campaign to put air bag risks and benefits into proper perspective, to encourage those persons at special risk from current air bags to take steps to reduce those risks without losing the protection of their air bags, and to promote the enactment and effective enforcement of State laws concerning the use of seat belts and child restraints.

C. Changes in Circumstances Since the NPRM Make Retrofit On-Off Switches Preferable to Deactivation

In the January 1997 deactivation proposal, the agency compared the merits of deactivation to those of on-off switches in a companion notice, i.e., a January 1997 final rule extending the duration of the option allowing on-off switches for passenger air bags in certain new vehicles. NHTSA concluded in the preamble to the on-off switch final rule that it was better from a safety standpoint to selectively deactivate the air bags after the vehicles had been produced, in response to specific consumer requests, than to authorize installation of on-off switches as standard equipment in those vehicles when they were produced. NHTSA placed great weight in that discussion on the long leadtime that vehicle manufacturers had previously said would be needed to integrate standard equipment on-off switches into new vehicles and on concerns expressed by the vehicle manufacturers that the integration efforts would disrupt the development of advanced air bags. In response to an August 1996 NPRM, the vehicle manufacturers had indicated that development and installation of standard equipment on-off switches for makes and models not already equipped with them would take at least one year. As a practical matter, given the time estimates from the vehicle manufacturers regarding on-off switch availability, deactivation was the only readily available means for turning off air bags in existing vehicles. Accordingly, in issuing the NPRM, the agency proposed to allow deactivation. Nevertheless, it expressly requested comment regarding on-off switches. A wide variety of commenters responded to that request.

The facts underlying the agency's comparison of the relative merits of deactivation and on-off switches changed dramatically after issuance of the deactivation NPRM. Not long after the issuance of the January 1997 NPRM, a number of major vehicle manufacturers began announcing that retrofit on-off switches could be made available at reasonable cost and in anywhere from 2 to 6 months.

These announcements fundamentally changed the agency's assessment of the relative merits of on-off switches and deactivation. As a result of the new information from the vehicle manufacturers, on-off switches were elevated from a theoretically available alternative to an alternative that is actually available within a relatively short time. The new information also indicated that retrofit on-off switches could be made available without disrupting the development of advanced air bags.

D. Specifying That Retrofit On-Off Switches Are the Only Means Authorized Under the Exemption for Turning Off Air Bags Is Reasonable and Consistent With Safety

The ready availability of on-off switches and their safety advantage over deactivation make authorizing deactivation both unnecessary and undesirable. The primary source of that safety advantage is the flexibility of on-off switches.[30] With an on-off switch, an air bag's operational status can be changed at the flip of a switch. The flexibility of on-off switches gives them considerably greater potential than deactivation for promoting overall safety. On-off switches allow air bags to be turned off and on as needed, according to whether an air bag creates risks for particular occupants.

In addition to making it possible to accommodate the different risks faced by different people, on-off switches can likewise accommodate the changing needs, knowledge and attitudes of people. For example, a child will be at increasingly less risk as he or she grows older. In addition, a person whose attention is focused now on the perceived risk of an air bag fatality if he or she does not turn the air bag off may later recognize that there is a much greater risk of serious injury or death if he or she does not leave the air bag on. Finally, subsequent owners of existing vehicles may have no need to turn off their air bags. The ability of on-off switches to allow vehicle owners to respond to these changes will have important implications for the percentage of occasions on which air bags are able to deploy when needed.

NHTSA recognizes that the opinion survey conducted by IIHS in January indicates that there is apparently significant public interest in on-off switches. The agency is aware also of

[28] Drivers who think that they are currently sitting closer than 10 inches should get a ruler and measure the distance. Research shows that many drivers underestimate the distance between them and their air bags. When they actually measure the distance, they often find that it is 10 or more inches.

[29] Drivers may underestimate their ability to change their driving position to achieve the 10-inch distance. A recent IIHS survey indicates that only 5 percent of female drivers (approximately 2.5 percent of all drivers) normally now sit less than 10 inches away from their air bag module. Another recent IIHS survey shows that most short-statured female drivers (10 out of 13 women ranging in height from 4 feet 8 inches to 5 feet 2 inches) could adjust their driving position to achieve that 10 inch distance in all 12 test vehicles used by IIHS. The remaining three drivers could achieve 10 inches in almost all of the vehicles.

[30] An additional safety advantage of on-off switches will be that they, together with the ''Air Bag Off'' telltale, will provide a permanent means of ensuring that people will not ride in a vehicle without knowing that an air bag has been turned off.

IIHS' suggestion that its January 1997 survey indicates that if the agency specifies on-off switches as the means for turning off air bags, more people may get on-off switches than would have had their air bags deactivated.

However, there are several reasons for believing that the January 1997 survey substantially overstates the number of people who will obtain on-off switches under this final rule. First, and foremost, the agency's decisions to require agency approval of each request and to limit eligibility for on-off switches to those vehicle owners who can certify membership in a particular risk group will significantly and appropriately limit the availability of on-off switches to persons with a real safety need for them. Further, the agency does not believe that a respondent's expressed interest in on-off switches in that January 1997 telephone public opinion survey will necessarily translate into a decision in January 1998 or thereafter to go to a dealer or repair business and pay to obtain an on-off switch. In addition, a consumer's decision to acquire and even to use the on-off switch does not mean that the consumer will continue to use the switch. The survey methods and results reflect not only the underlying safety problem, but also the atmosphere in which the survey was taken. That atmosphere was colored heavily by those media accounts that focused on an important, but limited, portion of the full story about air bags. Some of that same narrow focus can be seen in the survey.[31]

NHTSA recognizes that a new survey by IIHS cures some of the shortcomings of its January 1997 survey.[32] The new survey, conducted in August 1997, informed respondents about the cost of deactivation and on-off switches, the benefits of air bags and the steps that can be taken to minimize or even eliminate air bag risks for the vast majority of people. While the new survey suggests that many people are interested in on-off switches, it also shows that providing people with even minimal facts regarding these matters substantially reduced the extent of that interest. Before the respondents were provided with such information, 27 percent of the respondents indicated that they wanted on-off switches for driver air bags and 26 percent wanted them for passenger air bags. After receiving the information, these percentages fell to 12 percent and 16 percent, respectively. As noted below, the agency believes that a sustained, comprehensive public education campaign would reduce the level of interest in obtaining on-off switches even further.

Since the percentage of respondents to both IIHS surveys who expressed general interest in turning off their air bags far exceeds the percentage of the population at any significant risk, it is evident that the risks of air bag fatalities are significantly overestimated by many people. It is equally apparent that the misperception of risk regarding air bag-related fatalities is leading some consumers to insufficiently appreciate the risks of turning off an air bag. The agency expects that the requirement that owners certify that they have read the information brochure as well as the public education campaign will lead to a more balanced view of the risks associated with current air bag designs, and that the requirement for agency approval and for owner certification of risk group membership will appropriately limit the requesting of on-off switches.

The misperception of the risks in everyday life, whether related to air bags or other problems, arises from a variety of factors. An article published in *Smithsonian*, the magazine of the Smithsonian Institution, addressed some of the factors that make assessing and comparing risks difficult for scientists and engineers, and even harder for the average person without access to all available information and analytical methods:

> In a landmark test in 1980, a group of psychologists asked a representative sampling of the populace to rank 30 activities and technologies by risk; then they compared the results with rankings assigned by a panel of risk-assessment experts. In places, the two groups agreed, such as on the risk of motor vehicles, placed number one by the experts and number two by the public. But on others, there were large discrepancies: the public rated nuclear power as their number one risk, whereas the experts ranked it as a lowly number 20. Experts ranked x-rays as number 7, while the man-in-the-street saw them as a number 22. What, the risk-communication scientists next asked, was influencing the public's perception of risk?
>
> For starters, they found that the public responds differently to voluntary and involuntary risks. You and I are willing to tolerate far greater risks when it is our own doing, such as smoking cigarettes or climbing mountains. But if the risk is something we can't control, such as pesticides on food or radiation from a nuclear power plant, we protest, even if the threat is minimal.
>
> Second, we tend to overestimate the probability of splashy and dreadful deaths and underestimate common but far more deadly risks. . . .
>
> Yet another factor about how we rank risks revolves around whether or not the risk is perceived as ''natural. * * *''[33]

As the author also noted, our problem in making everyday decisions about the risks we face is more difficult than simply assessing a single risk correctly.

We're also realizing that the trade-offs are not always so clear. Reducing risk in one area

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[31] There are other reasons for discounting the results of this early 1997 IIHS survey as a basis for predicting how many people will obtain on-off switches. In asking the respondents whether they wanted on-off switches, the surveyors did not ask whether the respondents were aware of a number of key factors that might heavily influence the extent of their desire for an on-off switch. Further, the surveyors did not take the alternative approach of informing the respondents of these factors and then asking them whether learning any or all of this information influenced their desire for an on-off switch. Based on the factors that affect how the public perceives risk (see footnote 35), three undiscussed factors in particular seem key: (1) most people would be making significant safety tradeoffs if they turned off their air bags; (2) most people could control and virtually eliminate the risk of serious air bag injuries by changing their driving and riding habits instead of physically changing their vehicle; and (3) the cost of an on-off switch is not insubstantial. A survey by the Harvard School of Public Health's Center for Risk Analysis in late February and early March had similar shortcomings. The absence of these factors from these surveys in part simply reflects the fact that there was less of a consensus in early 1997 about the air bag-related risks and the most appropriate measures for reducing them. Nevertheless, their absence is a concern since the survey results themselves may not only measure (or at least attempt to measure) existing public attitudes regarding air bags and on-off switches, but also potentially affect future public attitudes regarding those matters.

NHTSA expects that when media reports and the agency's information brochure make the public more aware of the safety tradeoffs and available means of controlling and reducing risk, the level of public interest in obtaining on-off switches will fall. Interest is expected to fall further in response to the public education campaign to be conducted the agency and other organizations about air bags.

[32] The difference between the new IIHS survey and the January IIHS survey regarding the level of general interest in on-off switches for passenger air bags appears to demonstrate the influence which media accounts of recent air bag fatalities can have on survey results. The January survey, which was taken when media accounts of a particular child fatality were relatively fresh in the public mind, indicated that 67 percent of the respondents were generally interested in an on-off switch for passenger air bags. The August survey was not closely preceded by similar accounts. Its figure for general interest in passenger air bag on-off switches was 26 percent.

[33] John F. Ross, *Risk: Where Do Real Dangers Lie?* Smithsonian, November 1995, at 42. See also Marcia Angell, *Overdosing on Health Risks*, New York Times, May 4, 1997, Magazine Section, which, in part, notes that the media are not the only players that affect public risk perception; Michael Ryan, *What Is Really Risky?* Parade Magazine, June 15, 1997, which discusses a recent Harvard study concerning differences between the risk perceptions of scientists and the general public; and Matthew Wald, *Freewheeling Freedom; Appalled by Risk Except in the Car,* New York Times, June 14, 1997, section 4, Week in Review. For a related account of the difficulty in obtaining comparative information on risks and tradeoffs, see David Shaw's three-part series, *Living Scared. Why Do the Media Make Life Seem So Risky?* in the Los Angeles Times, September 11–13, 1994.

may very well increase the risk in another.* * *[34]

The actions being announced by NHTSA in this final rule will have the effect, directly or indirectly, of giving the public a sense of control over the risks associated with current air bags, and restoring objectivity to the public's perception of those risks. As a result, whatever the extent of the public's initial inclination to acquire and use on-off switches, these actions will thereby reduce that inclination. The air bag deaths are not random. Further, the risk of death is highly influenced by behavior. Through informing the public about how the vast majority of people can eliminate or substantially minimize any risk through behavioral changes and how the rest can eliminate the risk through the use of an on-off switch, the agency will give the public a significantly increased sense of control over the risk of air bag fatalities. Through these same means, the agency will inform the public about the steps that they can take to reduce, and thus control, this risk without turning off air bags.

Together, these actions will put air bag risks into proper perspective, enable those truly at risk to reduce or eliminate their risk, and calm the fears of others. As the public comes to appreciate more fully just how limited and controllable the risks are, interest in obtaining and using on-off switches to turn off air bags is expected to decline. Likewise, any inappropriate use of on-off switches will be reduced to a minimum. As noted above, the August 1997 IIHS survey demonstrates that giving the public even the barest facts reduces the level of interest in on-off switches. NHTSA believes that a sustained public education campaign which includes comprehensive reading materials, explanatory graphics and video clips will reduce the level of interest even further.

NHTSA notes also that some company and group commenters argued that on-off switches would be misused. They were particularly concerned that air bags would be turned off for people who are not at risk of serious air bag injuries and who would benefit from air bag protection. The agency recognizes that misuse is a possibility. However, the agency does not have any information indicating that there is a misuse problem associated with the 1.3 million vehicles equipped with an original equipment manufacturer (OEM) on-off switch for the passenger air bag. Further, the agency believes that any problem of misuse will be small, particularly given the requirements for agency approval and for vehicle owners to certify the reading of the information brochure and risk group membership. The public education campaign will also help minimize that problem. Because of these factors, the people who submit request forms for on-off switches will be aware of the dangers of misusing on-off switches by leaving them off when the vehicle is being used by people who are not at risk of being seriously injured by an air bag.[35]

Further, any small possibility of misuse will be more than offset by the fact that the use of an on-off switch instead of deactivation to turn off air bags will make it much more likely that air bags will be on for those people who will benefit from them. Compared to retrofit on-off switches, deactivation is an inflexible, overly broad, and essentially permanent method of turning off air bags. With deactivation, the consequence is universal, i.e., ''off for one, off for all.'' Deactivation does turn off an air bag for those who are at risk and need the air bag to be off, and thereby can prevent air bag fatalities. However, it accomplishes this only at the price of sacrificing protection for those who could benefit from that protection. The net effect of widespread deactivation would likely be even greater loss of life. Further, another likely consequence of deactivation is permanency, i.e., ''once off, forever off.'' In most instances, a consumer is unable, on his or her own, to change the operational status of a deactivated air bag to suit the needs of occupants on a particular trip. Likewise, a consumer cannot go to a dealer or repair business each time that the operational status of an air bag needs to be adjusted to meet the needs of the occupants on a particular trip. Given the time and expense involved, relatively few of the vehicle owners who have their bags deactivated are expected to make a return trip to the dealer or repair business to have them reactivated when needs or attitudes change, or when the vehicle is sold.

E. Case-by-Case Agency Authorizations of Retrofit On-Off Switch Installation, Based on Vehicle Owner Certification of Risk Group Membership and on Informed Consumer Decisionmaking, Is Reasonable and Consistent with Safety

As noted above, this rulemaking is being conducted under section 30122(c)(1) of Title 49, U.S.C., which provides that the Secretary of Transportation may prescribe regulations ''to exempt a person from * * * [the make inoperative prohibition] * * * if the Secretary decides the exemption is consistent with motor vehicle safety and section 30101 of this title.'' Section 30101 sets forth the purpose and policy of Chapter 301, ''Motor Vehicle Safety,'' of Title 49. The section states that, among other things, ''(t)he purpose of this chapter is to reduce traffic accidents and deaths and injuries resulting from traffic accidents.'' This final rule will promote safety by reducing the fatalities caused by current air bags, particularly in existing vehicles, and promoting the long run acceptability of the concept of air bags.

This final rule will achieve these safety goals by authorizing persons at risk to obtain retrofit on-off switches, based on a combination of informed decisionmaking, owner certification of risk group membership, and agency approval of each request. To promote informed decisionmaking, the agency will, in conjunction with other organizations (ABSC, AAA, NSC, and IIHS), conduct a public education campaign explaining that most people are not at risk and that even among people at risk, not all people need obtain and use on-off switches to turn off their air bags. The agency will discuss who is at risk from air bags, who is not at risk, and why. It will advise consumers of a series of easy steps that will reduce this risk to a point that obtaining an on-off switch is unnecessary for all but a relatively small number of people. Only if those steps are insufficient should motorists consider seeking an on-off switch. These messages will be reinforced and echoed in an agency information brochure. Further, the request form provides a place where each vehicle owner desiring an on-off switch must certify that he or she has read the information brochure.

To obtain a switch that turns a driver air bag on and off, vehicle owners must also certify on the request form that the owner or a driver of their vehicle is a member of a particular driver risk group. Similarly, to obtain an on-off switch for a passenger air bag, vehicle owners must certify on the request form that they or a passenger of their vehicle is a member of a particular passenger risk group. If an owner wants on-off switches for both air bags, the owner must make separate certifications on the same request form, one for the driver air bag and another for the passenger air bag.

[34] Ibid.

[35] The requirement for a telltale light that indicates if the air bab is not operational will also eliminate the possibility that occupants will unknowingly ride without the protection of an air bag.

NHTSA believes that requiring owners to certify that they have read the information brochure and that they or a user of their vehicle is a member of a risk group and requiring that each request be approved by the agency is justified by the current climate of heightened, and exaggerated, concern about air bag fatalities. These requirements will help limit the availability of on-off switches to persons with a genuine safety need for them. Having to make the certifications will help induce consumers to read the information brochure, separate fact from fiction, and avoid trading one safety risk for another, larger safety risk. The necessity of obtaining agency approval will induce an even greater level of care and caution in requesting an on-off switch. As the public education campaign moves forward, media coverage expands to cover the safety benefits, risks and tradeoffs associated with air bags more broadly, public and private efforts result in increased seat belt use rates, and air bags with advanced attributes start to appear in new vehicles, the public will increasingly appreciate the low risk of air bag fatalities and the steps they can take, short of turning their air bags off, to reduce that risk. The requirement for vehicle owners to certify that they have read the information brochure and fill out the request form will also help ensure that any decision to seek and use on-off switches is a thoughtful, responsible one.

Allowing vehicle owners to obtain on-off switches, based on risk group certification and on informed decisionmaking, and subject to agency approval, will enhance safety because it will speed the reduction of serious and fatal injuries related to air bag deployment. It will also enhance the public acceptance of air bags. Public acceptance of motor vehicle safety technology is not only a relevant consideration in assessing the practicability of a Federal motor vehicle safety standard,[36] but also it is vital to the long run success of any vehicle safety program and to the effectiveness of all types of safety equipment.

Making retrofit on-off switches available will promote public acceptance of air bags by providing those people at risk with a means of eliminating their risk. NHTSA anticipates members of the public will, with their concerns thus allayed, be increasingly receptive to the public education campaign concerning air bag safety and seat belt use. The agency anticipates that the public will also increasingly come to appreciate the limited nature of the risk, the factors that create that risk, the limited number of people affected by those factors, and the ways in which those people can reduce and even eliminate the risks without sacrificing the benefits of air bag protection. The public will come to appreciate also that turning off air bags will make the vast majority of people less safe, not more safe. As a result, the demand for retrofit on-off switches, and the inclination to use them to turn off air bags, will decrease.

Making retrofit on-off switches available will also have other salutary effects that are consistent with motor vehicle safety and section 30101. As noted elsewhere, the agency is mindful of the surveys by IIHS and others showing that the percentage of respondents interested in deactivation or on-off switches exceeds the percentage of the general population that is at risk. Availability of on-off switches will minimize the likelihood that consumers, potentially including consumers not actually at risk, will obtain unauthorized deactivations with the negative consequences discussed above. It will also lessen the possibility of owners attempting to deactivate their air bags on their own. While owners are not prohibited by Federal law from removing or disabling safety features and equipment installed pursuant to NHTSA's safety standards, attempts by inexperienced people to deactivate air bags or install on-off switches could result in serious injuries to those people. Further, whether performed by commercial entities or the owners themselves, these illicit deactivations would not only be inflexible and essentially permanent, but they could also be invisible to current users and future owners, since they might not be accompanied by any labeling or recordkeeping.

NHTSA recognizes that the final rule will not allow installation of on-off switches for people who are concerned about their air bags, but who are not at risk and thus cannot certify that they are, or a user of their vehicle is, in a risk group. It would not be consistent with safety for the agency to authorize these people to obtain on-off switches and to turn off their air bags, since their doing so would make them significantly less safe. However, action is needed to address the concerns of these people. The agency is seeking to alleviate their concerns by providing the public with information about who really is at risk, and why. The information brochure and public education campaign are the key elements of that effort.

Before deciding to limit the availability of on-off switches to members of risk groups and to allow installation of on-off switches only after prior approval by the agency of each request for switches, the agency considered a spectrum of possible approaches, listed below in decreasing degree of administrative complexity: (1) full documentation by the vehicle owner of the facts establishing membership in a particular risk group specified by the agency and case-by-case agency review of the owner's request and documentation before the agency authorizes installation of an on-off switch, (2) case-by-case agency approval of the owner's request (unaccompanied by documentation of the underlying facts) to confirm that he or she has properly certified membership in a particular risk group specified by the agency before it authorizes installation of an on-off switch, (3) presentation by owner to a dealer or repair business of his or her certification of having read the information brochure and of membership in a particular risk group specified by the agency, plus post-installation submission by the dealers and repair businesses of the certification to agency, (4) presentation by owner to a dealer or repair business of his or her certification of having read the agency information brochure and retention of the certification document by dealer or repair business of certification, and (5) presentation by owner to dealer or repair business of his or her simple request. The second approach was suggested in a comment by GM,[37] the fourth was proposed by the agency in January, and the fifth was suggested in a comment by the Competitive Enterprise Institute (CEI).

In developing the fourth approach, i.e., its January 1997 proposal, the agency indicated that it had considered the relative merits of two alternatives: continuing case-by-case agency approval of individual requests from persons seeking authorization to turn off

[36] *Pacific Legal Foundation* v. Department of Transportation, 593 F.2d 1338, 1345 (D.C. Cir. 1979).

[37] GM suggested that the agency select and describe the most frequent circumstances warranting an on-off switch and develop a '' * * * form letter that owners could complete (i.e., checking the appropriate one of the circumstances specified on the form), sign and submit to NHTSA.'' As to ''* * * requests that do not fit under one of the defined circumstances * * *,'' owners could still submit them''* * * to NHTSA in non-form letters that detail the reasons for the request.'' GM apparently contemplated that the agency would quickly examine the form letters and concentrate on the non-form requests. GM described the agency's review function as follows: ''The agency could *process requests made with the form letter in an expedited manner,* and focus attention principally on the non-form requests.'' (Emphasis added.)

their air bags based on a demonstrated safety need, or providing an information brochure informing vehicle owners about the factors that create risk and who is at risk, requiring owners to certify that they had read the brochure, and then letting them make their own decision. Given the complexity and time-consuming nature of the process then being used by the agency for processing deactivation requests, the agency proposed the latter alternative, which would have allowed any person to choose to deactivate, without having to demonstrate or claim a particular safety need, and without having to obtain the agency's approval. However, under the proposal, applicants would have had to submit a written authorization to the dealer or repair business performing the deactivation and certify that they had read an agency information brochure explaining the consequences of having an air bag deactivated.

Nevertheless, NHTSA requested views regarding the feasibility and advisability of limiting eligibility for deactivation to persons in specified risk groups. Specifically, the agency asked—

- Should deactivation of air bags be allowed at the owner's option in all cases or should deactivation be limited to situations in which death or serious injury might reasonably be expected to occur?
- Would the administrative details involved in establishing and implementing limitations on eligibility overly complicate the availability of deactivation?

The agency has decided that it is necessary to go beyond the fourth and even the third approaches and adopt provisions that give greater assurance that on-off switches are installed only when it is consistent with the interests of safety to do so. The complexities associated with such additional provisions are outweighed by other factors. Prior approval of requests for switches will encourage greater attention to the importance of on-off switches being requested and used only for people whose safety would be enhanced by turning off their air bag. As was noted by many of the group and company commenters, consistency with safety is the basic requirement of the statutory provision permitting the agency to issue exemptions from the make inoperative prohibition. Safety is also NHTSA's primary focus and responsibility under Chapter 301. Prior approval will also enable the agency to monitor directly, from the very beginning, the implementation of the regulation and the effectiveness of its regulation and the associated educational materials in promoting informed decisionmaking about air bag on-off switches.[38]

The final rule supplements the provision regarding informed decisionmaking by requiring that vehicle owners desiring on-off switches certify that the owner or a user of their vehicle is a member of a particular safety risk group. The necessity of certifying membership in a particular risk group will induce greater care on the part of vehicle owners who are considering authorizing the installation of an on-off switch. NHTSA notes, as it did in its proposal, that people not in a risk group would be less safe, not more safe, if they turned off their air bags. The further necessity for obtaining agency approval for an owner's request will induce vehicle owners to exercise even greater caution and to consider even more carefully whether they are at risk and, if so, whether they should request a switch.

A secondary reason for the decision to require agency approval of owner requests for on-off switches is the belief that the task of reviewing the owner request forms is more properly performed by NHTSA instead of the dealers and repair businesses. This belief became decisive with the addition of the provision for risk group certification. Determining eligibility for exemptions from statutory requirements and prohibitions is traditionally and most suitably a governmental function.

NHTSA recognizes that the decision to require prior agency approval of each request will add increased cost and administrative complexity to the process of obtaining on-off switches and is accordingly taking steps to streamline the approval process. The form has been designed to allow for a speedy review. To minimize any disruption of normal agency activities, the agency will contract out for the performance of the review process. The agency will ensure that word and data processing technologies are used to establish efficient processes for reviewing the on-off switch request forms and recording data from them.[39]

NHTSA also rejected the first approach which was more administratively complex and cumbersome than the final rule in that it would have required each vehicle owner to document the facts underlying his or her claim of risk group membership. NHTSA believes that a requirement for documenting risk group membership would be unduly burdensome and impracticable for vehicle owners. For example, documenting the necessity for carrying children in the front seat would be time consuming and difficult, if not impossible. Would a vehicle owner whose family has too many young children to place all of them in the back seat have to submit the birth certificates of each child? Would a parent who car pools children to soccer games have to submit affidavits from the parents of the other children? And would a driver unable to maintain the proper distance from his or her steering wheel have to submit photographs showing the driver holding a ruler? Finally, the delays under such an approach might create unsafe conditions, either by inducing people to seek illegal deactivations or by simply extending the time that people must drive their vehicles without means for eliminating the risks for people in risk groups.

NHTSA also rejected the fifth approach, suggested by CEI, which

[38] The agency's decision to require that vehicle owners be initially authorized by the agency to obtain a on-off switch moots the arguments by some commenters, most notably GM and the Association of International Automobile Manufacturers, that the agency can exempt individuals on a case-by-case basis, but lacks authority to exempt classes of people. To reach this conclusion, those commenters attributed unwarranted significance to the use of the singular ''person'' in the statutory exemption provision. Since the exemption authority runs to dealers and repair businesses, not to consumers, these commenters apparently contemplated that the agency issue a separate exemption to each dealer or repair business and perhaps even issue a separate exemption for each owner who desires a retrofit cutoff switch.

There is no reason to believe that Congress intended to limit exemptions to ones granted to specific individuals. In the agency's view, the exemption provision can reasonably be read to permit an exemption based on classes of people. The singular includes the plural, absent contrary statutory language or purpose. Section 30122 neither contains any language nor has any purpose that would preclude reading ''person'' in the plural. NHTSA notes that similar use of the singular in 15 U.S.C. 1402(e), the statutory predecessor to 49 U.S.C. 30118(a) regarding the making of a defect and noncompliance determination concerning a motor vehicle or replacement equipment, has repeatedly been judicially interpreted to permit NHTSA to make determinations regarding classes of vehicles or equipment. Section 30118(a) was enacted in the same public law, Pub. L. No. 93–492, that contained the make inoperative prohibition.

[39] NHTSA notes that some proponents of prior agency approval of on-off switch requests credted the introduction of streamlined practices and increased use of information technologies with being the key factors leading to substantial decreases this year in the agency's average processing time of air bag deactivation requests. Those parties further suggested that use of the same information technologies will enable the agency to process on-off switch requests with equal speed. While the introduction of those practices and technologies increased the efficiency of the agency's processing of the deactivation requests, by far the most important factor was the steady and substantive decline in the number of deactivation requests. The volume fell from a high of 400 requests per week in April and May to 100 requests per week in September.

would let people obtain an on-off switch without even requiring that they first read the agency information brochure so that they could make a fully informed decision. CEI also suggested that air bags should be optional instead of required equipment. This suggestion is premised primarily on the shortcomings of current air bag designs. Making air bags optional is inconsistent with safety. It is also inconsistent with the ISTEA, which mandates air bags. Further, the rationale underlying CEI's suggestion is akin to the rationale unsuccessfully used by this agency in the early 1980's to rescind the automatic restraint requirements adopted in the mid 1970's. The agency rescinded those requirements because the vehicle manufacturers chose to comply with them by means (detachable automatic seat belts) that were potentially ineffective and might not have produced significant safety benefits, instead of by more effective means (either nondetachable automatic seat belts or air bags) that were available to the vehicle manufacturers. The U. S. Supreme Court unanimously concluded that the appropriate regulatory response of the agency under the Vehicle Safety Act to ineffective or undesirable design choices under the automatic restraint requirements should not be simply to rescind those requirements, but first to consider the alternative of amending the requirements to preclude those choices. *Motor Vehicle Mfrs. Assn.* v. *State Farm Mut. Auto. Ins. Co.,* 403 U.S. 29 (1983). Similarly, the judgment that current air bag designs do not provide an optimal level of safety is not a sufficient reason to undercut or negate the Congressional mandate for air bags. Instead, the appropriate short term response is to allow the installation of on-off switches so that air bags can be readily turned off for people who are actually at risk from current air bags, as well as to require new labeling and expedite the depowering of air bags. Ultimately, the solution is to ensure that the manufacturers introduce advanced air bag designs.

F. Continued Use of Prosecutorial Discretion for Case-by-Case Authorizations of Air Bag Deactivation Until Retrofit On-Off Switches Become Available

Between now and January 19, 1998, the date on which on-off switch installation may begin, NHTSA will continue its current practice of using its prosecutorial discretion to grant requests for deactivating the air bags in all vehicle makes and models. This will be done on a case-by-case basis in a limited set of circumstances, e.g., those in which certain medical conditions suggest that deactivation is appropriate. The agency will continue to limit the circumstances because of the inflexible and relatively permanent nature of deactivation.

After January 19, NHTSA will cease granting deactivation requests for those vehicle makes and models for which the vehicle manufacturer makes on-off switches available.[40] NHTSA expects that most vehicle manufacturers will promptly make on-off switches available for most vehicle makes and models.[41] Vehicle owners can consult with dealers about the availability of such switches. As on-off switches become available from a vehicle manufacturer for a specific make and model, NHTSA will cease granting deactivation requests for that make and model. Owners of the make and model can then fill out request forms and send them to NHTSA for approval. If on-off switches are available both from the vehicle manufacturer and from an independent aftermarket manufacturer, a vehicle owner who obtains an authorization letter from the agency for a switch can choose to have the on-off switch installed by either a dealer or a repair business.

Owners of vehicle makes and models for which the vehicle manufacturer has not made available an on-off switch may have several options after January 19, 1998. They can write to NHTSA for authorization to deactivate their air bags. The agency will continue to grant such requests indefinitely under the same criteria that the agency is currently using in making such grants. Owners can also consult with a repair business to determine if an aftermarket parts manufacturer has made an on-off switch available for the owner's particular make/model. If such an on-off switch is available, these consumers could fill out a request form, send it to the agency, and ask it for authorization to have an on-off switch installed.

[40] However, if on-off switches become available for a vehicle make and model from an independent aftermarket manufacturer, but not the vehicle manufacturer, the agency will continue to authorize deactivation for that make and model. While the agency believes that on-off switches are superior to deactivation from a safety standpoint, it will continue to authorize deactivation in this limited circumstance in view of the agency's greater difficulty in tracking the availability of on-off switches from aftermarket manufacturers and the lace of a mechanism for testing the performance of an on-off switch as installed in a particular vehicle.

[41] The agency is aware that the incidence of air bag facilities is not the same for all manufacturers and that some manufacturers have indicated that they may not make on-off switches available. NHTSA notes that its exemption authority under section 30122 does not permit it to require manufacturers to make these on-off switches available.

Since the agency will continue to authorize deactivation at least until January 19, and since some vehicle owners may have been delaying submitting a request for deactivation in anticipation of the issuance of this rule with an immediate effective date, NHTSA is providing below an updated explanation of its procedure and criteria for reviewing and granting deactivation requests. This will help vehicle owners understand the limited circumstances in which NHTSA will be authorizing deactivations. Those circumstances have been modified to reflect the issuance of the physicians' report on medical conditions. The explanation will also inform the public about the nature of the information that NHTSA needs from vehicle owners to make appropriate decisions about the deactivation requests.

G. Other Issues

1. Request Form

NHTSA is requiring owners who want an on-off switch to submit a filled out request form and obtain agency approval before they can have an on-off switch installed. Most commenters who addressed the issue supported the use of a request form. As revised in this final rule, the form serves three major purposes.

First, the request form provides the agency, and the dealer or repair business, with a measure of assurance that the person requesting the on-off switch is the person with authority to authorize the installation of a switch. The dealer or repair business may, in addition, require further proof of ownership or authority. However, the necessity of submitting a signed request form on which the signer of the form must claim, subject to 18 U.S.C. 1001, ownership of the vehicle to be modified should help forestall installation requests by persons other than the owner of a vehicle.

Second, as noted above, the form reinforces the value of the information brochure by requiring the owner to certify that the owner has read the brochure and that the owner or a user of the vehicle is a member of a risk group listed on the brochure. In response to the concern expressed by several commenters that, partly because of the complexity of the subject matter involved, owners would not read the proposed information brochure, NHTSA has changed the brochure to make it more customer-friendly.

Third, the request form is intended to make the owner understand that he or she is responsible for the consequences of the decision to install, and later to

use, the on-off switch. To that end, the form includes statements that the owner is aware of the safety risks and consequences of turning off an air bag.

The agency will begin processing of request forms on December 18, 1997. If a form is submitted before that date, it will be given the same priority as a form submitted after that date. Accordingly, there will be no advantage to submitting forms early.

2. Dealer and Repair Business Liability

To address the anticipated concerns of motor vehicle dealers, repair businesses and others regarding liability issues associated with turning off air bags, the agency proposed making the decision of vehicle owners to obtain on-off switches dependent upon informed decisionmaking, acknowledgment of the adverse safety consequences of turning air bags and execution of a limited standardized waiver in the proposed authorization form. The waiver would have stated that the owner's act of authorizing a deactivation would waive any claim or cause of action that the owner might have against the dealer or repair business by virtue of the fact that the air bag had been deactivated. A number of commenters questioned the efficacy of any such waiver, asserting that it would not apply to other possible vehicle occupants, such as family members or friends of the owner or to future owners and their family members and friends. Several vehicle manufacturers expressed concern that the waiver did not extend to actions and claims involving vehicle manufacturers. One commenter stated that only legislation could provide effective relief from liability risks.

NHTSA believes that the liability risks have been essentially eliminated and that those risks should not interfere with the implementation of this exemption. First, under this final rule, dealers and repair businesses will play no role in determining whether vehicle owners qualify for the installation of on-off switches. Those parties will have no involvement in the process until the vehicle owners contact them with agency authorization letters in hand.

Second, in recognition of the dealers' and repair businesses' concerns, NHTSA has switched from an authorization form to a request form and included a statement alerting vehicle owners that dealers and repair businesses may condition their agreement to install an on-off switch upon the owner's signing of a liability waiver. Owners desiring an on-off switch must acknowledge that possibility by marking the box next to that statement. This will facilitate the efforts of dealers and repair businesses to obtain waivers from owners.

Upon reviewing its proposal and the public comments, the agency decided not to include a standardized waiver in the request form. NHTSA agrees that the proposed waiver would not have covered all possible litigants. Further, the agency is concerned about state-to-state variations in the law regarding the precise language that is sufficient to waive a claim even by the vehicle owner. Those variations could undermine the value of any standardized waiver. Moreover, NHTSA is concerned that adoption of a standardized waiver might give some dealers and repair businesses false assurances of protection from liability in all states and in all cases. Finally, NHTSA believes that, to the extent dealers want vehicle owners to sign a waiver before they will install an on-off switch, this is an issue between them and vehicle owners. By taking this position regarding waivers, the agency believes that dealers and repair businesses will be in a better position to craft individualized waivers that reflect the law of the State in which they operate.

The agency's decision not to include a waiver moots the requests of some commenters to expand the proposed waiver to cover claims against vehicle manufacturers, distributors and employers who operate fleets. This final rule places no limitation on efforts by those parties to seek waivers from vehicle owners. Vehicle manufacturers can work together with their dealers to develop a waiver that covers both. Further, no implication should be drawn from this decision that the general concept of seeking of such waivers is in any way inappropriate. To the contrary, it reflects NHTSA's belief that any waiver is more appropriately a decision between the vehicle owner and the dealer or repair business. Dealers and repair businesses may condition their installation of on-off switches upon the making of waivers by vehicle owners. Employers that provide fleet vehicles to their employees may write their own waivers and condition any installation of on-off switches on the employees' signing those waivers.

Third, NHTSA believes that the various provisions included in the final rule regarding informed decisionmaking and risk group membership have the additional effect of significantly reducing the liability concerns of the dealers and repair businesses.

Fourth, the agency's decision to restrict the means of turning off air bags under the exemption adopted in this final rule to on-off switches substantially increases the likelihood that air bags will be turned on and protect those persons not in a risk group. One concern with allowing deactivation as proposed in the NPRM was that a deactivated air bag would not deploy in situations in which deployment would save lives. This concern was particularly great with respect to the friends and family of vehicle owners and the subsequent purchasers of vehicles with deactivated air bags. The presence of on-off switches in the clearly marked ''off'' position and/or the illumination of their indicator lights will be readily obvious to all front seat occupants, largely eliminating the concern about uninformed vehicle occupants and owners. In addition, the provisions requiring that owners read a government information brochure warning about the dangers of turning off air bags and that the owners expressly acknowledge those dangers should have the effect of reducing liability concerns.

There are additional reasons why the agency's decision to specify on-off switches will reduce any potential liability of manufacturers, dealers, and repair businesses. Under the deactivation proposal in the NPRM, it would have been the dealer or repair business itself that turned off the air bag. Subsequent purchasers might not know that an air bag has been turned off. In contrast, with on-off switches, no air bag will be turned off except by the hand of the owner or another user of the owner's vehicle. The last critical action or inaction that determines whether a vehicle's air bags will deploy in a crash is that of an occupant of that vehicle who has chosen whether the air bags are on or off. This is just as much true if the vehicle is owned by a subsequent purchaser as if it is still owned by the person who authorized the installation of the on-off switch.

The agency has not added a statement, requested by the National Association of Independent Insurers, that the obtaining or using of on-off switches may affect insurance premiums, or that it is the owner's responsibility to report the installation of an on-off switch to the insurance carrier. NHTSA wishes to maintain a strict safety orientation to the request form, and keep the paperwork to a minimum. Further, these are matters between insurers and their customers. An insurer can require its customers to notify it of on-off switch installation or attach whatever conditions it deems appropriate to continuing coverage of vehicles with on-off switches.

3. Information Brochure

In response to the commenters and the focus groups, the agency has revised the information brochure to make it much more informative. The focus groups requested not only detailed information about who was at risk and why, but also basic background information about how air bags work. That information is needed to address persistent misconceptions about some aspects of how air bags operate. The revised brochure—

- explains how air bags work,
- explains how air bags save many lives and prevent many injuries,
- describes the groups of people who have been killed by air bags,
- identifies the single factor that is common to all air bag deaths,
- makes clear why certain groups of people are at risk,
- gives practical advice to consumers on how to reduce their individual risk and that of the users of their vehicle without modifying their vehicles, and
- as printed by the agency, includes simple graphics showing the steps that drivers at risk can take to reduce those risks.

NHTSA agrees with IIHS and other commenters that the proposed information brochure was too technical, and has completely rewritten it to make it more consumer-friendly.[42] The data tables on historical fatalities and injuries in the proposed information brochure have been replaced by a practical, succinct, question and answer format. This makes it much more likely that the brochure will be read, and understood, in its entirety.

The agency recognizes that no single information brochure will fully meet everyone's needs and that some consumers will prefer more information. However, the agency disagrees that not being able to tailor the information brochure to individual needs means that the brochure will not contribute to informed decisionmaking by consumers. The brochure contains basic information, geared to the average person. Persons wishing more information can visit NHTSA's Internet Web site or call the agency's toll-free Hotline.

NHTSA will distribute the information brochure widely. In addition, on its Internet Web site, the agency is providing the public with an opportunity to view video clips of crash tests showing the difference in the amount of protection that test dummies receive when using both seat belts and air bags and when using seat belts alone. The clips show that when the air bag is turned off and does not deploy in a moderate to severe crash, the head of a dummy representing a short female driver strikes the steering wheel hard enough to cause fatal injuries. The opportunity to view these video clips is prominently noted on the information brochure. The agency believes that this multi-media approach will effectively inform consumers about the importance of air bag protection and about the limited circumstances in which turning off an air bag should be considered. However, although the video is a useful educational tool, the agency is not conditioning eligibility for an on-off switch upon viewing a video presentation of the information in the brochure, as suggested by one commenter.

The agency disagrees with Chrysler's argument that basing advice to drivers on distance from the steering wheel is not meaningful. While Chrysler is correct that differences in air bag systems and steering wheel inclinations will affect the appropriate distances, NHTSA believes that giving general advice is useful and effective, and that no other measure is better (height being only a rough proxy for distance). Moreover, the vehicle manufacturers have not provided information to the agency on which it could base distance recommendations that are individually tailored to each vehicle make and model. By focusing on the ability of the vast majority of drivers, particularly short ones, to move a sufficient distance away from the steering wheel, this general guidance will help drivers identify ways they can reduce and even eliminate their risk. NHTSA anticipates that the vehicle manufacturers will supplement this general guidance as appropriate to fit the circumstances and air bag performance of their individual makes and models of vehicles.

4. Dealer and Repair Business Responsibilities Regarding the Request Form and Information Brochure

Many dealer and repair business commenters objected to the agency's proposal to require them to receive authorization forms from vehicle owners and to check the forms. Under this final rule, dealers and repair businesses will not have these responsibilities. They will be performed instead by the agency.

Many dealer and repair business commenters also objected to the agency's proposal to require them to distribute the request form and the information brochure. NHTSA is not requiring that they do so. The information brochures and request forms will be available to anyone who visits NHTSA's Internet Web site or uses U.S. Government Printing Office (GPO) Access.[43] The public can also call the agency's Hotline and arrange to have copies faxed or mailed to them. NHTSA will also send copies to dealers and repair businesses and to State Departments of Motor Vehicles. In addition, other organizations, such as the American Automobile Association, will assist in distributing these documents.

5. Insert for Vehicle Owner's Manual

NHTSA has decided not to adopt its proposal that dealers and repair businesses be required to provide vehicle owners with a copy of the information brochure as an insert for the vehicle owner's manual. A requirement that the dealer or repair business provide the entire brochure seems unnecessary given that the owner must certify that he or she has read the brochure prior to signing the request form.

However, as a reminder about the proper use of on-off switches, the agency is requiring that vehicle owners be given an owner's manual insert describing the operation of the on-off switch, listing the risk groups, stating that the on-off switch should be used to turn off an air bag for risk group members only, and stating the vehicle specific safety consequences of using the on-off switch for a person who is not in any risk group. Those consequences will include the effect of any energy managing features, e.g., load limiters, on seat belt performance. (See the discussion of safety belts with energy managing features in part II.B.2 above.)

6. Recordkeeping

In the deactivation proposal, the agency proposed to require that dealers and repair businesses send filled-out authorization forms to the appropriate vehicle manufacturer and that vehicle manufacturers be required to retain those forms for five years. The primary purpose of these proposals was to ensure that subsequent owners had a way of learning whether their air bags had been deactivated. The agency realized that the deactivated status of an

[42] NHTSA notes, however, the focus groups expressed a clear desire for extensive and detailed information about air bag safety and on-off switches to increase their understanding and aid their decisionmaking. Accordingly, the agency has not shortened the information brochure as urged by some commenters. It has, however, attempted to provide that information in a simple, readily understandable form. As printed by the agency, the information brochure will be supplemented with various graphics.

[43] GPO Access is a service of the U.S. Government Printing Office and is available directly as a subscription, or free through participating Federal Depository Libraries.

air bag is not readily apparent from a visual examination of a vehicle interior and that the labels proposed by the agency could fall off, deteriorate over time or be removed.

NHTSA has concluded that recordkeeping by the vehicle manufacturers is not necessary to accomplish the primary goal of ensuring that the public is aware of the operational status of air bags that have been turned off by means of on-off switches. On-off switches and their warning lights are relatively conspicuous and more permanent than labels. Thus, keeping records for the benefit of other vehicle occupants and subsequent owners is unnecessary, and indeed, not so effective as these visible cues.

Instead, NHTSA is requiring that, when a dealer or repair business receives an agency authorization letter from a vehicle owner and installs a switch, the dealer or repair business must fill in the form provided in the letter for reporting information about the dealer or repair business and about the installation. See Appendix C. The form must then be returned to NHTSA. This requirement will facilitate agency efforts to ensure that the exemption from the make inoperative prohibition is being implemented in accordance with the conditions set forth in this final rule. It will also aid the agency in monitoring the volume of requests and the geographic and other patterns of switch requests and installations. To ensure that the forms are returned to the agency in a timely fashion, NHTSA is requiring that each form be mailed within seven days of the installation of an on-off switch by the dealer or repair business.

With respect to its continued exercise of prosecutorial discretion to authorize deactivation, NHTSA will keep records regarding the vehicles for which it has allowed deactivations and for which it is able to obtain sufficient information. NHTSA will be sending labels to all owners for whom it has authorized deactivation, and will enclose a request for information on whether a deactivation was performed, whether it was a driver or passenger air bag deactivation (or both), and the vehicle identification number (VIN). This will enable NHTSA to keep records on vehicles for which the agency has approved air bag deactivation. The VINs of those vehicles, but no other identifying information, will be made available on NHTSA's Internet Web site, or by phone to aid subsequent purchasers in identifying vehicles with deactivated air bags.

7. Labels

The agency proposed labeling for the same reason it proposed recordkeeping, i.e., the difficulty of determining by visual inspection whether an air bag has been deactivated. Since the agency has decided to specify retrofit on-off switches instead of deactivation as the means for turning off air bags, a labeling requirement is unnecessary. To be eligible for the exemption, the dealer or motor vehicle repair business must install a retrofit on-off switch meeting certain requirements, including a requirement for a telltale light that illuminates to indicate when the air bag is off and a requirement that the device be operable only by means of a key. The ''on'' or ''off'' position of the on-off switch and/or illumination or non-illumination of the telltale light will be readily apparent to other occupants and future owners and inform them of the on or off status of the air bags.

NHTSA intends to distribute warning labels to people who receive deactivation letters before retrofit on-off switches become available and for vehicles for which on-off switches do not become available. The agency will also distribute those labels to persons who have already received such a letter from the agency. The agency expects that those labels will be available in the near future.

8. Lessees

A leasing association and a fleet managers association commented that the proposal did not address how to handle special issues concerning deactivations of air bags in leased vehicles. These associations emphasized the contractual distinctions between commercial (corporate fleets) and consumer (individual) lease arrangements, the difficulty that a repair business would have in determining whether the person presenting the leased vehicle for modification has authority to have the air bag deactivated, and the many different use scenarios and occupants of fleet vehicles. One association stated that the corporate employer in charge of the operation of fleet vehicles, whether as an owner or lessee, should be the sole party with authority to request deactivation. It also stated that a fleet maintenance facility should be considered a ''repair facility.'' [44]

NHTSA appreciates the complexity of the issue, and that it may be difficult for a dealer or repair business to determine whether the person presenting a leased vehicle has authority to request an on-off switch. This is, in part, why the agency did not make a specific proposal, but instead raised the issue of lessees and asked how issues relating to them should be addressed.

Under this final rule, the exemption from the make inoperative prohibition applies to leased vehicles as well as owned vehicles. The request form has been changed accordingly.

9. Definition of Repair Business

The agency has become aware that some businesses are holding themselves out as being willing and able to deactivate a vehicle's air bags. This is permissible so long as the owner of the vehicle has a letter from NHTSA authorizing the deactivation of the air bags. However, some businesses have suggested that they will deactivate air bags even for people who do not have such a letter from NHTSA, on the theory that they are ''air bag technicians'' (or perhaps mere ''agents'' of the owners) and not motor vehicle repair businesses.

The relevant part of 49 U.S.C. 30122(b) states that a ''manufacturer, distributor, dealer, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard. * * *'' Air bags are items of safety equipment installed in compliance with applicable motor vehicle safety standard No. 208, and deactivating them, by definition, makes them inoperative.

The term *motor vehicle repair business* is defined in 49 U.S.C. 30122(a) as ''a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment.'' Especially in light of the broadly inclusive list of commercial entities in the statutory provision, NHTSA interprets this term as including the activities of mechanics, technicians, or any other individuals or commercial entities that knowingly make modifications to or perform work on safety equipment for a fee, if those modifications cause the vehicle no longer to comply with applicable Federal motor vehicle safety standards.

[44] NHTSA assumes that, in many cases, fleet maintenance facilities are owned by the same business that owns the fleet itself. Since vehicle owners are not subject to the make inoperative prohibition, and thus can modify their vehicles as they wish, subject to state and local law, the common ownership of the facilities and the fleet means that the fleet owners can have their maintenance facilities install on-off switches or even deactivate their air bags without NHTSA authorization. If the facilities are not operated by the owners of the fleet, then they are considered to be repair businesses, for purposes of 49 U.S.C. 30122(a).

The agency believes that Congress was drawing a distinction in the make inoperative prohibition between commercial entities that might work on a vehicle and a vehicle owner, or an owner's friend or relative who might work on a vehicle without compensation.

The legislative history of the Motor Vehicle and Schoolbus Safety Amendments of 1974, which added the ''make inoperative'' prohibition, supports this broad interpretation. The Conference Report states that it ''is intended to ensure that safety equipment continues to benefit motorists for the life of the vehicle. The protection of subsequent . . . purchasers of a vehicle is thereby assured.'' H.R. Rep. No. 93–1452, 93rd Cong., 2d Sess. 39 (1974). It would subvert the purposes of Congress in enacting this prohibition to read the statutory term ''repair'' literally and allow a business to perform, for compensation, the very acts which the prohibition was intended to prohibit. Deactivating an air bag makes its benefits unavailable to subsequent purchasers.

NHTSA is aware that there is a court decision that addressed the definition of ''repair business.'' A United States District Court concluded that businesses installing window tint film were not repair businesses because ''the plain meaning of the term ''repair business'' will prevail. * * * The plain meaning of the word 'repair' is to restore to sound condition something that has been damaged or broken . . . they are not in the business of restoring or replacing motor vehicle equipment.'' *United States* v. *Blue Skies Projects, Inc.*, 785 F. Supp. 957, 961 (M.D. Fla. 1991).

NHTSA believes this case was not correctly decided. The court did not recognize and give sufficient effect to Congress's intent, expressed in legislative history, that federally-required safety equipment should continue to ensure safe performance of vehicles over their lifetime. Further, it is evident from the inclusion of repair businesses among the listed entities subject to the prohibition that some repair businesses sometimes do things other than restoring components and systems to sound condition. This implies a broader definition of ''repair'' than the one offered by the court.

Accordingly, NHTSA interprets the term ''motor vehicle repair business'' to include mechanics, technicians, or any other individuals or commercial entities that, for compensation, add, remove, replace or make modifications to motor vehicles and motor vehicle equipment, including safety equipment such as air bags, regardless of whether the vehicle or component was previously ''broken'' or needed to be ''repaired.'' The description that a business applies to itself is not controlling; it is the business' commercial relationship with the public and the nature of the operations it performs on motor vehicles that is determinative. Any business currently deactivating air bags for customers who have not received authorization from NHTSA is violating the law and subject to enforcement action by the agency.

10. Effective Date

NHTSA proposed an immediate effective date in the January 1997 NPRM. As noted in the summary of comments, the vehicle manufacturers indicated that an immediate effective date would not be sufficient even for deactivation, for which minimal parts, if any, are needed. NHTSA recognizes that special parts are needed for on-off switches, and that their production requires additional time. The industry has indicated that the time necessary to produce retrofit on-off switches in large enough quantity to meet all of the anticipated demand is 4 to 6 months.

This period was calculated from March 1997, not from the actual date of a final rule. In anticipation of retrofit on-off switches being allowed as an alternative, vehicle manufacturers began developing them in March. At an NTSB hearing regarding air bag safety on March 17–19, 1997, two manufacturers stated that the time needed to develop switches was dependent on the volume needed. Smaller volumes would take less time. Although NHTSA has no information indicating that anyone other than vehicle manufacturers plans to produce on-off switches, it notes that independent aftermarket producers would not be precluded from doing so. Their implementation time might be different from that estimated by the vehicle manufacturers.

NHTSA has decided to make the exemption effective on December 18, 1997 and to set January 19, 1998, as the date on which switch installation may begin. NHTSA finds good cause for making the exemption effective less than 30 days after the publication of the final rule. Making the exemption effective on December 18 is necessary to enable the agency to begin processing requests at an early enough date that owners can have their agency authorization letters in hand by January 19. In this way, persons at risk can begin obtaining switches on that date or as soon thereafter as switches become available for the make and model of their vehicle.

A delayed date for the beginning of switch installation will promote the orderly implementation of the exemption. Based on the calls to NHTSA from consumers regarding deactivation, it appears likely that most owners who obtain agency authorization for switches will go to dealerships to obtain their switches. The date of January 19, 1998, will allow the manufacturers time to complete design of on-off switches, start production, and begin delivery to their dealers before consumers start expecting their requests to be filled. It will also allow them to develop procedures for installing on-off switches, and conduct necessary training for dealer service technicians. The date will also give the agency and many of the company and group commenters the time required to educate the public about air bag benefits and risks before the on-off switches become available.

Although the selection of January 19 provides less time than the manufacturers suggested in early 1997 would be needed to satisfy all anticipated requests for on-off switches, NHTSA believes that this date provides sufficient time for the manufacturers to begin to make retrofit on-off switches available for installation. The agency reiterates that the 4 to 6 month estimate by the vehicle manufacturers was made with reference to March of this year, not the date of the issuance of this rule. Further, a number of vehicle manufacturers are already producing on-off switches in anticipation of this final rule. In addition, on-off switches from aftermarket manufacturers might be available to satisfy any unmet orders for on-off switches.

11. Sunset Date or Event

The NPRM proposed that deactivation of advanced air bags would not be permitted under the exemption. NHTSA also stated that it would consider not allowing deactivation of driver air bags that had been depowered. GM and other manufacturers stated that NHTSA had not adequately defined ''smart'' (i.e., advanced) air bags, and that it was therefore inappropriate to sunset the availability of deactivation once advanced air bags were introduced. A safety group stated that a sunset was appropriate because on-off switches would not be necessary after advanced air bags were available.

Although NHTSA continues to believe, based on safety considerations, that it should prohibit dealers and repair businesses from retrofitting advanced air bag vehicles with on-off switches, there is no immediate need to do so. Widespread installation of

advanced air bags is not expected to begin for another several years. Further, NHTSA notes that the existing definition of ''advanced'' air bag does not include driver air bags and needs updating. NHTSA will address these issues in the proposal on advanced air bag rulemaking scheduled to be issued this winter and will include a proposed sunset date for retrofit on-off switches.

As to permitting on-off switches for depowered air bags, NHTSA anticipates that those air bags will pose less of a risk of serious air bag injuries than current air bags. However, the agency will wait and accumulate data on depowered air bags before making a final decision on this issue. The agency may revisit this issue in a future rulemaking if data indicate that on-off switches are not appropriate in vehicles with depowered air bags. For the present, the exemption will apply to vehicles with depowered air bags.

12. On-Off Switches for New Vehicles

Many public commenters on the January 1997 deactivation proposal favored extending the existing option for installing on-off switches in certain new vehicles to all new vehicles. However, the company and group commenters were overwhelmingly opposed to the idea. NHTSA considered this idea and then rejected it in its January 6, 1997 final rule regarding on-off switches for passenger air bags in new vehicles with no rear seat or an inadequate rear seat for rear-facing infant seats (62 FR 798). The major reasons for this decision were (1) assertions of the vehicle manufacturers (at that time) that OEM on-off switches for new vehicles could not be developed quickly, (2) the possibility that extending the option to all new vehicles might result in on-off switches' being installed as standard equipment instead of being installed upon special request by those at risk, (3) the possibility that universal installation of on-off switches in new vehicles might do more harm than good (4) the lower cost of deactivation, and the fact that the cost would be borne primarily by those who actually at risk and therefore in need of deactivation, and (5) the possibility that the effort to develop on-off switches and integrate them into the design of new vehicles might necessitate a diversion of manufacturer engineering resources from development of advanced air bags.

While the extension of the option for OEM on-off switches for new vehicles to all air bag vehicles is outside the scope of this rulemaking, that same issue was raised in a pending petition from the National Motorists Association for reconsideration of the January final rule. NHTSA remains concerned that extending the option to all new vehicles might result in on-off switches' being installed as standard equipment in all new vehicles, thus resulting in many more vehicles being equipped with on-off switches than will occur under this final rule. The agency has concluded that such widespread installation of on-off switches without regard to whether individual consumers are actually at risk would not be in the best interests of safety. The agency also remains concerned that integrating on-off switches into new vehicles, which would entail redesigning dashboards, will require more resources than retrofitting on-off switches and thus could divert resources from the development of advanced air bags. For these reasons, NHTSA denies this petition for reconsideration.

13. Conforming Changes to Occupant Crash Protection Standard

This final rule amends Standard No. 208 so that the Standard refers to ''on-off switches'' instead of ''cutoff switches.'' It also amends the Standard to revise the owner's manual insert for passenger air bag on-off switches installed in new vehicles. Instead of stating that use of the switch should be limited to instances in which the right front passenger seating position is occupied by an infant in a rear-facing infant seat, the insert will say that use should be limited to persons in one of the passenger risk groups identified in the request for in Appendix B of Part 595.

IX. Implementation of Agency Decision

A. Limited Continued Use of Prosecutorial Discretion to Authorize Deactivation: Procedures and Requirements

Between now and January 19, 1998, the date on which switch installation may begin, NHTSA will continue its current practice of granting requests for deactivating the air bags in all vehicle makes and models. This will be done on a case-by-case basis. The agency will grant those requests only if they are based on the justifications that are currently being accepted under existing agency practice, as modified to reflect changed circumstances such as the issuance of the report on medical conditions warranting turning off an air bag. Continuing to limit deactivation to requests based on these justifications is appropriate, given the inflexibility and relative permanency of deactivation.

NHTSA will grant deactivation requests after January 19, 1998, only for those vehicle makes and models for which the vehicle manufacturer does not make on-off switches available. NHTSA expects that vehicle manufacturers will make on-off switches available for most vehicle makes and models. For those specific makes and models for which on-off switches are available on January 19, the agency will cease granting deactivation requests as of that date. Likewise, as on-off switches become available from the vehicle manufacturer for a specific make and model after that date, NHTSA will cease granting deactivation requests for that make and model. Owners of that make and model can fill out an on-off switch request form and send it to the agency for approval. If an on-off switch is also manufactured by an aftermarket manufacturer, a consumer may wish to request that a dealer or repair business install it. For vehicle makes and models for which the vehicle manufacturer does not make available an on-off switch, the agency will continue to grant deactivation requests, even if an aftermarket parts manufacturer makes an on-off switch available for those vehicles.

As noted above, this section describes the procedures and practices that the agency will follow in response to changed circumstances such as the issuance of a report by the National Conference on Medical Indications for Air Bag Disconnection. Those procedures and practices differ from the ones previously followed regarding requests based on medical conditions since that report does not recommend deactivation for many of the medical conditions for which deactivation requests have been granted in the past. In addition, this section describes the legal effect of an agency letter authorizing deactivation and describes the conditions which motor vehicle dealers and repair businesses must meet in deactivating an air bag pursuant to such a letter.

Summary

If the owner of an air bag-equipped vehicle wishes to obtain the agency's authorization to have an air bag deactivated, based on one of the justifications described below, the consumer may write to NHTSA stating the consumer's justification and requesting authorization for deactivation. If the agency determines that the justification meets the criteria for granting requests, it sends the consumer a letter authorizing a dealer or repair business to deactivate the consumer's air bag. The consumer presents the letter to a dealer or repair business. Since the letter authorizes, but cannot require, the dealer or repair

business to perform a deactivation, the dealer or repair business then decides whether to deactivate the air bag(s), as authorized in NHTSA's letter. If the dealer or repair business decides to do so, it must meet certain conditions in deactivating the air bag.

Vehicle Owners

Air Bag Deactivation: Who is Eligible, and how is Authorization Obtained?

1. NHTSA [45] will authorize deactivation based upon the following justifications:

- A rear-facing infant restraint must be placed in front seat of a vehicle because there is no back seat in the vehicle or the back seat is too small for the child restraint (passenger air bag only).
- A child age 12 or under must ride in the front seat because the child has a medical condition that requires frequent monitoring in the front seat.
- The owner, or a driver or passenger of the owner's vehicle, has a medical condition that, in combination with an air bag, poses a special risk to the person with the condition, and
- That risk outweighs the increased risk that the person's head, neck or chest will violently strike the steering wheel or dashboard during a crash if the air bag is turned off (driver and/or passenger air bag, as appropriate).
- Drivers who are extremely short-statured (i.e., 4 feet, 6 inches or less) (driver air bag only).[46]

2. An owner who wants deactivation for any of the above reasons should describe the reason in a letter and send it to: National Highway Traffic Safety Administration, Attention: Air Bag Deactivation Requests, 400 7th St. S.W., Washington, D.C. 20590. Deactivation is not available for other reasons. The request can also be faxed to (202) 366–3443.

The request must contain the following:

- Name and address of the vehicle owner.
- The justification for the request. (See the list of accepted justifications above.) The letter should be as specific as possible about the justification and state whether the request applies to the driver or passenger air bag, or both.
- A description of the facts creating the need for deactivation.
- Each request based on a medical condition *must* be accompanied by a statement from a physician, *if* the condition is *not* one for which the National Conference recommended deactivation.[47] The physician's statement must not only identify the particular condition of the patient, but also state the physician's judgment—

a. That the condition causes air bags to pose a special risk to the person, *and*

b. That the condition makes the potential harm to the person from contacting an air bag in a crash greater than the potential harm from turning off the air bag and allowing the person's head, neck or chest to hit the steering wheel, dashboard or windshield. (Hitting the vehicle interior is likely in a moderate to severe crash, even if the person is using seat belts.)[48]

If the request concerns a child that must ride in the front seat to enable the driver to monitor the child's medical condition, the supporting physician's statement must identify the condition and state that frequent monitoring by the driver is necessary. NHTSA notes that the American Academy of Pediatrics has stated that medical conditions requiring such monitoring are very rare. According to the final report of the National Conference on Medical Indications for Air Bag Disconnection: ''It is anticipated that the American Academy of Pediatrics will make recommendations regarding which specific conditions warrant close monitoring while driving'' (passenger air bag only).

3. The agency will respond in writing, enclosing a copy of the information brochure in Appendix A of Part 595, labels to be attached to the vehicle interior for alerting vehicle users about the deactivated air bags, and a form to be filled out and mailed back to the agency regarding the deactivation. NHTSA will answer the deactivation requests as quickly as possible. It screens the incoming requests for requests involving rear-facing child restraints (because of the higher risk associated with those requests) and processes those requests first. Depending on the volume of requests being received by the agency, the processing usually occurs within several days. All other requests are handled in the order in which they are received. These requests currently take a couple days longer to answer.

The central reason for convening the National Conference on Medical Indications for Air Bag Disconnection was that the belief that the public and many physicians might benefit from guidance by physicians having expertise relating to automotive crash-induced trauma. The agency will attempt to ensure that due consideration is given the National Conference's report. If the agency receives a deactivation request accompanied by a physician's statement based on one of the medical conditions for which the National Conference did *not* recommend deactivation, the agency will defer to the requestor's physician and send a letter to the requestor granting his or her request. However, the agency will also enclose the report

[45] The reference to owners is intended to include lessees as well.

[46] As noted above in IV, Summary of Comments on Proposal, IIHS conducted a study in which it found the almost all women in a group of women ranging in height from 4 feet 8 inches to 5 feet to 2 inches were able to get about 10 inches from their driver air bag in all test vehicles and all of the women could achieve that distance in almost all of those vehicles.

[47] The physicians at the National Conference did *not* recommend turning off air bags for pacemakers, supplemental oxygen, eyeglasses, median sternotomy, angina, chronic obstructive pulmonary disease, emphysema, asthma, breast reconstruction, mastectomy, scoliosis (if the person is capable of being positioned properly), previously back or neck surgery, previous facial reconstructive surgery or facial injury, hyperacusis, tinnitus, advanced age, osteogenesis imperfecta, osteoporosis and arthritis (if the person can sit back at a safe distance from the air bag), previous opthalmologic surgery, Down syndrome and atlantoaxial instability (*if* the person can reliably sit properly aligned in the front seat), or pregnancy. However, the physicians did recommend turning off an air bag if a safe sitting distance or position cannot be maintained by a driver because of scoliosis or achondroplasia or by a passenger because of scoliosis or Down syndrome and atlantoaxial instability. The physicians also noted that a passenger air bag might have to be turned off if an infant or child has a medical condition and must ride in front so that he or she can be monitored. This report is summarized more fully earlier in this notice. To obtain a complete copy of the detailed recommendations by the panel, call the NHTSA Hotline (1–800–424–9393) or download if from the NHTSA Web site.

[48] Physicians considering whether a person's medical condition makes it desirable for that person to turn off his or her air bag should consider the report of the National Conference and the following three points and guidance.

- Most medical conditions present no greater risk of air bag injury for a person with one of those conditions than the risk faced by the general public.
- The risks of air bag injury are generally less and almost never greater than the risks of injury from striking the steering wheel or dashboard.
- The types of injury sustained by persons who strike the steering wheel or dashboard are far more serious (except in extremely rare circumstances that occur only a few times a year) than the types of injury sustained as a result of contacting deploying air bags. Injuries from striking the steering wheel or dashboard typically include brain trauma and severe facial injuries. The facial injuries can be very disfiguring and may require multiple, complicated surgical procedures.

As noted above in the description of the report of the National Conference, very few medical conditions will cause an air bag to create a special risk. The few conditions that do create such a risk do so by making it necessary for persons with one of those conditions to sit less than 10 inches from an air bag. This is true for both low speed crashes and higher speed crashes. This guidance is based on the following facts:

1. The force of a deploying air bag decreases as the air bag moves away from the steering wheel or dashboard, and

2. An air bag spreads out the forces that a person experiences during a crash, reduces the crash forces that seat belts transmit to particular areas of the body, and decreases the risk that the person's head, neck or chest (even those of a belted person) will strike the steering wheel or dashboard.

and urge that the requestor discuss it with his or her physician before having any modifications made to the requestor's air bags. NHTSA will also send a copy of the letter and report directly to the physician to ensure that he or she is made aware of the report's contents.

4. If a request has been granted, the recipient should call his or her dealer or a repair business and ask if it will disconnect the air bag. If the dealer or repair business says that it will, the recipient should ask further whether it is necessary to bring proof of owner status to the dealer or repair business.

5. Some dealers and repair businesses have a policy of not disconnecting air bags. NHTSA has no authority to require them to do so—that is the dealer's or business' decision. The owner may have to shop around to find a qualified automotive mechanic or technician who will disconnect the air bag.

6. If there is a motor vehicle insurance premium discount based on the presence of air bags in a vehicle, the premiums may increase slightly if the air bag(s) is(are) disconnected.

7. Seat belts should always be worn, whether a person's air bag is operational or deactivated. If a person's air bag is deactivated, seat belts are the only available means of restraint to reduce the likelihood that the person will hit the vehicle interior in a crash. Thus, it will be more important than ever to be properly restrained at all times.

8. NHTSA strongly urges owners to have their air bag reactivated if the condition that caused the deactivation ceases to exist, or if they sell the vehicle. If they do not reactivate the air bag upon sale, they should inform the new owner that the air bag has been deactivated.

9. If the agency denies a request, it will give the reason for the denial. The reason may be that there was not enough explanatory or supporting information submitted for NHTSA to approve the request. In that event, the request may be resubmitted with the necessary information. If a request was denied because the owner does not provide an accepted justification, the owner must wait for retrofit on-off switches to become available for his or her make/model of vehicle in order to turn off the air bag(s). If the owner or a user of his or her vehicle is a member of a risk group, the owner may request an on-off switch once one becomes available.

Motor Vehicle Dealers and Repair Businesses

Steps Which Must Be Taken if an Air Bag is Deactivated Pursuant to an Agency Authorization Letter

1. If a person requests deactivation of an air bag, the dealer or repair business should determine that the person is the owner of the vehicle and that the person possesses a letter from the agency authorizing that person to have that air bag deactivated. Owner status can normally be checked by looking at the vehicle title or registration. (NOTE: A dealer or repair business is prohibited by statute from deactivating a vehicle's air bag unless the owner has an authorization letter from the agency.)

2. The agency letter will indicate which air bag(s) may be deactivated. If the letter authorizes deactivation of the driver air bag, the passenger air bag may not be deactivated, and vice versa.

3. NHTSA recommends that the dealer or repair business consult with the vehicle's manufacturer regarding a deactivation procedure if there are any doubts about how to deactivate an air bag.

4. An air bag must be deactivated in a manner such that:

- It will not deploy in a crash; and
- Reactivation is facilitated, if possible. This means, for example, leaving the air bag module in the vehicle.

5. These steps may be supplemented in any manner, such as by keeping a copy of the agency grant letter. Some dealers and repair businesses are requiring owners to permit them to apply warning labels to the vehicle or sign waivers of liability.

B. Providing Retrofit On-Off Switches Under the Exemption: Procedures and Requirements

Consumers can request the installation of an on-off switch by completely filling out the request form in Appendix B of Part 595 and sending it to NHTSA for approval. The agency will begin processing request forms on December 18. If a form is submitted before that date, it will be given the same priority as a form submitted after that date. Accordingly, there will be no advantage to submitting forms early.

When the agency approves a request, it will send an authorization letter to the vehicle owner. Motor vehicle dealers and repair business may begin installing switches on January 19, 1998. If a dealer or repair business installs an on-off switch, it must comply with the conditions set forth in Part 595. Those conditions include obtaining the owner's authorization letter which includes a form to be filled in by the dealer or repair business and mailed back to NHTSA.

Vehicle Owners

Air Bag On-Off Switches: Who is Eligible, and How is Authorization Requested?

1. Ask a dealer or vehicle repair business if a retrofit on-off switch is available. As noted above, NHTSA will grant deactivation requests after January 19, 1998 for only those vehicle makes and models for which the vehicle manufacturer does not make on-off switches available. As on-off switches become available from the vehicle manufacturer for a specific make and model, NHTSA will cease granting deactivation requests for that make and model. If an owner of such a make and model writes to NHTSA requesting authorization to have an air bag deactivated, NHTSA will deny the request and notify the person that a retrofit on-off switch is available. Eligible owners of the make and model may fill out a request form and send it to the agency for approval. If the agency approves the request and sends an authorization letter to the owner, the owner may then give the letter to a dealer or repair business, and ask it to install the vehicle manufacturer's on-off switch. If an on-off switch is also manufactured by an aftermarket manufacturer, a consumer may wish to request that a dealer or repair business install it.

For vehicle makes and models for which the vehicle manufacturer does not make available an on-off switch, the agency will continue to consider deactivation requests, even if an aftermarket parts manufacturer makes an on-off switch available for those vehicles. If an aftermarket parts manufacturer does make an on-off switch, the eligible owner of such a vehicle has the choice of requesting the agency to authorize deactivation or submitting an on-off switch request form to the agency for approval. If the agency approves the request for a switch, the owner can then give the agency authorization letter to a dealer or repair business, and ask it to install the aftermarket on-off switch.

2. Determine if the vehicle owner or a user of the owner's vehicle meets the criteria in one of the risk groups and if obtaining a retrofit on-off switch is appropriate. The information brochure in Appendix A of Part 595 will help the owner make this decision. The owner will have to certify on the request form that he or she has read the information brochure and that he or she or a user of

the owner's vehicle is a member of one of the risk groups listed on the form. Separate certifications, one for a risk group related to the driver air bag and another for a risk group related to the passenger air bag, must be made on the form if the owner wants an on-off switch or switches for both the driver and passenger air bags.

3. Completely fill out the request form in Appendix B of Part 595. The agency cannot approve a request for an on-off switch unless the form is completely filled out and signed and dated by the owner.

4. Send the completed form to NHTSA.

5. Upon reviewing the owner's form and approving it, NHTSA will send an authorization letter to the owner.

6. Call your dealer or repair business and ask about the installation of a switch and the associated costs.

7. Give your authorization letter to a dealer or repair businesses willing to install the switch and request the installation of an on-off switch.

8. Use the retrofit on-off switch appropriately. The on-off switch should only be used if the person occupying the seating position is a member of one of the risk groups listed in the information brochure in Appendix A of Part 595. At all other times, the air bag should be on.

Motor Vehicle Dealers and Repair Businesses

Steps Which Must Be Taken if an Air Bag On-Off Switch is Installed Pursuant to the Exemption From the Make Inoperative Prohibition

1. Make sure the vehicle owner presents an authorization letter from NHTSA. The dealer or repair business may also require the owner to fill out a form devised by the dealer or repair business. That form may include a waiver of liability.

2. Install a retrofit on-off switch for each air bag covered by the agency's authorization.

3. Ensure that each on-off switch meets all of the following performance requirements—

a. Be activated solely by a key.

b. Cause the air bag to remain turned off until manually turned back on using a key and the on-off switch.

c. Be accompanied by a telltale light in the vehicle interior. The telltale must indicate when an air bag has been turned off and be visible to an occupant of the driver's seat, in the case of a light for the driver air bag, and to all front seat occupants, in the case of a light for the passenger air bag.

d. Not affect the ability of the required air bag readiness indicator to monitor an air bag that is not turned off. The indicator must show whether the air bag is functioning properly.

e. If a single on-off switch is installed to control both the driver's and passenger's air bag, the on-off switch must be capable of turning off one air bag without turning off the other. For a single on-off switch controlling both air bags, the telltale light must indicate which air bag is off.

4. Provide the owner with an insert for the vehicle owner's manual describing the operation of the on-off switch, listing the risk groups on the request form, stating that the on-off switch should only be used to turn off an air bag for a member of one of those risk groups, and stating the vehicle specific consequences for using it for persons who are not members of any of those risk groups. Those consequences must include the effect of any energy managing features, e.g., load limiters, on seat belt performance. NHTSA anticipates that the inserts can be obtained primarily from the vehicle manufacturers, although in some cases, they might be available from independent on-off switch manufacturers.

5. Fill in information about your dealership or repair business and about the installation on the form included in the authorization letter and return the form by mail to NHTSA within seven days of your installation of an on-off switch pursuant to that letter.

C. Steps to Promote Informed Decisionmaking by Consumers About Retrofit On-Off Switches

1. Information Brochure

To limit the obtaining and use of retrofit on-off switches to persons who may be at risk from serious air bag injury, the agency is issuing guidance to aid consumers in determining if they or a user of their vehicle is in a risk group and in making informed decisions about requesting and using retrofit on-off switches. This guidance is contained in the information brochure in Appendix A of Part 595. In response to public comments about the information brochure in the deactivation NPRM, the brochure has been rewritten in a question and answer format to be more user friendly. The brochure will be distributed widely and made available on the Internet. The electronic version of the information brochure on NHTSA's Web site will supplemented by video clips showing what happens to a belted dummy in a crash test when the driver air bag is turned off.

The information brochure explains which consumers may be at any risk from air bags, and which are not. The brochure identifies the factors that create risk and tells consumers how to reduce that risk. For those who may be at risk, it stresses how infrequently people, particularly drivers and adult passengers, are fatally injured by air bags.

The information brochure also emphasizes that on-off switches should not be used to turn off air bags for the people not at risk. They represent the vast majority of vehicle occupants. Their use of on-off switches to turn off air bags will not make them safer in low speed crashes, but will make them less safe in moderate and high speed crashes.

2. Insert for Vehicle Owner's Manual

To remind vehicle owners and users about the proper use of on-off switches, the agency is requiring that dealer or repair businesses which install switches give vehicle owners an owner's manual insert describing the operation of the on-off switch, listing the risk groups, stating that the on-off switch should be used to turn off an air bag for risk group members only, and stating the vehicle specific safety consequences of using the on-off switch for a person who is not in any risk group. Those consequences would include the effect of any energy managing features, e.g., load limiters, on seat belt performance.

3. Physicians' Guidance Regarding Medical Conditions Warranting Turning Off an Air Bag

As noted above, a national conference of physicians, convened by George Washington University at the request of NHTSA, has examined the medical conditions that have been cited by vehicle owners as the basis for requesting deactivation of air bags. The conference participants recently issued a report containing their assessment of each of those conditions as a justification for deactivation. The agency expects that publicizing the report will reduce some of the confusion and misapprehension about which medical conditions really justify air bag deactivation. NHTSA has briefly summarized the report in the information brochure and is placing it on the agency's Web site.

4. Campaign to Increase Use of Child Restraints and Seat Belts

NHTSA is also undertaking a campaign in conjunction with safety groups, vehicle manufacturers and state and local authorities to promote increased use of all types of occupants restraints. NHTSA is urging motorists to use child restraints and seat belts and

place children in the back seat, whenever possible, as well as spreading the word about the benefits of air bags for most people. Proper use of the restraint(s) most appropriate to the weight and age of each child fatally injured to date by air bags would have saved all or almost all of them. While increasing numbers of parents are placing their children in the back seat or ensuring that they are properly secured in the front seat, much consumer education work remains to be done.

Disturbingly, most of the fatally-injured children were allowed to ride in the front without any type of restraint whatsoever. And, as of July 15, 1997, five out of the last seven fatally injured children aged 1 to 12 were simply ''held in place'' on the lap of a front seat passenger. There were no similar fatalities before December 1996. It is not known whether the sudden appearance of fatalities under these particular circumstances is mere chance or a response to the publicity given child air bag fatalities last fall. It is known that the combined effects of the risk of an air bag to an unrestrained child, and the weight that an adult places on a child during a frontal crash can make the decision to attempt to hold a child in place a fatal one. Children should ride fully restrained, and in the back seat whenever possible.

In addition, NHTSA is seeking to increase the rate of seat belt use from the current 68 percent to 90 percent by 2005 by promoting the enactment of primary seat belt use laws and high-visibility enforcement of use laws. Such an increase could save an estimated additional 5,000 lives each year. Since most persons fatally injured by air bags have been unbelted, this increase would also provide an additional way of preventing air bag fatalities. This provides an additional reason why on-off switches should only be used when a person in one of the identified risk groups is in the seat.

X. Net Safety Effects and Costs of On-Off Switches

A. Effect of Turning Off Air Bags on the Performance of Some Seat Belts

A number of industry commenters stated that deactivating air bags could result in substandard performance of the seat belts. Senator John McCain also sent NHTSA a letter requesting that the agency investigate this possibility.

A good general introduction to this issue appeared in an article on March 31 in the Kansas City Star:

> The seat belts on some newer cars were designed to work with their air bags, automakers say. Alone, they will not protect a person in a serious crash as well as an older-style belt.
>
> The newer belts allow a person to travel forward a few more inches than older belts, and when used in conjunction with air bags have some advantages, experts say. If the air bag is removed, however, the person faces a greater risk of head or chest injuries from hitting the steering wheel or dashboard.
>
> In minor or moderately severe crashes, the redesign of the belt won't make a difference, auto and safety officials say. But in severe crashes, a person is more likely to travel forward far enough to hit the dashboard or steering wheel, sustaining head and chest injuries, they say.
>
> When used with an air bag as designed, the newer belt has some definite advantages over the traditional one
>
> Because it is looser, it is less likely to break a rib or collarbone in a severe crash. * * * That is particularly of concern for elderly people.
>
> In older cars without air bags, the work of restraining an occupant falls solely on the belt * * *
>
> The newer belt can * * * give way a little bit so that the air bag takes up some of the force of the crash and spreads it out over a broader section of your body * * * The result: fewer belt injuries.

Seat belts are required to meet minimum performance requirements in Standard No. 209, ''Seat belt assemblies,'' and seat belt anchorages in vehicles are required to meet minimum performance requirements in Standard No. 210, ''Seat belt anchorages.'' However, dynamically tested belts (automatic belts or manual belts with air bags) do not have to meet the requirement of Standard No. 209 that places a maximum of 30 percent on the amount of permitted webbing elongation. In addition, the anchorages for dynamically tested belts do not have to meet the anchorage location requirements of Standard No. 210. These requirements are not necessary for belts which are dynamically-tested, because the dynamic test ensures that the system works to protect the occupant from the type of injuries these requirements are designed to prevent. The elongation requirements also do not apply to belts that are equipped with ''load limiters'' and that are installed at a seating position with an air bag. A load limiter is a component of a seat belt system used to limit the levels of forces transferred to an occupant restrained by the belt during a crash. In very severe crashes, the forces in the seat belt system may rise above levels considered safe. If a belt system has a load limiter, parts in the system deform so that the belt forces transferred to the occupant do not rise above a predetermined maximum level. There are different designs of load limiters, ranging from simple folds stitched into the seat belt webbing that are designed to tear under a certain load, to more complex mechanical systems, some of which play out a small amount of additional webbing at incremental increases in load levels. The exclusion from the elongation requirements does not unnecessarily prevent manufacturers from using a design for these devices that operates by affecting the length of the webbing.

The exclusion from the elongation requirement is not likely to significantly affect the safety of the belt system. Although manufacturers may have designed belt systems in some air bag equipped vehicles with more ''give'' than those in non-air bag equipped vehicles, a 1991 NHTSA study showed that webbing in vehicles with air bags far exceeded Standard No. 209's requirements despite the exclusion from the elongation requirement. The study showed that maximum elongation, when tested according to the requirements of Standard No. 209, was 15 percent or less, or about half the permitted amount of elongation. NHTSA updated this study and again found that the maximum elongation was 15 percent or less.

Some manufacturers have, appropriately, been using the flexibility in Standard No. 209 to optimize their belt systems to work with air bags. Additional webbing elongation and load limiters would not normally be a problem in an air bag equipped vehicle, because the air bag would limit occupant excursion. This additional ''give'' in the seat belts is normally beneficial because it prevents the belt from causing injuries. However, some load limiters, those releasing a relatively large amount of additional webbing, could result in additional deaths and injuries if the air bags are turned off. Unfortunately, if the air bag cannot function because it has been turned off, the ''give'' in these seat belts would increase the chance that occupants would hit their heads and upper bodies more easily on the steering wheel, the A-pillar, the windshield, or other hard parts of the vehicle interior, and suffer serious injury. In some cases, the only way to solve this problem might be by replacing the entire belt assembly.

Another type of safety device that could be affected by turning off the air bags is a seat belt pretensioner. These devices retract the seat belt webbing to remove slack almost instantly in a crash, thus enhancing the effectiveness of the seat belts by reducing the distance that the occupant might otherwise travel forward. Pretensioners are not powerful enough to pull the occupant back into

the vehicle seat; they merely remove slack. Some seat belt pretensioners are triggered by the same sensor that actuates the air bag, and may be wired into the same circuit as the air bag. Therefore, unless on-off switches are designed correctly, turning off the air bag may also disable the seat belt pretensioners. Pretensioners are not required by NHTSA standards, but are an improvement added at the manufacturer's option. NHTSA is not aware of any belt systems with pretensioners that allow more slack to be introduced than is allowed by systems without pretensioners. However, the system is likely to be more effective if the pretensioner is not disconnected as a result of the installation and use of an on-off switch. To NHTSA's knowledge, all air bags in vehicles with pretensioners can be turned off without disabling the pretensioners.

The exclusion of air bag equipped vehicles from the requirements in Standard No. 210 may have also been used by manufacturers to optimize their seat belt anchorage locations for seat belts used in conjunction with air bags. The agency cannot quantify or even estimate the extent to which vehicle manufacturers have availed themselves of this opportunity. NHTSA's anchorage location requirements are intended to reduce the likelihood that occupants would ''submarine,'' i.e., slide forward under the lap belt. Submarining would cause the seat belt loads to be transferred to an occupant up on the soft tissue of the abdomen instead of down on the pelvic bones, thereby increasing the likelihood of abdominal injury. The static test in Standard No. 210 is intended as a substitute for a dynamic test where the interaction between the occupant and the lap belt can be observed. Since manual belts used with air bags do not have to meet Standard No. 210's anchorage location requirements, manufacturers may have located the anchorage locations to optimize the interaction between the belt and the air bag in controlling the forward motion of the occupant. With the air bag turned off, the system as a whole will not operate as designed, and the chance of abdominal injuries could be increased.

A minority of vehicles have load limiters or seat belt pretensioners. Using information provided by manufacturers on the design of 1997 model year vehicles and sales numbers of 1996 vehicles, NHTSA estimates that vehicles with pretensioners will comprise only 5 percent of 1997 vehicle sales. Using the same information, NHTSA estimates that vehicles with load limiters comprise about 22 percent of 1997 model year sales. Very few models have both load limiters and pretensioners. Since the number of vehicles with these features has been increasing in recent years, the actual percentage of models with these features in the entire on-road vehicle fleet is lower than the percentage in 1997 model vehicles. Nonetheless, NHTSA expects vehicle manufacturers, dealers and repair businesses will take appropriate steps to inform consumers whether their vehicle is equipped with one of these devices and to advise them whether any modifications to the vehicle belt system should be made. The agency's information brochure advises vehicle owners to ask the manufacturer of their vehicle about this issue.

NHTSA agrees with the industry commenters that turning off the air bag could result in a seat belt system with less than optimal performance. Modern vehicle restraint systems are highly complex and integrated, with the seat belt and air bag components often designed to work together. The seat belt systems may not be designed to work alone. Taking out one component of the integrated system could result in reductions in performance. Because many of the features identified by NHTSA are designed to operate only when high loads are placed on the belt system, the presence of these features will be of no consequence in low severity crashes in which the air bag has been turned off, especially when a small/light weight person is using the belt. However, those features will be consequential in a more severe crash. In such a crash, the belts will not provide their full benefits for a vehicle occupant if that person's air bag is turned off.

B. Net Safety Effects and Costs

People not in any of the four risk groups specified in this final rule will be worse off if they turn off their air bag. These people include the vast majority of teenagers and adults, including older drivers. By turning off their air bags, they will increase their chance of death or serious injury in moderate to serious crashes. Even belted occupants and the vast majority of short occupants will increase their risk of serious or fatal head, neck or chest injury if they turn off their air bags.

The net safety effects of retrofit on-off switch use will depend in part upon what proportion of the switch users are people at risk. Among persons in risk groups, the net safety effect of use of the on-off switch will depend on the whether that group is, on balance, benefited or harmed by air bags. For a group, like infants, which has had members fatally injured, but not saved, by air bags, use of the on-off switch to turn off passenger air bags will produce a net positive safety effect for the group. However, for other groups, use of the on-off switch to turn off driver air bags could have a net negative safety effect for the group.

Survey data provided by commenters suggest that many more people want on-off switches than could possibly benefit from them. As suggested above, the agency believes that this is because people tend to hear more about, and be more reactive to, the small number of fatalities from air bags than the large number of lives saved by air bags. The January 1997 survey provided by IIHS suggested that 30 percent of respondents were generally interested in on-off switches for the driver air bag, and 67 percent in on-off switches for the passenger air bag. Several commenters suggested that widespread availability of on-off switches would raise the possibility of what they termed ''misuse,'' i.e., use of on-off switches by persons who are not at risk and who are clearly better off with their air bag left on. If this were to occur, it could result in a negative effect on safety. However, to the extent that the reported interest in on-off switches simply reflected a desire to make it possible to turn off an air bag should a person at risk ever be carried, then the likelihood of use by persons not at risk would be smaller.

As previously noted, the more recent IIHS survey, conducted in August, indicates that the general interest in on-off switches for passenger air bags has declined considerably since January. According to the new survey, 26 percent of respondents expressed a general interest in passenger air bag switches. General interest in driver air bag on-off switches was essentially unchanged, with 27 percent of respondents expressing an interest in those switches. The new survey also showed that interest in on-off switches declined after the respondents were informed about matters such as air bag benefits, steps for reducing risk and the cost of switches. The figure for passenger air bags dropped from 26 percent to 16 percent and the figure for driver air bags dropped from 27 percent to 12 percent.

To minimize the possibility of adverse safety consequences, persons who wish to apply for retrofit on-off switches must certify that they have read a NHTSA information brochure that explains the benefits and risks related to air bags to ensure that they make informed decisions both with respect to obtaining, and then using, an on-off switch. The brochure identifies which groups may be at risk, and which are not. More

important, persons interested in on-off switches must certify that they or a user of the seating position in question meets the criteria for one of the relevant risk groups. Limiting eligibility for on-off switches to vehicle owners who are able to certify risk group membership should minimize the possibility that persons not in a risk group will have an opportunity to use a on-off switch to turn off their air bag and reduce the possibility that the switch will be used improperly. Finally, owners must submit their request to the agency for approval.

Given the large numbers of lives currently being saved by air bags and the very small chance of a fatality due to an air bag, and notwithstanding the limitation on eligibility for a on-off switch, NHTSA recognizes the possibility that authorizing the installation of retrofit on-off switches could result in a net loss of life. The agency has analyzed these adverse effects in its Final Regulatory Evaluation (see summary below). NHTSA notes that to the extent such a loss occurs, it would be the unfortunate result of several readily avoidable events: the incorrect certification of risk group membership, the use of on-off switches by persons who are not members of risk groups, and the failure to use seat belts and/or child restraints properly and to take other readily available precautionary measures.

NHTSA is issuing this final rule, notwithstanding its potential to reduce the number of lives saved by air bags, because the agency believes that it must consider both the short-run and long-run implications of this rulemaking on safety. Ultimately, the continued availability and use of any safety device, whether provided voluntarily by manufacturers or pursuant to a regulation, is dependent on public acceptability. The agency believes that air bags which fatally injure occupants, particularly children in low speed crashes, weaken the acceptability of air bags, despite their overall net safety benefits. Accordingly, to help ensure that air bags remain acceptable to the public and ultimately achieve their full potential in the future (as advanced air bags are developed and introduced), the agency believes it is reasonable and appropriate to give persons in risk groups the opportunity to obtain and use an on-off switch, upon the making of the requisite certifications on the agency request form and obtaining agency approval for each request.

The potential savings and savings foregone are described in the executive summary of the Final Regulatory Evaluation (FRE). The following discussion is based on that summary.[49]

The Final Regulatory Evaluation analyzes the potential impact of allowing motor vehicle dealers and repair businesses to install air bag on-off switches in vehicles. This option is being considered in response to concerns that current air bags may injure or kill some occupants in low speed crashes.

Data indicate that only a small portion of vehicle occupants are actually at risk of fatal harm from air bags, and that these occupants tend to fall into well-defined groups. Because both the actual risk and the public's perception of this risk are quite different for drivers and passengers, this analysis addresses each occupant position separately.

On-off switches will not be necessary after advanced air bags become available. Vehicle manufacturers are expected to install some kind of advanced air bags throughout their fleet by the year 2002. An analysis was therefore performed of the impacts that might occur during the 1998–2001 period, when an average of 45 percent of the on-road vehicle fleet will have driver air bags, and 32 percent will have passenger air bags. Safety impacts will continue to occur over the remaining life of these pre-2002 model year fleets, but at a declining rate as more vehicles are retired from the fleet without being replaced by on-off-switch-equipped vehicles. For the purposes of isolating and analyzing the impacts of this rulemaking, it is assumed that there is no change in air bag design, i.e., the potential impact of depowering or other design changes are not included. It is also assumed that there is no change in driver/passenger behavior, belt use, child restraint use, or the percent of children sitting in the front seat. Since the agency has significant education and labeling efforts underway, and the manufacturers are constantly improving air bags, the population which could be positively affected by retrofit on-off switches is actually smaller than that assumed for the purpose of this analysis. The results of this analysis are as follows:

Drivers

If on-off switches are installed and used by all drivers actually at risk, the switches could prevent 45 fatalities during the 1998–2001 period, an average of 11 each year. For every one percent of those not in a risk group who always use on-off switches to turn off the driver air bag, the number of drivers saved by air bags would be reduced by 42 for that period, an average of 11 drivers each year. Nonfatal injuries impact a broad range of occupants for which particular risk groups cannot be properly identified.[50] For each one percent of drivers always use on-off switches to turn off the driver air bag, a net increase of 490 moderate to critical injuries would occur during 1998–2001 (123 annually).[51]

Passengers

Passenger impacts vary dramatically by age group. If on-off switches are always used for all child passengers (ages 0–12), they could prevent 177 deaths over the 1998–2001 period, an average of 44 deaths annually. The vast majority of these benefits would come from infants and from children 1–12 years old who ride completely unbelted, remove their shoulder belt, lean forward or otherwise place themselves at risk. The net impact of on-off switches on nonfatal injuries is uncertain, but the agency believes that on-off switches would provide a net benefit to children.

The agency cannot identify the teenage and adult at-risk group, with the exception of a minimal number of medical cases. The agency advises all those passengers above 12 years of age to leave air bags on. For every one percent of teenage and adult passengers who always utilize on-off switches to turn off their air bag, 9 additional fatalities and 93 additional moderate to critical injuries would occur, an average of 2 more fatalities and 23 more injuries annually.

Costs

NHTSA estimates that an on-off switch for one seating position would cost between $38 and $63 and that the cost for an on-off switch to control both the driver and right front passenger air bags would cost between $51 and $76 (1996 dollars) to install on aftermarket vehicles. These costs would be voluntary and incurred at the initiative of the vehicle owner. Ford was the only commenter on costs. Ford estimated the cost of installing an aftermarket on-off switch that controls both the driver and

[49] The agency notes that IIHS and BMW raised the possibility in their comments that use of on-off switches could lead to increased occupancy of the front seat, especially by children, and thus to increased injuries and fatalities. The extent to which this phenomenon might occur, if at all, is speculative and therefore not quantifiable.

[50] Some nonfatal injuries are unrelated to the factors (sitting distance from air bag and medical conditions) which define the driver risk groups. For example, since all drivers must hold the steering wheel, they are all subject to arm injuries without regard to those factors.

[51] This potential increase applies to all drivers, not just those in a risk group.

right front passenger air bag to be $95 to $124.

NHTSA notes that one commenter, MBS, submitted an analysis suggesting that a final rule would result in a large annual number of additional deaths by the year 2000. After reviewing MBS' analysis, the agency concludes that it rests on a number of incorrect assumptions about key matters and consequently cannot reliably assess the impacts of this final rule. First, MBS' analysis assumes the final rule would authorize deactivation, which is permanent and eliminates air bag protection for all vehicle users, instead of on-off switches. As noted above, on-off switches make it possible to leave air bags on except when a person at risk is riding in the vehicle. Second, MBS' analysis assumes that anyone may have their air bag turned off, based on informed decisionmaking alone. In fact, the final rule is based on informed decisionmaking, certification of risk group membership, and agency approval of each request. As a result, the final rule will reduce inappropriate requests for on-off switches, i.e., those requests based on reasons other than safety risk. Third, MBS' analysis relies on highly speculative assumptions about the percentage of respondents to telephone surveys (the January IIHS survey and a later survey by Ford) who will actually go to their dealers or repair business and purchase an on-off switch. Given the shortcomings of those early surveys, which are detailed above, they do not provide a reliable basis for estimating the level of interest in on-off switches. Although the more recent (August) survey by IIHS avoided those shortcomings and demonstrated the potential for education to reduce interest in on-off switches, that survey too does not provide a basis for reliably estimating the number of people who will obtain on-off switches under this final rule. Even though the new survey introduced key information about cost and safety, it did so only to the very limited extent that it was reasonable and practicable to do so in the context of a brief survey. Only the barest of facts were given to the respondents. Further, since IIHS was conducting an opinion survey, not a public education campaign, its efforts to educate respondents about who is at risk from air bags was very cursory. The public education campaign planned by the agency and other interested parties will provide the public with a much fuller description of the facts and present those facts in the context of persuasive explanatory discussions and graphics. Third, instead of using data representing the passenger vehicle fleet in 2000, MBS incorrectly used NHTSA data representing a later fleet fully equipped with driver and passenger air bags. By contrast, only 47 percent of the vehicles in the 2000 fleet will have driver air bags and 35 percent will have passenger air bags. The effect of this error was to magnify greatly MBS's estimate of the effects of a final rule.

XI. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget (OMB) under E.O. 12866, ''Regulatory Planning and Review.'' This rule is not economically significant under E.O. 12866. However, the action has been determined to be ''significant'' under the Department of Transportation's regulatory policies and procedures because of the degree of public interest in this subject. This rule is not a major rule under Chapter 8 of Title 5, U.S. Code.

Further, the agency does not believe that the annual net economic impacts of the actions taken under this rule will exceed $100 million per year. This final rule does not require a motor vehicle manufacturer, dealer or repair business to take any action or bear any costs except in instances in which a dealer or repair business agrees to install an on-off switch for an air bag. For consumers, the purchasing and installation of on-off switches is permissive, not prescriptive. Accordingly, universal use of on-off switches by risk group members is unlikely. As noted below, the agency estimates that the percentage of vehicle owners who will ultimately choose to seek and use on-off switches is relatively low. Further, while NHTSA has specified four risk groups and made them eligible for on-off switches, the agency is affirmatively recommending only that two of the four specified risk groups obtain on-off switches. As a result, the agency does not believe this rule will yield benefits whose value exceeds $100 million in any one year.

When an eligible consumer obtains the agency's authorization for the installation of a retrofit on-off switch and a dealer or repair business agrees to install the switch, there will be costs associated with that action. The agency estimates that installation of an on-off switch would typically require less than one hour of shop time, at the average national labor rate of up to $50 per hour. NHTSA estimates the cost of providing an on-off switch for the passenger air bag is $38 to $63 and the cost of providing an on-off switch for both driver and passenger air bag is $51 to $76. Ford estimated the cost of installing an aftermarket on-off switch that controls both the driver and passenger air bag to be $95 to $124.

At this time, any estimate of the number of vehicle owners who will actually fill out request forms, obtain agency authorization and pay for retrofit on-off switches is necessarily subject to substantial uncertainty. The agency's experience with requests for deactivation suggests a figure that is much lower than the estimates offered by some commenters based on public opinion surveys. The agency believes that actual experience provides a sounder basis for making an estimate. Based on the volume of deactivation requests,[52] the greater public interest in on-off switches than in deactivation, the burst of publicity likely to surround the issuance of the final rule, and the time needed for the public education campaign to take full effect, NHTSA estimates that at least 100,000 request forms will be submitted to the agency in the first year after the issuance of this final rule, and that the annual average for the three-year period including that year and the next two years will be at least 80,000.

Because of the public interest in air bags, the publicity that will surround the issuance of this final rule, and the continuing public education campaign, NHTSA expects that many more people will read the information brochure than will fill out request forms and seek authorization for on-off switches. The agency has no directly relevant experience upon which to base an estimate. However, NHTSA estimates that the number of persons who read the brochure will be at least 1,000,000 over the three year period following the issuance of this final rule. Thus, the annual average will be at least 330,000 people.

In view of the preceding analysis, there are no mandatory costs associated with this rule. A final regulatory evaluation for this notice has been placed in the docket.

[52] The agency is using the volume of requests from the peak period during 1997, i.e., April and May. The volume averaged about 400 letters per week during that period. By contrast, the volume in late August-early September was slightly less than 300 per week. In mid-September, the average was even lower, just over 100. However, in October, the weekly average increased to nearly 200.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Most dealerships and repair businesses are considered small entities, and a substantial number of these businesses may perform on-off switch installations pursuant to this rule, and would presumably profit from these installations. However, the economic impact on any given business will not be significant. For every 100,000 vehicle owners who voluntarily decide to seek authorization to have an on-off switch installed and who obtain that authorization, the average new vehicle dealer will install about 4.4 on-off switches before the introduction of advanced air bags solves the problem. NHTSA estimates the cost of providing a single on-off switch that operates both driver and passenger air bag is $51 to $76. Ford estimated that cost as $95 to $124. Based on a range from $51 to $124, the average dealer will receive, for each 100,000 on-off switches installed nationwide, additional revenues of between $224 and $545, before subtracting the cost of materials, labor, and overhead. This does not represent a significant amount of money for these businesses.

To the extent that consumers take their vehicles to the much larger number of used car dealers and smaller repair businesses for on-off switch installations, the economic impact would be diluted on a per-business basis. A small number of businesses may specialize in on-off installation, and this rule would have a large impact on them. However, NHTSA has noted a reluctance, on the part of the people receiving letters of authorization to deactivate their air bags, to take their vehicles to businesses other than dealerships. Assuming that this lack of ''demand'' for the independent businesses extends to on-off switch installation, and given the general liability concerns even on the part of the dealerships, the agency does not believe that a substantial number of businesses will specialize in on-off switch installation.

Because the economic impact, per average business, is so small, I hereby certify that it will not have a significant economic impact on a substantial number of small entities. NHTSA notes again that the requirements will not impose any mandatory economic impact on any entities, small or otherwise.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule does not meet the definition of a Federal mandate, because it is completely permissive. In addition, annual expenditures will not exceed the $100 million threshold.

Executive Order 12612 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule has no retroactive effect. NHTSA is not aware of any State law that would be preempted by this final rule. This final rule does not repeal any existing Federal law or regulation. It modifies existing law only to the extent that it replaces an agency procedure under which vehicle owners had to obtain authorization to have their air bags deactivated with a new procedure under which owners may seek authorization to have on-off switches installed. This new procedure involves reading an information brochure about air bag safety and submitting to NHTSA a signed and dated request form on which the owner certifies that he or she has read the brochure and that he or she, or a user of his or her vehicle, is a member of a risk group defined by the agency. If the agency approves the request, it sends an authorization letter to the vehicle owner. This final rule does not require submission of a petition for reconsideration or the initiation of other administrative proceedings before a party may file suit in court.

Paperwork Reduction Act

Several of the conditions placed by this final rule on the exemption from the make inoperative prohibition are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Specifically, this rule conditions the exemption for motor vehicle dealers and repair businesses upon vehicle owners filling out and submitting a request form to the agency, obtaining an authorization letter from the agency and then presenting the letter to a dealer or repair business. The exemption is also conditioned upon the dealer or repair business filling in information about itself and the installation in the form provided for that purpose in the authorization letter and then returning the form to NHTSA. The information collection requirements for part 593 have been approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

49 CFR Part 595

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends chapter V of title 49 of the Code of Federal Regulations as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising S4.5.2, 4.5.4 and 4.5.4.4 to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

S4.5.2 Readiness indicator. An occupant protection system that deploys in the event of a crash shall have a monitoring system with a readiness indicator. The indicator shall monitor its own readiness and shall be clearly visible from the driver's designated seating position. If the vehicle is equipped with a single readiness indicator for both a driver and passenger air bag, and if the vehicle is equipped with an on-off switch permitted by S4.5.4 of this standard, the readiness indicator shall monitor the readiness of the driver air bag when the passenger air bag has been deactivated by means of the on-off switch, and shall not illuminate solely because the passenger air bag has been deactivated by the manual on-off switch. A list of the elements of the system being monitored by the indicator shall be included with the information furnished in accordance with S4.5.1 but need not be included on the label.

* * * * *

S4.5.4 Passenger Air Bag Manual On-Off Switch. Passenger cars, trucks,

buses, and multipurpose passenger vehicles manufactured before September 1, 2000 may be equipped with a device that deactivates the air bag installed at the right front passenger position in the vehicle, if all the conditions in S4.5.4.1 through 4.5.4.4 are satisfied.

* * * * *

S4.5.4.4 The vehicle owner's manual shall provide, in a readily understandable format:

(a) Complete instructions on the operation of the on-off switch;

(b) A statement that the on-off switch should only be used when a member of a passenger risk group identified in the request form in Appendix B to part 595 of this chapter is occupying the right front passenger seating position; and,

(c) A warning about the safety consequences of using the on-off switch at other times.

3. Part 595 is added to read as follows:

PART 595—RETROFIT ON-OFF SWITCHES FOR AIR BAGS

Sec.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

§ 595.1 Scope.

This part establishes conditions under which retrofit on-off switches may be installed.

§ 595.2 Purpose.

The purpose of this part is to provide an exemption from the ''make inoperative'' provision of 49 U.S.C. 30122 and authorize motor vehicle dealers and motor vehicle repair businesses to install retrofit on-off switches for air bags.

§ 595.3 Applicability.

This part applies to dealers and motor vehicle repair businesses.

§ 595.4 Definitions.

The term *dealer,* defined in 49 U.S.C. 30102(a), is used in accordance with its statutory meaning.

The term *motor vehicle repair business* is defined in 49 U.S.C. 30122(a) as ''a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment.'' This term includes businesses that receive compensation for servicing vehicles without malfunctioning or broken parts or systems by adding or removing features or components to or from those vehicles or otherwise customizing those vehicles.

§ 595.5 Requirements.

(a) Beginning January 19, 1998, a dealer or motor vehicle repair business may modify a motor vehicle by installing an on-off switch that allows an occupant of the vehicle to turn off an air bag in that vehicle, subject to the conditions in paragraphs (b)(1) through (5) of this section:

(b)(1) The dealer or motor vehicle repair business receives from the owner or lessee of the motor vehicle a letter from the National Highway Traffic Safety Administration that authorizes the installation of an on-off switch in that vehicle for that air bag and includes a form to be filled in by the dealer or motor vehicle repair business with information identifying itself and describing the installation it makes.

(2) The dealer or motor vehicle repair business installs the on-off switch in accordance with the instructions of the manufacturer of the switch.

(3) The on-off switch meets all of the conditions specified in paragraph (a)(4)(i) and (ii) of this section.

(i) The on-off switch is operable solely by a key. The on-off switch shall be separate from the ignition switch for the vehicle, so that the driver must take some action other than inserting the ignition key or turning the ignition key in the ignition switch to turn off the air bag. Once turned off, the air bag shall remain off until it is turned back on by means of the device. If a single on-off switch is installed for both air bags, the on-off switch shall allow each air bag to be turned off without turning off the other air bag. The readiness indicator required by S4.5.2 of § 571.208 of this chapter shall continue to monitor the readiness of the air bags even when one or both air bags has been turned off.

(ii) A telltale light in the interior of the vehicle shall be illuminated whenever the driver or passenger air bag is turned off by means of the on-off switch. The telltale for a driver air bag shall be clearly visible to an occupant of the driver's seating position. The telltale for a passenger air bag shall be clearly visible to occupants of all front seating positions. The telltale for an air bag:

(A) Shall be yellow;

(B) Shall have the identifying words ''DRIVER AIR BAG OFF'' or ''PASSENGER AIR BAG OFF,'' as appropriate, on the telltale or within 25 millimeters of the telltale;

(C) Shall remain illuminated for the entire time that the air bag is ''off;''

(D) Shall not be illuminated at any time when the air bag is ''on;'' and,

(E) Shall not be combined with the readiness indicator required by S4.5.2 of § 571.208 of this chapter.

(4) The dealer or motor vehicle repair business provides the owner or lessee with an insert for the vehicle owner's manual that—

(i) Describes the operation of the on-off switch,

(ii) Lists the risk groups on the request form set forth in Appendix B of this Part,

(iii) States that an on-off switch should only be used to turn off an air bag for a member of one of those risk groups, and

(iv) States the safety consequences for using the on-off switch to turn off an air bag for persons who are not members of any of those risk groups. The description of those consequences includes information, specific to the make, model and model year of the owner's or lessee's vehicle, about any seat belt energy managing features, e.g., load limiters, that will affect seat belt performance when the air bag is turned off.

(5) In the form included in the agency authorization letter specified in paragraph (b)(1) of this section, the dealer or motor vehicle repair business fills in information describing itself and the on-off switch installation(s) it makes in the motor vehicle. The dealer or motor vehicle repair business then sends the form to the address below within 7 working days after the completion of the described installations: National Highway Traffic Safety Administration, Attention: Air Bag Switch Request Forms, 400 Seventh Street, S.W., Washington, D.C. 20590–1000.

BILLING CODE 4910–59–P

APPENDIX A TO PART 595--INFORMATION BROCHURE

U. S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

AIR BAGS AND ON-OFF SWITCHES
INFORMATION FOR AN INFORMED DECISION

Keeping the Benefits for the Many
and
Reducing the Risks for the Few

INTRODUCTION

Air bags are proven, effective safety devices. From their introduction in the late 1980's through November 1, 1997, air bags saved about 2,620 people. The number of people saved increases each year as air bags become more common on America's roads.

However, the number of lives saved is not the whole story. Air bags are particularly effective in preventing life-threatening and debilitating head and chest injuries. A study of real-world crashes conducted by the National Highway Traffic Safety Administration (NHTSA) found that the combination of seat belts and air bags is 75 percent effective in preventing serious head injuries and 66 percent effective in preventing serious chest injuries. That means 75 of every 100 people who would have suffered a serious head injury in a crash, and 66 out of 100 people who would have suffered chest injuries, were spared that fate because they wore seat belts and had air bags.

For some people, these life saving and injury-preventing benefits come at the cost of a less severe injury caused by the air bag itself. Most air bag injuries are minor cuts, bruises, or abrasions and are far less serious than the skull fractures and brain injuries that air bags prevent. However, 87 people have been killed by air bags as of November 1, 1997. These deaths are tragic, but rare events -- there have been about 1,800,000 air bag deployments as of that same date.

The one fact that is common to all who died is NOT their height, weight, sex, or age. Rather, it is the fact that they were too close to the air bag when it started to deploy. For some, this occurred because they were sitting too close to the air bag. More often this occurred because they were not restrained by seat belts or child safety seats and were thrown forward during pre-crash braking.

The vast majority of people can avoid being too close and can minimize the risk of serious air bag injury by making simple changes in behavior. Shorter drivers can adjust their seating position. Front seat adult passengers can sit a safe distance from their air bag. Infants and children 12 and under should sit in the back seat. And everyone can buckle up. The limited number of people who may not be able to make these changes may benefit from having the opportunity to turn off their air bags when necessary.

Beginning January 19, 1998, consumers can choose to have an on-off switch installed for the air bags in their vehicle if they are, or a user of their vehicle is, in a risk group listed below. The following information provides the facts you need about air bags so you can make the appropriate decision for you and anyone else who is in a risk group.

What is an on-off switch?

An on-off switch allows an air bag to be turned on and off. The on-off switch can be installed for the driver, passenger, or both. To limit misuse, a key must be used to operate the on-off switch. When the air bag is turned off, a light comes on. There is a message on or near the light saying "DRIVER AIR BAG OFF" or "PASSENGER AIR BAG OFF." The air bag will remain off until the key is used to turn it back on.

What steps can you take to reduce air bag risk without buying an on-off switch?

- **Always place an infant in a rear-facing infant seat in the back seat.**
- **Always transport children 1 to 12 years old in the back seat and use appropriate child restraints.**
- **Always buckle your seat belt.**
- **Keep 10 inches between the center of the air bag cover and your breastbone.**

The vast majority of people don't need an on-off switch. Almost everyone over age 12 is much safer with air bags than without them. This includes short people, tall people, older people, pregnant women -- in fact, all people, male or female, who buckle their seat belts and who can sit far enough back from their air bag. Ideally, you should sit with at least 10 inches between the center of your breastbone and the cover of your air bag. The nearer you can come to achieving the 10-inch distance, the lower your risk of being injured by the air bag and the higher your chance of being saved by the air bag. If you can get back almost 10 inches, the air bag will still help you in a crash.

Who should consider installing an on-off switch?

- People who must transport infants riding in rear-facing infant seats in the front passenger seat.
- People who must transport children ages 1 to 12 in the front passenger seat.
- Drivers who cannot change their customary driving position and keep 10 inches between the center of the steering wheel and the center of their breastbone.
- People whose doctors say that, due to their medical condition, the air bag poses a special risk that outweighs the risk of hitting their head, neck or chest in a crash if the air bag is turned off.

If you cannot certify that you are, or any user of your vehicle is, in one of these groups, you are not eligible for an on-off switch. Turning off your air bag will not benefit you or the other users of your vehicle. Instead, it will increase the risk that you and the other users will suffer a head, neck or chest injury by violently striking the steering wheel or dashboard in a moderate to severe

crash.

WHY SOME PEOPLE ARE AT RISK

How do air bag deaths occur?
Air bags are designed to save lives and prevent injuries by cushioning occupants as they move forward in a front-end crash. By providing a cushion, an air bag keeps the occupant's head, neck, and chest from hitting the steering wheel or dashboard. To perform well, an air bag must deploy quickly. The force is greatest in the first 2-3 inches after the air bag bursts through its cover and begins to inflate. Those 2-3 inches are the "risk zone." The force decreases as the air bag inflates farther.

Occupants who are very close to or on top of the air bag when it begins to inflate can be hit with enough force to suffer serious injury or death. However, occupants who are properly restrained and sit 10 inches away from the air bag cover will contact the air bag only after it has completely or almost completely inflated. The air bag then will cushion and protect them from hitting the hard surfaces in the vehicle.

Do both children and adults face risk?
Yes, both children and adults face the risk of air bag injury or death if they are positioned too close to the air bag or fail to use proper restraints. As of November 1, 1997, NHTSA has confirmed that 49 young children have died, all on the passenger side. 38 adults have died -- 35 drivers and 3 passengers.

What were the specific circumstances of the children's deaths?
Almost all of the 49 children who died were improperly restrained or positioned. 12 were infants under age 1 who were riding in rear-facing infant seats in front of the passenger air bag. When placed in the front seat, a rear-facing infant seat places an infant's head within a very few inches of the passenger air bag. In this position, an infant is almost certain to be injured if the air bag deploys. Rear-facing infant seats must ALWAYS be placed in the back seat.

The other 37 children ranged in age from 1 to 9 years; most were 7 or under. 29 of them were totally unrestrained. This includes 4 children who were sitting on the laps of other occupants. The remaining 8 children included some who were riding with their shoulder belts behind them and some who were wearing lap and shoulder belts but who also should have been in booster seats because of their small size and weight. Booster seat use could have improved shoulder belt fit and performance. These various factors allowed the 37 children to get too close to the air bag when it began to inflate.

What were the specific circumstances of the adults' deaths?
Most of the adults who were killed by air bags were not properly restrained. 18 of the 35 drivers, and 2 of the 3 passengers, were totally unbelted. 2 of the drivers who were belted had medical conditions which caused them to slump over the steering wheel immediately before the crash. A few of the drivers did not use their seat belts correctly and the others are believed to have been sitting too close to the steering wheel.

SEE FOR YOURSELF

Visit the NHTSA Web site at **http://www.nhtsa.dot.gov** and click on the icon "AIR BAGS - Information about air bags." A video shows crash tests of properly belted dummies whose air bags are turned off. A properly belted short female dummy without an air bag is shown slamming her head hard enough to bend the steering wheel and suffer fatal injuries. For more information, call the NHTSA Hotline at 1-800-424-9393.

REDUCING THE RISK

What is the safest way to ride in front of an air bag?
First, move the seat back and buckle up -- every time, every trip. The lap belt needs to fit over your hips, not your abdomen, and the shoulder belt should lie on your chest and over your shoulder. Remove any slack from the belt. In a crash, seat belts stretch and slow down your movement toward the steering wheel or dashboard. Moving back and properly using seat belts give the air bag a chance to inflate before you move forward in a crash far enough to contact the air bag.

How do I best protect children?
Never place a rear-facing infant seat in the front seat if the air bag is turned on. Always secure a rear-facing seat in the back seat. Children age 12 and under should ride in the back seat. While almost all of the children killed by an air bag were 7 years old or younger, a few older children have been killed. Accordingly, age 12 is recommended to provide a margin of safety.

There are instances when children must sit in the front because the vehicle has no rear seat, there are too many children for all to ride in back, or a child has a medical condition that requires monitoring. If children must sit in the front seat, they should use the seat belts and/or child restraint appropriate for their weight or size (see the table at the end of this brochure) and sit against the back of the vehicle seat. The vehicle seat should be moved as far back from the air bag as practical. Make sure the child's shoulder belt stays on. If adult seat belts do not fit properly, use a booster seat. Also, children must never ride on the laps of others.

What should teenagers and adults do to be safest on the passenger side?
Always wear seat belts. This reduces the distance that they can move forward during a crash. Move the seat toward the rear. The distance between a passenger's chest and the dashboard where the air bag is stored is usually more than 10 inches, even with the passenger seat all the way forward. But more distance is safer.

How do I stay safe when I'm driving?
Since the risk zone for driver air bags is the first 2-3 inches of inflation, placing yourself 10 inches from your driver air bag provides you with a clear margin of safety. This distance is measured from the center of the steering wheel to your breastbone. If you now sit less than 10 inches away, you can change your driving position in several ways:

- Move your seat to the rear as far as you can while still reaching the pedals comfortably.

- Slightly recline the back of the seat. Although vehicle designs vary, many drivers can achieve the 10-inch distance, even with the driver seat all the way forward, simply by reclining the back of the seat somewhat. If reclining the back of your seat makes it hard to see the road, raise yourself by using a firm, non-slippery cushion, or raise the seat if your vehicle has that feature.
- If your steering wheel is adjustable, tilt it downward. This points the air bag toward your chest instead of your head and neck.

[In its published version, the brochure will be 10 inches tall and will indicate that it should be placed between your breastbone and the center of the air bag cover to check your distance.]

Will following these safety tips guarantee that I will be safe in a crash?
There is no guarantee of safety in a crash, with or without an air bag. However, most of the people killed by air bags would not have been seriously injured if they had followed these safety tips.

Are air bags the reason the back seat is the safest place for children?
No. The back seat has always been safer, even before there were air bags. NHTSA conducted a study of children who died in crashes in the front and back seats of vehicles, very few of which had passenger air bags. The study concluded that placing children in the back reduces the risk of death in a crash by 27 percent, whether or not a child is restrained.

THE ON-OFF SWITCH DECISION

Vehicle owners and lessees can obtain an on-off switch for one or both of their air bags only if they can certify that they are, or a user of their vehicle is, in one of the four risk groups listed below:

Two risk groups have a high enough risk that they would definitely be better off with an on-off switch:

- **Infants in rear-facing infant seats**. A rear-facing infant seat must never be placed in the front seat unless the air bag is turned off.
- **Drivers or passengers with unusual medical conditions.** These are people who have been advised by a physician that an air bag poses a special risk to them because of their condition. However, they should not turn off their air bag unless their physician also has advised them that this risk is greater than what may happen if they do turn off their air bag. Without an air bag, even belted occupants could hit their head, neck or chest in a crash.

  A national conference of physicians considered all medical conditions commonly cited as possible justifications for turning off air bags. The physicians did not recommend turning off air bags for persons with pacemakers, supplemental oxygen, eyeglasses, median sternotomy, angina, chronic obstructive pulmonary disease, emphysema, asthma, breast reconstruction, mastectomy, scoliosis (if the person can be positioned properly), previous back or neck surgery, previous facial reconstructive surgery or facial injury, hyperacusis, tinnitus, advanced age,

osteogenesis imperfecta, osteoporosis & arthritis (if the person can sit at a safe distance from the air bag), previous ophthalmologic surgery, Down syndrome and atlantoaxial instability (if the person can reliably sit properly aligned), or pregnancy. The physicians recommended turning off an air bag if a safe sitting distance or position cannot be maintained by a driver because of scoliosis or achondroplasia or by a passenger because of scoliosis or Down syndrome and atlantoaxial instability. The physicians also noted that a passenger air bag might have to be turned off if an infant or child has a medical condition and must ride in front so that he or she can be monitored. To obtain a copy of the recommendations, call the NHTSA Hotline or see the NHTSA Web site.

Two other risk groups may be better off with an air bag on-off switch:

- **Children ages 1 to 12.** Children in this age group can be transported safely in the front seat if they are properly belted, they do not lean forward, and their seat is moved all the way back. The vast majority of all fatally injured children in this age range were completely unrestrained. But children sometimes sit or lean far forward and may slip out of their shoulder belts, putting themselves at risk. The simple act of leaning far forward to change the radio station can momentarily place even a belted child in danger. If a vehicle owner must transport a child in the front seat, the owner is eligible for an on-off switch for the passenger air bag. Since air bag performance differs from vehicle model to vehicle model, the vehicle owner may wish to consult the vehicle manufacturer for additional advice.

CAUTION: If you allow children to ride in the front seat while unrestrained or improperly restrained, and especially if you sit with a child on your lap, **you are putting them at serious risk, with or without an air bag**. Turning off the air bag is not the safe answer. It would eliminate air bag risk but not the likelihood that in a crash an unrestrained child would fly through the air and strike the dashboard or windshield, or be crushed by your body.

- **Drivers who cannot get back 10 inches**. Very few drivers are unable to sit so that their breastbone is 10 inches away from their air bag. If, despite your best efforts, you cannot maintain a distance of 10 inches, you may wish to **consult your dealer or vehicle manufacturer for advice or modifications to help you move back.**

  Since the risk zone is the first 2-3 inches from the air bag cover, sitting back 10 inches provides a clear margin of safety. While getting back at least 10 inches is desirable, if you can get back almost 10 inches, the air bag is unlikely to seriously injure you in a crash and you probably don't need an on-off switch. If you cannot get back almost 10 inches from the air bag cover, you may wish to consider an on-off switch. Since air bag performance differs among vehicle models, you may wish to consult your vehicle manufacturer for additional advice.

What if you are, or a user of your vehicle is, not in one of the listed risk groups?
You are not at risk and do not need an on-off switch. This includes short people, tall people, older people, pregnant women -- in fact, all people, male or female over age 12, who buckle their seat belts and who can sit with 10 inches from the center of their breastbone to where the air bag is stored. You will have the full benefit of your air bag and will minimize the risk of violently striking the steering wheel and dashboard in a moderate to severe crash.

How do I get an on-off switch?
If you are eligible, you must fill out a NHTSA request form. Forms are available at state motor vehicle offices and may be available at automobile dealers and repair shops. You may also get one by calling the NHTSA Hotline or visiting the NHTSA Web site. On the form, you must indicate which air bags you want equipped with an on-off switch, certify that you have read this information brochure, certify that you are, or a user of your vehicle is, a member of a risk group listed above, and identify the group. Then send this form to NHTSA. Upon approval of your request, the agency will send you a letter authorizing an automobile dealer or repair shop to install an on-off switch in your vehicle.

Should a pregnant woman get an on-off switch?
No, not unless she is a member of a risk group. Pregnant women should follow the same advice as other adults: buckle up and stay back from the air bag. The lap belt should be positioned low on the abdomen, below the fetus, with the shoulder belt worn normally. Pull any slack out of the belt. Just as for everyone else, the greatest danger to a pregnant woman comes from slamming her head, neck or chest on the steering wheel in a crash. When crashes occur, the fetus can be injured by striking the lower rim of the steering wheel or from crash forces concentrated in the area where a seat belt crosses the mother's abdomen. By helping to restrain the upper chest, the seat belt will keep a pregnant woman as far as possible from the steering wheel. The air bag will spread out the crash forces that would otherwise be concentrated by the seat belt.

ON-OFF SWITCH PRECAUTIONS

If I turn off my air bag for someone at risk, what precautions should I take for others?
Since the air bag will not automatically turn itself back on after you turn it off with an on-off switch, you must remember to turn it on when someone who is not at risk is sitting in that seat. Every on-off switch has a light to remind you when the air bag is turned off.

If I turn off my air bag, will my seat belts provide enough protection?
Air bags increase the protection you can get from seat belts alone. If the air bag is turned off, you lose this extra protection.

In some newer vehicles, turning off your air bag may have additional consequences. These vehicles have seat belts that were specially designed to work together with air bags. If the crash forces become too great, these new seat belts "give" or yield to avoid concentrating too much force on your chest. The air bag prevents you from moving too far forward after the seat belts

give. Without the air bag to cushion this forward movement, the chance of the occupant hitting the vehicle interior is increased.

Ask your vehicle manufacturer whether your seat belts were specially designed to work with an air bag. If they were, your dealer or repair shop will provide you information about the effects that turning off your air bag will have on the performance of the belts. Ask your dealer or repair shop to show you this information before you decide whether to have an on-off switch installed.

HOW AIR BAGS WORK

Air bags are designed to keep your head, neck, and chest from slamming into the dash, steering wheel or windshield in a front-end crash. They are not designed to inflate in rear-end or rollover crashes or in most side crashes. Generally, air bags are designed to deploy in crashes that are equivalent to a vehicle crashing into a solid wall at 8-14 mph. Air bags most often deploy when a vehicle collides with another vehicle or with a solid object like a tree.

Air bags inflate when a sensor detects a front-end crash. The sensor sends an electric signal to start a chemical reaction that inflates the air bag with harmless nitrogen gas. All this happens faster than the blink of an eye. Air bags have vents, so they deflate immediately after cushioning you. They cannot smother you and they don't restrict your movement. The "smoke" you may have seen in a vehicle after an air bag demonstration is the nontoxic starch or talc that is used to lubricate the air bag.

Are all air bags the same?
No. Air bags differ in design and performance. There are differences in the crash speeds that trigger air bag deployment, the speed and force of deployment, the size and shape of air bags, and the manner in which they unfold and inflate. That is why you should contact your vehicle manufacturer if you want specific information about the air bags in your particular car or truck.

FUTURE AIR BAGS

Do I need an on-off switch if I buy a vehicle with depowered air bags?
Many manufacturers are installing depowered air bags beginning with their model year 1998 vehicles. They are called "depowered" because they deploy with less force than current air bags. They will reduce the risk of air bag-related injuries. However, even with depowered air bags, rear-facing child seats still should never be placed in the front seat and children are still safest in the back seat. Contact your vehicle manufacturer for further information.

Will on-off switches be necessary in the future?
Manufacturers are actively developing so-called "smart" or "advanced" air bags that may be able to tailor deployment based on crash severity, occupant size and position, or seat belt use. These bags should eliminate the risks produced by current air bag designs. It is likely that vehicle manufacturers will introduce some form of advanced air bags over the next few years.

WHAT RESTRAINT IS RIGHT FOR YOUR CHILD?

Weight or size of your child	Proper type of restraint (Put your child in back seat, if possible)
Children less than 20 pounds,* or less than 1 year	Rear-facing infant seat (*secured to the vehicle by the seat belts*)
Children from about 20 to 40 pounds* and at least 1 year	Forward-facing child seat (*secured to the vehicle by the seat belts*)
Children more than 40 pounds*	Booster seat, plus both portions of a lap/shoulder belt (*except only the lap portion is used with some booster seats equipped with front shield*)
Children who meet both criteria below: (1) Their sitting height is high enough so that they can, without the aid of a booster seat: wear the shoulder belt comfortably across their shoulder, and secure the lap belt across their pelvis, and (2) Their legs are long enough to bend over the front of the seat when their backs are against the vehicle seat back	Both portions of a lap/shoulder belt

* To determine whether a particular restraint is appropriate for your child, see restraint manufacturer's recommendations concerning the weight of children who may safely use the restraint.

APPENDIX B TO PART 595--REQUEST FORM

U. S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

OMB No. 2127-0588
Expiration Date: 11/30/00

REQUEST FOR AIR BAG ON-OFF SWITCH

Vehicle Owner or Lessee Instructions:
Read the National Highway Traffic Safety Administration (NHTSA) information brochure, "Air Bags & On-Off Switches, Information for an Informed Decision." If you want authorization for an on-off switch for your driver air bag, passenger air bag, or both, fill out Parts A, B, E and F completely, fill out Parts C and D as appropriate, and send this form to:

National Highway Traffic Safety Administration
Attention: Air Bag Switch Request Forms
400 Seventh Street, S. W.
Washington, D.C. 20590-1000

- Please print.
- Please note: Incomplete forms will be returned to the owner or lessee.
- If you need a copy of the brochure or have any questions about how to fill out this form, call the NHTSA Hotline at 1-800-424-9393.

Part A. Name and address

(First)	(Middle In.)	(Last)	
Residence: Street address	City	State	Zip Code

Part B. I own or lease the following vehicle: (Owners of multiple vehicles should consult the additional instructions at the end of this form.)

Make	Model
Model year	Vehicle Identification Number (located on driver's side of dashboard near windshield and on certification label on driver's door frame)

Part C. Switch for Driver Air Bag.
I request authorization for the installation of an on-off switch for the driver air bag in my vehicle. I certify that I or another driver of my vehicle meets the criteria for the risk group checked below.
(At least one box must be checked.)

☐ **Medical condition.** The driver has a medical condition which, according to his or her physician:
- causes the driver air bag to pose a special risk for the driver; and
- makes the potential harm from the driver air bag in a crash greater than the potential harm from turning off the air bag and allowing the driver, even if belted, to hit the steering wheel or windshield in a crash.

☐ **Distance from driver air bag.** Despite taking all reasonable steps to move back from the driver air bag, the driver is not able to maintain a 10-inch distance from the center of his or her breastbone to the center of the driver air bag cover.

Part D. Switch for Passenger Air Bag.
I request authorization for the installation of an on-off switch for the passenger air bag in my vehicle. I certify that I or another passenger of my vehicle meets the criteria for the risk group checked below.
(At least one box must be checked.)

☐ **Infant.** An infant (less than 1 year old) must ride in the front seat because:
- my vehicle has no rear seat;
- my vehicle has a rear seat too small to accommodate a rear-facing infant seat; or
- the infant has a medical condition which, according to the infant's physician, makes it necessary for the infant to ride in the front seat so that the driver can constantly monitor the child's condition.

☐ **Child age 1 to 12.** A child age 1 to 12 must ride in the front seat because:
- my vehicle has no rear seat;
- although children ages 1 to 12 ride in the rear seat(s) whenever possible, children ages 1 to 12 sometimes must ride in the front because no space is available in the rear seat(s) of my vehicle; or
- the child has a medical condition which, according to the child's physician, makes it necessary for the child to ride in the front seat so that the driver can constantly monitor the child's condition.

☐ **Medical condition.** A passenger has a medical condition which, according to his or her physician:
- causes the passenger air bag to pose a special risk for the passenger; and
- makes the potential harm from the passenger air bag in a crash greater than the potential harm from turning off the air bag and allowing the passenger, even if belted, to hit the dashboard or windshield in a crash.

Part E. I make this request based on following certification and understandings:	
(Check each box below after reading carefully.)	
☐	**Information brochure.** I certify that I have read the NHTSA information brochure, "Air Bags & On-Off Switches, Information for an Informed Decision." I understand that air bags should be turned off only for people at risk and turned back on for people not at risk.
☐	**Loss of air bag protection.** I understand that turning off an air bag may have serious safety consequences. When an air bag is off, even belted occupants may hit their head, neck or chest on the steering wheel, dashboard or windshield in a moderate to serious crash. That possibility may be increased in some newer vehicles with seat belts that are specially designed to work with the air bag. Those belts, which are designed to reduce the concentration of crash forces on any single part of the body, typically allow the occupant to move farther forward in a crash than older belts. Without the air bag to cushion this forward movement, the chance of the occupant hitting the vehicle interior is increased.
☐	**Waiver.** I understand that motor vehicle dealers and repair businesses may require me to sign a waiver of liability before they install an on-off switch.

Part F. Certification. **I certify to the U. S. Department of Transportation that the information, certifications and understandings given or indicated by me on this form are truthful, correct and complete to the best of my knowledge and belief. I recognize that the statements I have made on this form concern a matter within the jurisdiction of a department of the United States and that making a false, fictitious or fraudulent statement may render me subject to criminal prosecution under Title 18, United States Code, Section 1001.**	
Date	Signature of owner/lessee

Additional instructions and information for vehicle owners and lessees: An owner or lessee of multiple vehicles (e.g., a fleet owner) who wants an on-off switch for the same air bag (e.g., just the passenger air bag) in more than one vehicle and for the same reason does not need to submit a separate form for each vehicle. Instead, the owner or lessee may list the make, model, model year, and vehicle identification number for each of those vehicles and attach the list to a copy of this form. Each page of the list must be signed and dated by the owner or lessee. A list may also be attached to a single copy of this form if the owner or lessee wishes to request authorization for on-off switches for both air bags in multiple vehicles.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number appears above.

APPENDIX C TO PART 595--INSTALLATION OF AIR BAG ON-OFF SWITCHES

INSTALLATION OF AIR BAG ON-OFF SWITCHES	OMB No. 2127-0588 Expiration Date: 11/30/00

(The form and instructions below will be included in agency letters sent to vehicle owners or lessees authorizing the installation of air bag on-off switches. Each letter will identify the owner or lessee and the vehicle for which installation is authorized.)

The vehicle dealer or repair business identified below made the following installations of on-off switch(es) for the air bags in the motor vehicle identified above:		
Name of motor vehicle dealer or repair business		
Street address		
City	State	Zip Code
On-off switch(es) were installed for the air bag(s) checked on this form:	**driver air bag** ☐	**passenger air bag** ☐
Date of installation	Signature of authorized representative of dealer or repair business	

Instructions for vehicle dealers and repair businesses: Within 7 days of your installation of an on-off switch in the vehicle identified above, you must complete this form and mail it to: National Highway Traffic Safety Administration, Attention: Air Bag Switch Installation Forms, 400 Seventh St., S. W., Washington, D.C. 20590-1000.

Note: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number appears above.

BILLING CODE 4910–59–C

Issued on: November 17, 1997.

[Signature page for Docket No. NHTSA–97–3111 (final rule)]

Ricardo Martinez,

Administrator.

[FR Doc. 97–30485 Filed 11–18–97; 10:00 ;am]

BILLING CODE 4910–59–P

Friday
November 21, 1997

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 285

Administrative Wage Garnishment; Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

[Docket No. FMS–285.11]

RIN 1510–AA67

Administrative Wage Garnishment

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule implements the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA). The DCIA authorizes Federal agencies to garnish the disposable pay of an individual to collect delinquent nontax debts owed to the United States in accordance with regulations issued by the Secretary of the Treasury.

DATE: Comments must be received by December 22, 1997.

ADDRESSES: Comments should be sent to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street, S.W., Room 151, Washington, D.C. 20227.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874–6660; Ronda Kent or Ellen Neubauer, Senior Attorneys, or Laurie Levin, Attorney-Advisor, at (202) 874–6680. This document is available for downloading from the Financial Management Service web site at the following address: http://www.fms.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

This proposed regulation implements the wage garnishment provision in section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, 110 Stat. 1321–358 (Apr. 26, 1996), codified at 31 U.S.C. 3720D. Under this provision Federal agencies may administratively garnish up to 15 percent of the wages of a debtor to satisfy delinquent nontax debt owed to the United States. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees. Section 31001(o) of the DCIA preempts State laws that prohibit wage garnishment or otherwise govern wage garnishment procedures.

As authorized by the DCIA, a Federal agency which is collecting delinquent nontax debt may administratively garnish a delinquent debtor's wages in accordance with regulations promulgated by the Secretary of the Treasury. As the lead agency for the collection of nontax debt in the Federal Government, the Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA.

In accordance with the requirements of the DCIA, this proposed rule establishes the following rules and procedures:

1. *Notice.* At least 30 days before an agency initiates garnishment proceedings, the agency will give the debtor written notice informing him or her of the nature and amount of the debt, the intention of the agency to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.

2. *Rights of the debtor.* The agency will provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing concerning the existence or amount of the debt and the terms of a repayment schedule. The hearing will be held prior to the issuance of a withholding order if the debtor's request is timely received. For hearing requests that are not received in the specified time frame, an agency need not delay issuance of the withholding order prior to conducting a hearing. An agency may not garnish the wages of a debtor who has been involuntarily separated from employment until that individual has been reemployed continuously for at least 12 months.

3. *Employer's responsibilities.* The agency will send to the employer of a delinquent debtor a wage garnishment order directing that the employer pay a portion of the debtor's wages to the Federal Government. This proposed regulation requires the debtor's employer to certify certain payment information about the debtor. Employers will not be required to vary their normal pay cycles in order to comply with the garnishment order.

The DCIA prohibits employers from taking disciplinary actions against the debtor based on the fact that the debtor's wages are subject to administrative garnishment. In addition, the DCIA authorizes an agency to sue an employer for amounts not properly withheld from the wages payable to the debtor.

Section Analysis

(a) Purpose

The purpose of this section is to implement the wage garnishment provision in the DCIA, codified at 31 U.S.C. 3720D, under which Federal agencies may administratively garnish up to 15% of the wages of a debtor to satisfy delinquent nontax debt owed to the United States.

(b) Scope

Paragraph (b)(1) states that all Federal agencies are authorized to utilize this collection tool to collect delinquent nontax debt owed to the United States. The term ''agency'' is defined in paragraph (c).

As provided in the DCIA, paragraph (b)(2) explains that State law does not apply to the withholding of an employee's wages under this section to the extent that such State law conflicts or interferes with the procedures and requirements of this section.

Paragraph (b)(3) explains that an agency's use of this collection tool does not interfere with an agency's discretion to compromise a debt, or to suspend or terminate collection action of the debt.

Paragraph (b)(4) explains that administrative wage garnishment is one of many debt collection tools available to an agency. An agency may use administrative wage garnishment concurrently with other collection tools, even if an agency receives payments through the use of wage garnishment.

Paragraph (b)(5) distinguishes Federal salary offset from administrative wage garnishment. Federal salary offset procedures, whereby Federal salary payments payable to Federal employees who owe debt to the United States are withheld to satisfy the outstanding obligations, are set forth in 5 U.S.C. 5514 and the implementing regulations.

(c) Definitions

Agency. The term ''agency'' has the same meaning as found in 31 U.S.C. 3701(a)(4). The term refers to an agency in the executive, judicial or legislative branches of the Government, including government corporations, that either administers the program that gave rise to the debt or pursues recovery of the debt. For example, the Department of the Treasury and Treasury-designated debt collection centers may collect debts by administrative wage garnishment in accordance with the provisions of this rule when collecting debts for other agencies.

Business day. The term ''business day'' means Monday through Friday and shall be calculated consistent with Rule

6(a) of the Federal Rules of Civil Procedure.

Certificate of service. A ''certificate of service'' refers to a signed certificate that an agency is required to retain as evidence of mailing of a document. A certificate may be retained electronically and may contain a computer generated signature.

Day. Unless otherwise indicated, the term ''day'' means calendar day and shall be calculated consistent with Rule 6(a) of the Federal Rules of Civil Procedure.

Debt or claim. For the purposes of this rule, the terms ''debt'' and ''claim'' refer to delinquent nontax debt. The term ''delinquent nontax debt'' refers to debt that is past-due.

Debtor. The term ''debtor'' refers to an individual who owes a delinquent nontax debt to the United States.

Disposable pay. ''Disposable pay'' is all of a debtor's compensation except health insurance premiums and those amounts required to be withheld by law, such as social security taxes. Lump sum payments, such as bonuses and back pay, are included in disposable pay. For purposes of calculating disposable pay, voluntary withholdings, such as savings allotments, are not deducted from a debtor's compensation.

Employer. The term ''employer'' refers to a person or entity that employs the services of others and includes State and local Governments. For purposes of this section, however, the Federal Government is not an ''employer'' because debts owed by Federal employees are collected in accordance with the Federal salary offset procedures.

Garnishment. The term ''garnishment'' refers to the process of withholding amounts from an employee's pay and forwarding those amounts to a creditor in satisfaction of a withholding order.

Withholding order. The term ''withholding order'' refers to any order for withholding or garnishment of pay, whether issued under the provisions of this section or otherwise. A withholding order may be issued by an agency, or a judicial or administrative body. For purposes of this proposed rule, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

(d) General Rule

Paragraph (d) sets forth the authority contained in the DCIA that authorizes an agency to administratively garnish the wages of a delinquent debtor. Agencies authorized to administratively garnish the wages of a delinquent debtor include the Department of the Treasury and Treasury-designated debt collection centers when collecting debt for other agencies.

(e) Notice Requirements

Paragraph (e)(1) contains the DCIA requirement that the agency give the debtor written notice at least 30 days before initiating garnishment proceedings. The notice will inform the debtor of the nature and amount of the debt, the intention of the agency to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action. The notice will include the time frame within which a debtor may exercise his or her rights. This notice may be combined with and made a part of any notice of intent to use other collection tools that an agency sends to the debtor.

Paragraph (e)(2) contains the DCIA requirement that the agency provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing. Agencies should review a debtor's request to establish a repayment agreement under paragraph (e)(2)(ii) of this section in accordance with the requirements of the Federal Claims Collection Standards (4 CFR Parts 101–105), or other applicable standards, to ensure that the debtor's ability to pay is considered. The debtor is entitled to a hearing only with respect to (1) the existence of the debt; (2) the amount of the debt; or, (3) the terms of the proposed repayment schedule under the garnishment order, e.g., that the amount withheld would create a financial hardship. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement between the debtor and the agency. As discussed below, a debtor who is subject to a wage garnishment order may request a review by the agency of the amount garnished based on materially changed circumstances that result in financial hardship. See paragraph (k) of this section.

Paragraph (e)(3) requires that the agency keep a copy of the certificate of service indicating the date of mailing of the notice required by this section as evidence of the agency having provided the debtor with notice and the opportunity for review. This regulation does not specify how the certificate should be retained by the agency, and accordingly the certificate may be retained electronically. However, agencies are advised to consult with the Department of Justice as to the adequacy of computer generated records for evidentiary purposes.

(f) Hearing

The DCIA requires agencies to promulgate regulations concerning procedures for the conduct of administrative wage garnishment hearings. Agencies may use established hearing procedures so long as they meet the requirements of this section. Paragraph (f)(1) allows agencies either to prescribe their own regulations for this purpose or adopt this section without change.

Under paragraph (f)(2), agencies may decide whether to hold an oral or written hearing. The subject matter of the hearing is limited to the existence or amount of the debt or the terms of an involuntary repayment schedule as described under paragraph (e) of this section.

Paragraph (f)(3) sets forth factors an agency should consider in determining the type of hearing or review to provide. If an agency determines that an oral hearing is appropriate, the debtor may choose an in-person hearing or a hearing by telephone conference.

As required by the DCIA, paragraph (f)(4) provides that a hearing will be held prior to the issuance of a withholding order if the debtor's request for a hearing is timely received by the agency. Timely received means that the request for a hearing is received by the agency on or before the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section. Agencies are required to inform the debtor of the deadline for requesting a hearing prior to the issuance of a withholding order.

Paragraph (f)(5) addresses hearing requests received after the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section. As provided in the DCIA, an agency need not delay issuance of the withholding order prior to conducting a hearing if the request for a hearing is not timely received.

Paragraph (f)(6) authorizes the head of the agency to designate any qualified individual as a hearing official.

Paragraph (f)(7) requires an agency to notify the debtor about the hearing, including the date and time of the hearing or the deadlines for the submission of evidence.

Paragraph (f)(8) describes the burden of proof on the respective parties to a hearing. The agency must present evidence as to the existence or amount of the debt. To dispute the debt, the debtor must present clear and convincing evidence that no debt exists or that the amount of the debt is

incorrect. If the terms of the repayment schedule are an issue, the debtor must show that such terms are unreasonable or unlawful.

Paragraph (f)(9) describes the type of record required for a hearing provided under this section.

As required by the DCIA, under paragraph (f)(10), the hearing official is required to issue a written decision no later than sixty (60) days after the request for a hearing was made. Thus, a hearing must be held and a decision rendered within 60 days after the receipt of a hearing request by the debtor. The agency may not issue a withholding order until a hearing is held and a decision rendered. If an agency has previously issued a withholding order and the agency is unable to hold a hearing and issue a decision within the 60-day time period, the agency must suspend the withholding order until a hearing and a decision have been provided to the debtor. The provisions of this paragraph (f)(10) do not apply to financial hardship reviews under the provisions of paragraph (k) of this section.

Paragraph (f)(11) sets forth the information that must be included in the hearing official's written decision.

Paragraph (f)(12) states that the hearing official's decision is the final agency action for appeal purposes.

Paragraph (f)(13) provides that if a debtor, without good cause shown, fails to appear at a scheduled hearing, an agency may issue a withholding order prior to rescheduling or holding a subsequent hearing.

(g) Wage Garnishment Order

In accordance with the provisions of the DCIA, paragraph (g)(1) requires agencies to send to employers of delinquent debtors a wage garnishment order directing the employer to pay a portion of the debtor's wages to the Federal Government. The agency is required to send the order within 30 days after the debtor fails to make a timely request for a hearing, or if a timely request is made, within 30 days after a final decision is made to proceed with the garnishment.

Paragraph (g)(2) describes the format and content of a withholding order. A withholding order may contain a computer generated signature.

Paragraph (g)(3) requires that the agency retain a copy of the certificate of service indicating the date of mailing of the withholding order as evidence of the agency having served the employer with the order. While a copy of the certificate may be retained electronically, agencies are advised to consult with the Department of Justice as to the adequacy of computer generated records for evidentiary purposes.

(h) Certification by Employer

When a debtor's employer receives a withholding order, paragraph (h) requires the employer to complete a certification in a form prescribed by the Secretary of the Treasury. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

(i) Amounts Withheld

Paragraphs (i)(1), (i)(2), and (i)(3) describe the restrictions on the amounts that can be withheld from an employee's pay to satisfy a withholding order issued pursuant to this proposed rule. As provided in the DCIA, under paragraph (i)(1) no more than 15% of the debtor's disposable pay for each pay period may be garnished.

Special rules apply to calculating the amount to be withheld from a debtor's pay that is subject to multiple withholding orders. Paragraph (i)(2) describes the amount that may be garnished from a debtor's disposable pay if, at the time of the withholding, the debtor's pay is subject to other wage garnishment orders, whether issued under this section or otherwise, e.g., a wage garnishment order issued pursuant to the provisions of 28 U.S.C. 3205 (Garnishment) or a commercial wage garnishment.

For garnishments issued under this section, an employer is required to withhold from a debtor's pay the amounts set forth in paragraph (i)(1). However, when the employee's pay is subject to multiple withholding orders that would result in the withholding of more than 25% of a debtor's disposable pay, this proposed rule requires that the amounts withheld under this section be reduced if the other withholding orders are for family support or were served on the employer prior in time. For example, if the employer is withholding 15% of a debtor's disposable pay for a family support or prior withholding order, the amount withheld for the subsequent withholding order issued under this section is limited to 10% of the debtor's disposable pay. When the family support or prior withholding order terminates, the amount withheld for the subsequent withholding order issued under this section may be increased to the maximum 15% allowed under (i)(1).

The following examples illustrate how the rules described in paragraphs (i)(1) and (i)(2) work.

Examples: An agency issues a garnishment order under this section setting the amount of garnishment at 15% of the debtor's disposable pay.

(A) If the debtor's disposable pay is $200 weekly and is not subject to other garnishment orders with priority, then the amount of the garnishment under this section will be $30 weekly, 15% of disposable pay (15%×$200=$30).

(B) If the debtor's disposable pay is $200 weekly and is subject to a prior garnishment order in the amount of $40 weekly, then the amount of the garnishment under this section will be $10 weekly. The $10 amount is the lesser of 15% of disposable pay (15%×$200=$30) or the maximum amount to be garnished where a debtor's pay is subject to withholding orders with priority (25%×$200=$50; $50−$40=$10). When the prior garnishment order terminates, the amount of the garnishment shall be increased to $30 weekly because the calculation regarding the prior withholding orders is no longer necessary.

(C) If the debtor's disposable pay is $200 weekly and is subject to a garnishment order with priority in the amount of $100 weekly, then the amount of the garnishment under this section will be $0. The $0 amount is the lesser of 15% of disposable pay (15%×$200=$30) or the maximum amount to be garnished where a debtor's pay is subject to withholding orders with priority (25%×$200=$50; $50—$100 $0). When the prior garnishment order terminates, the amount of the garnishment shall be increased to $30 weekly because the calculation regarding the prior withholding orders is no longer necessary.

Paragraph (i)(3) allows the debtor to consent in writing to withholding a greater amount than provided in paragraphs (i)(1) and (i)(2).

Under paragraph (i)(4), the employer is required to promptly pay to the agency amounts withheld under the garnishment order, generally within 10 days.

As provided in the DCIA, under paragraph (i)(5) an employer is not required to vary its pay cycle or disbursement cycle to comply with a withholding order issued pursuant to this section.

Paragraph (i)(6) provides that a withholding order issued under this section will take priority over any assignment or allotment by an employee of his wages, except for an assignment or allotment made pursuant to a family support judgment or order.

Paragraph (i)(7) requires the employer to continue to garnish an employee's wages until the agency notifies the employer that garnishment is no longer appropriate.

(j) Exclusions From Garnishment

As required by the DCIA, paragraph (j) provides that no withholding of a debtor's wages may occur in the case of an individual who has been involuntarily separated from

employment until that individual has been reemployed continuously for at least 12 months. The debtor bears the burden of notifying the agency of an involuntary separation and the circumstances surrounding any separation from employment to avoid wage withholding based on this provision.

(k) Financial Hardship

Paragraph (k)(1) allows a debtor to request a review by the agency of the amount being garnished under a wage garnishment order based on materially changed circumstances which result in a financial hardship.

Paragraph (k)(2) requires the debtor to explain and submit evidence of the materially changed circumstances and the effect of the change on the debtor's ability to pay.

Paragraph (k)(3) explains that an agency is required to adjust the amounts withheld under the garnishment order if a financial hardship is found to exist.

(l) Ending Garnishment

Paragraph (l)(1) requires an agency to instruct the employer to discontinue garnishment upon its receipt of the full amount of the debt, including interest, penalties, and administrative costs.

Paragraph (l)(2) requires an agency to review its debtors' accounts, at least annually, to ensure that garnishment has been terminated for accounts that have been paid in full.

(m) Actions Prohibited by the Employer

As mandated by the DCIA, paragraph (m) prohibits employers from taking disciplinary actions against a debtor based on the fact that the debtor's wages are subject to administrative garnishment.

(n) Refunds

Paragraph (n)(1) requires an agency to refund promptly to a debtor amounts improperly withheld from wages.

Paragraph (n)(2) provides that, unless required by law or contract, refunds shall not bear interest.

(o) Right of Action

As authorized by the DCIA, paragraph (o) provides that an agency may sue an employer for the amounts that were not properly withheld from the wages payable to the debtor. The agency may initiate action against an employer only after terminating its collection efforts against the debtor. For purposes of this section, this occurs when an agency (1) has terminated collection action in accordance with the Federal Claims Collection Standards or other applicable standards, or (2) has not received any payments for the debt from any source for at least one year.

Regulatory Analyses

This proposed rule is not a significant regulatory action as defined in Executive Order 12866.

It is hereby certified that this proposed regulation, including the certification referenced in this notice of proposed rulemaking (see paragraph (h) of this section), will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to this proposed regulation and to the certification requirement in this proposed rule, the requirements will not have a significant economic impact on these entities. Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on that entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this proposed rule.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Hearing and appeal procedures, Salaries, Wages.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR Part 285 is proposed to be amended to read as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for Part 285 is revised to read as follows:

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3716, 3720A, 3720D; E.O. 13019

2. Subpart B consisting of § 285.11 is added to Part 285 to read as follows:

Subpart B—Authorities Other Than Offset

§ 285.11 Administrative wage garnishment.

(a) *Purpose.* This regulation provides procedures for Federal agencies to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent nontax debt owed to the United States.

(b) *Scope.* (1) This regulation applies to any Federal agency that administers a program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.

(2) This regulation shall apply notwithstanding any provision of State law.

(3) Nothing in this regulation precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 4 CFR Parts 101–105.

(4) The receipt of payments pursuant to this regulation does not preclude a Federal agency from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent nontax debt owed to the United States. A Federal agency may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This regulation does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and the implementing regulations.

(c) *Definitions.* As used in this section the following definitions shall apply:

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations. For purposes of this regulation, agency means either the agency that administers the program that gave rise to the debt or the agency that pursues recovery of the debt.

Business day means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

Certificate of service means a certificate signed by an agency official indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

Debt or *claim* means any amount of money, funds or property that has been

determined by an appropriate official of the Federal Government to be owed to the United States by an individual. Delinquent nontax debt means any nontax debt that has not been paid by the date specified in the agency's initial written demand for payment, or applicable agreement, unless other satisfactory payment arrangements have been made. For purposes of this section, the terms ''debt'' and ''claim'' are synonymous and refer to delinquent nontax debt.

Debtor means an individual who owes a delinquent nontax debt to the United States.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, ''amounts required by law to be withheld'' include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

Garnishment means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

(d) *General rule.* Whenever an agency determines that a delinquent debt is owed by an individual, the agency may initiate proceedings to administratively garnish the wages of the delinquent debtor.

(e) *Notice requirements.* (1) At least 30 days before the initiation of garnishment proceedings, the agency shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of:

(i) The nature and amount of the debt;

(ii) The intention of the agency to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(iii) An explanation of the debtor's rights, including those set forth in paragraph (e)(2) of this section, and the time frame within which the debtor may exercise his or her rights.

(2) The debtor shall be afforded the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) To enter into a written repayment agreement with the agency under terms agreeable to the agency; and

(iii) For a hearing in accordance with paragraph (f) of this section concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (e)(2)(ii) of this section.

(3) The agency will keep a copy of a certificate of service indicating the date of mailing of the notice.

(f) *Hearing.*—(1) *In general.* Agencies shall prescribe regulations for the conduct of administrative wage garnishment hearings or shall adopt this section without change by reference.

(2) *Request for hearing.* The agency shall provide a hearing, which at the agency's option may be oral or written, if the debtor submits a written request for a hearing concerning the existence or amount of the debt or the terms of the repayment schedule (for repayment schedules established other than by written agreement under paragraph (e)(2)(ii) of this section).

(3) *Type of hearing or review.* (i) For purposes of this section, whenever an agency is required to afford a debtor a hearing, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(ii) If the agency determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the agency. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(iii) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

(iv) In those cases when an oral hearing is not required by this section, an agency shall nevertheless accord the debtor a ''paper hearing,'' that is, an agency will decide the issues in dispute based upon a review of the written record. The agency will establish a reasonable deadline for the submission of evidence.

(4) *Effect of timely request.* Subject to paragraph (f)(13) of this section, if the debtor's written request is received by the agency on or before the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall not issue a withholding order under paragraph (g) of this section until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (f)(10) and (f)(11) of this section has been rendered.

(5) *Failure to timely request a hearing.* If the debtor's written request is received by the agency after the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall provide a hearing to the debtor but will not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the debtor had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order.

(6) *Hearing official.* A hearing official may be any qualified individual, as determined by the head of the agency, including an administrative law judge.

(7) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

(i) The date and time of a telephonic hearing;

(ii) The date, time, and location of an in-person oral hearing; or

(iii) The deadline for the submission of evidence for a written hearing.

(8) *Burden of proof.* (i) The agency will have the burden of going forward to prove the existence or amount of the debt.

(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present clear and convincing evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unreasonable or unlawful.

(9) *Record.* The hearing official must maintain a summary record of any hearing provided under this section. A hearing is not required to be a formal evidentiary-type hearing, however, witnesses who testify in oral hearings will do so under oath or affirmation.

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the agency. If an agency is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(i) The agency may not issue a withholding order until the hearing is held and a decision rendered; or

(ii) If the agency had previously issued a withholding order to the debtor's employer, the agency must suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(11) *Content of decision.* The written decision shall include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedures Act (5 U.S.C. 701 *et seq.*).

(13) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (f)(4) of this section, will be deemed as not having timely filed a request for a hearing.

(g) *Wage garnishment order.* (1) Unless the agency receives information that the agency believes justifies a delay or cancellation of the withholding order, the agency shall send, by first class mail, a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (i.e., within 15 business days after the mailing of the notice described in paragraph (e)(1) of this section), or, if a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the agency to proceed with garnishment.

(2) The withholding order sent to the employer under paragraph (g)(1) of this section shall be in a form prescribed by the Secretary of the Treasury on the agency's letterhead and signed by the head of the agency or his/her delegatee. The order shall contain only the information as may be necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(3) The agency will keep a copy of a certificate of service indicating the date of mailing of the order.

(h) *Certification by employer.* Along with the withholding order, the agency shall send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the agency within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

(i) *Amounts withheld.* (1) Subject to the provisions of paragraph (i)(3), after receipt of the garnishment order issued under this section the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount indicated on the garnishment order up to 15% of the debtor's disposable pay.

(2) When a debtor's pay is subject to withholding orders with priority the following shall apply:

(i) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (i)(1) of this section and shall have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this section.

(ii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(A) The amount calculated under paragraph (i)(1) of this section, or

(B) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(3) An amount greater than that set forth in paragraphs (i)(1) and (i)(2) of this section may be withheld upon the written consent of debtor.

(4) The employer shall promptly pay to the agency all amounts withheld in accordance with the withholding order issued pursuant to this section.

(5) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(6) Any assignment or allotment by an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this part, except for any assignment or allotment made pursuant to a family support judgment or order.

(7) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the agency to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

(j) *Exclusions from garnishment.* The agency may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor bears the burden of informing the agency of the circumstances surrounding an involuntary separation from employment.

(k) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(2) A debtor requesting a review under paragraph (k)(1) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. Agencies shall consider any information submitted in accordance with procedures and standards established by the agency.

(3) If a financial hardship is found, the agency shall downwardly adjust, by an amount and for a period of time agreeable to the agency, the amount garnished to reflect the debtor's financial condition. The agency will notify the employer of any adjustments to the amounts to be withheld.

(l) *Ending garnishment.* (1) Once the agency has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the agency shall send the debtor's employer

notification to discontinue wage withholding.

(2) At least annually, an agency shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(m) *Actions prohibited by the employer.* An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this section.

(n) *Refunds.* (1) If a hearing official, at a hearing held pursuant to paragraph (f)(3) of this section, determines that a debt is not legally due and owing to the United States, the agency shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(o) *Right of action.* The agency may sue any employer for any amount that the employer, after receipt of the garnishment order provided by the agency under paragraph (g) of this section, fails to withhold from wages owed and payable to an employee. However, a suit may not be filed before the termination of the collection action, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, ''termination of the collection action'' occurs when the agency has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the agency has not received any payments to satisfy the debt, in whole or in part, from any source for a period of one (1) year.

Dated: November 17, 1997.

Russell D. Morris,

Commissioner.

[FR Doc. 97–30611 Filed 11–20–97; 8:45 am]

BILLING CODE 4810–35–P

Friday
November 21, 1997

Part IV

Department of Health and Human Services

Food and Drug Administration

Guidance for FDA and Industry: Direct Final Rule Procedures; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0439]

Guidance for FDA and Industry: Direct Final Rule Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Guidance for FDA and Industry: Direct Final Rule Procedures.'' This guidance explains when and how FDA will employ direct final rulemaking. FDA believes that direct final rulemaking will expedite the issuance of routine or otherwise noncontroversial rules and conserve limited Government resources for carrying out the agency' regulatory functions.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. A copy of this guidance will be made available on FDA's World Wide Web site at ''http://www.fda.gov/ opacom/ morechoices /industry/preguide.htm''.

FOR FURTHER INFORMATION CONTACT: Marquita B. Steadman, Office of Policy (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION:

I. Background

In Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), the President set forth the administration's regulatory philosophy and principles. The Executive Order contemplates an efficient and effective rulemaking process, including the conservation of limited Government resources for carrying out its regulatory functions. Furthermore, ''Improving Regulatory Systems,'' an Accompanying Report of the National Performance Review, recognized the need to streamline the regulatory process and recommended the use of ''direct final'' rulemaking procedures to reduce needless double review of noncontroversial rules. Direct final rulemaking involves agency publication of a rule in the **Federal Register** with a statement that unless significant adverse comment, as defined later in this document, is received on the rule within a specified time period, the rule will become effective as a final rule on a particular date. However, if a significant adverse comment is filed, the rule is withdrawn, and the agency may publish the rule as a proposed rule under the usual notice-and-comment procedures of the Administrative Procedure Act (APA).

From 1964 to 1995 the Administrative Conference of the United States (ACUS), established by the Administrative Conference Act (5 U.S.C. 591–596), studied the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out administrative programs. When it was in existence, ACUS made recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 594(1)).

In the **Federal Register** of August 18, 1995 (60 FR 43108), ACUS issued a notice adopting five recommendations at its Fifty-Second Plenary Session held on June 15 to 18, 1995. Recommendation 95–4, ''Procedures for Noncontroversial and Expedited Rulemaking,'' endorsed direct final rulemaking as a procedure that can expedite rules in appropriate cases (see 60 FR 43108, August 18, 1995). ACUS found direct final rulemaking appropriate where a rule is expected to generate no significant adverse comment. ACUS defined significant adverse comment as one where the comment explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change (60 FR 43108 at 43111) . ACUS stated that, in determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, agencies should consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process (Id.). ACUS noted that the direct final rule process allows the agency to issue a rule without having to go through the review process twice (i.e., at the proposed and final rule stages) while at the same time offering the public the opportunity to challenge the agency's view that the rule has no significant opposition (60 FR 43108 at 43111 and 43112).

ACUS determined that direct final rulemaking is supported by two rationales under current law. First, it is justified by the APA's ''good cause'' exemption from notice-and-comment procedures where they are found to be ''unnecessary.'' ACUS found that the agency's solicitation of public comment does not undercut this argument, but rather validates the agency's initial determination. Second, ACUS stated that, alternatively, direct final rulemaking also complies with the basic notice-and-comment requirements in section 553 of the APA. ACUS stated that the agency provides the requisite notice and opportunity to comment on the rule through its **Federal Register** notice; the publication requirements are met, although the information has been published earlier in the process than normal; and, the requisite advance notice of the effective date required by the APA is provided (60 FR 43108 at 43111).

Because the process protects public comment and expedites routine rulemaking, ACUS recommended that agencies use direct final rulemaking in all cases where the ''unnecessary'' prong of the good cause exemption is available, unless the agency determines that the process would not expedite issuance of such rules (60 FR 43108 at 43111). ACUS further recommended that agencies explain when and how they will employ direct final rulemaking. Such a policy should be issued as a procedural rule or a policy statement (Id.).

Provided herein and on FDA's World Web site at ''http://www.fda.gov/ opacom/morechoices/ industry/ preguide.htm'', FDA is making available a guidance document titled ''Guidance for FDA and Industry: Direct Final Rule Procedures.'' This guidance explains when and how FDA will employ direct final rulemaking. FDA believes that direct final rulemaking will expedite the issuance of routine or otherwise noncontroversial rules.

II. Comments

Interested persons may, at any time, submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments are to be identified with the docket number found in brackets in the heading of this document. Comments may be submitted at any time and will be used to determine whether to revise the guidance further.

Dated: November 12, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

The text of the guidance is set forth below:

BILLING CODE 4160–01–F

Guidance for FDA and Industry: Direct Final Rule Procedures

U.S. Department of Health and Human Services

Food and Drug Administration

Office of Policy

November (*insert date of publication in the* FEDERAL REGISTER), 1997

Comments and suggestions regarding this document should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm.1-23, Rockville, MD 20857. Requests and comments are to be identified with the docket number found in brackets in the heading of the notice of availability that published in the FEDERAL REGISTER. For questions regarding this document, contact Marquita B. Steadman, Office of Policy (HF-26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

I. Summary

This guidance will explain when and how the Food and Drug Administration (FDA) will employ direct final rulemaking. FDA believes that direct final rulemaking will expedite the issuance of routine or otherwise noncontroversial rules.

II. FDA's Direct Final Rulemaking Procedures

This guidance adopts many aspects of the former Administrative Conference of the United States' (1964 to 1995) recommendations concerning direct final rulemaking. FDA may use the direct final rule process when the agency does not anticipate receiving any significant adverse comment, or when a rule may qualify for exemption from notice-and-comment rulemaking. FDA will publish in the notice of direct final rulemaking the full text of the rule and the statement of basis and purpose, including all the material that would be required in the preamble to a final rule. FDA will also publish a companion proposed rule in the same issue of the **Federal Register**. That proposed rule will serve the purpose of issuing a proposed rule under usual notice-and-comment procedures in the event the direct final rule is withdrawn because the agency receives any significant adverse comment.

FDA ordinarily will allow at least 75 days for comment on the direct final rule after it is published in the **Federal Register**. If the agency receives any significant adverse comment, the agency will publish a notice of significant adverse comment and withdraw the direct final rule within 30 days after the comment period ends. In that circumstance, any comments received will be considered comments on the proposed rule and will be considered in developing a final rule using the usual APA notice-and-comment procedures. If the agency receives no significant adverse comment during the specified comment period, the direct final rule will go into effect no later than 60 days after the comment period ends. The agency will publish a document confirming the effective date within 30 days after the comment period ends, which ordinarily will state that the direct final rule will go into effect 30 days after the confirmation notice is published. This means that a direct final rule that receives no significant adverse comment will go into effect no later than 135 days after its publication in the **Federal Register**.

FDA will adopt ACUS's definition of significant adverse comment. Thus, significant adverse comment is defined as one where the comment explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. FDA notes that comments that are frivolous, insubstantial, or outside the scope of the rule would not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule (e.g., where a rule deletes several unrelated regulations), FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

As discussed previously, FDA will only use direct final rulemaking procedures when the agency expects that there will be no significant adverse comment. For example, FDA will consider direct final rulemaking for minor, substantive changes to regulations; incorporation by reference of the latest edition of technical or industry standards; extensions of compliance dates, direct incorporations of mandates from new legislation; and other noncontroversial rules where FDA determines that use of direct final rulemaking is in the public interest and that the rule is unlikely to result in any significant adverse comment.

III. Significance of Guidance

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance is issued as Level 1 guidance consistent with GGP's. The agency will not solicit public input prior to implementation because the guidance presents a less burdensome policy that is consistent with the public health. This guidance represents the agency's current thinking on direct final rules. It does not operate to create or confer any rights for or on any person and does not operate to

bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulation, or both.

IV. Request for Comments

Interested persons may, at any time, submit written comments on this guidance to the Dockets Management Branch (address above). Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy.

[FR Doc. 97–30704 Filed 11–20–97; 8:45 am]
BILLING CODE 4160–01–C

Federal Register

Friday
November 21, 1997

Part V

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guidance on Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0112]

International Conference on Harmonisation; Guidance on Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled ''S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance identifies a standard set of genotoxicity tests that should be conducted for pharmaceutical registration and recommends the extent of confirmatory experimentation in in vitro genotoxicity tests in the standard battery. The guidance complements the ICH guidance ''Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals'' (S2A).

DATES: Effective November 21, 1997. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert E. Osterberg, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2123.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of April 3, 1997 (62 FR 16026), FDA published a draft tripartite guideline entitled ''Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals'' (S2B). The notice gave interested persons an opportunity to submit comments by June 2, 1997.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on July 16, 1997.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

Genotoxicity tests are in vitro and in vivo tests designed to detect compounds that induce genetic damage directly or indirectly by various mechanisms. Compounds that are positive in tests that detect such damage have the potential to be human carcinogens and/or mutagens, i.e., may induce cancer and/or heritable defects. The guidance addresses two areas of genotoxicity testing for pharmaceuticals: (1) Identification of a standard set of tests that should be conducted for registration and (2) the extent of confirmatory experimentation in in vitro genotoxicity tests in the standard battery. The guidance is intended to be used together with the ICH S2A guidance entitled ''Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals'' (61 FR 18198, April 24, 1996) as ICH guidance principles for testing pharmaceuticals for potential genotoxicity.

This guidance represents the agency's current thinking on a recommended standard battery for genotoxicity testing of a pharmaceutical. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet (http://www.fda.gov/cder/guidance.htm).

The text of the guidance follows:

S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals[1]

1. Introduction

Two fundamental areas in which harmonization of genotoxicity testing for

[1] This guidance represents the agency's current thinking on a recommended standard battery for genotoxicity testing of a pharmaceutical. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

pharmaceuticals is considered necessary are the scope of this guidance: (I) Identification of a standard set of tests that should be conducted for registration. (II) The extent of confirmatory experimentation in in vitro genotoxicity tests in the standard battery. Further issues that were considered necessary for harmonization can be found in the ICH guidance S2A ''Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals.'' *The two ICH guidances on genotoxicity complement each other and therefore should be used together as ICH guidance principles for testing of a pharmaceutical for potential genotoxicity*.

2. General Purpose of Genotoxicity Testing

Genotoxicity tests can be defined as in vitro and in vivo tests designed to detect compounds that induce genetic damage directly or indirectly by various mechanisms. These tests should enable a hazard identification with respect to damage to DNA and its fixation. Fixation of damage to DNA in the form of gene mutations, larger scale chromosomal damage, recombination and numerical chromosome changes is generally considered to be essential for heritable effects and in the multistep process of malignancy, a complex process in which genetic changes may play only a part. Compounds which are positive in tests that detect such kinds of damage have the potential to be human carcinogens and/or mutagens, i.e., may induce cancer and/or heritable defects. Because the relationship between exposure to particular chemicals and carcinogenesis is established for man, while a similar relationship has been difficult to prove for heritable diseases, genotoxicity tests have been used mainly for the prediction of carcinogenicity. Nevertheless, because germ line mutations are clearly associated with human disease, the suspicion that a compound may induce heritable effects is considered to be just as serious as the suspicion that a compound may induce cancer. In addition, the outcome of such tests may be valuable for the interpretation of carcinogenicity studies.

3. The Standard Test Battery for Genotoxicity

Registration of pharmaceuticals requires a comprehensive assessment of their genotoxic potential. It is clear that no single test is capable of detecting all relevant genotoxic agents. Therefore, the usual approach should be to carry out a battery of in vitro and in vivo tests for genotoxicity. Such tests are complementary rather than representing different levels of hierarchy.

The general features of a standard test battery can be outlined as follows:

(i) It is appropriate to assess genotoxicity in a bacterial reverse mutation test. This test has been shown to detect relevant genetic changes and the majority of genotoxic rodent carcinogens.

(ii) DNA damage considered to be relevant for mammalian cells and not adequately measured in bacteria should be evaluated in mammalian cells. Several mammalian cell systems are in use: Systems that detect gross chromosomal damage (in vitro tests for structural and numerical chromosomal aberrations), systems that detect primarily gene mutations (see Note 1), and a system that detects gene mutations and clastogenic effects (mouse lymphoma tk assay) (see Note 2). The information given in Notes 3 and 4 demonstrates that with appropriate test protocols (see section 5 of this document) the various in vitro tests for chromosomal damage and the mouse lymphoma tk assay yield results with a high level of congruence for compounds that are regarded as genotoxic but yield negative results in the bacterial reverse mutation assay. Therefore, these systems are currently considered interchangeable when used together with other genotoxicity tests in a standard battery for genotoxicity testing of pharmaceuticals, if these test protocols are used.

(iii) An in vivo test for genetic damage should usually be a part of the test battery to provide a test model in which additional relevant factors (absorption, distribution, metabolism, excretion) that may influence the genotoxic activity of a compound are included. As a result, in vivo tests permit the detection of some additional genotoxic agents (see Note 5). An in vivo test for chromosomal damage in rodent hematopoietic cells fulfills this need. This in vivo test for chromosomal damage in rodents could be either an analysis of chromosomal aberrations in bone marrow cells or an analysis of micronuclei in bone marrow or peripheral blood erythrocytes.

The following standard test battery is recommended based upon the considerations mentioned above:

(i) A test for gene mutation in bacteria.

(ii) An in vitro test with cytogenetic evaluation of chromosomal damage with mammalian cells *or* an in vitro mouse lymphoma tk assay.

(iii) An in vivo test for chromosomal damage using rodent hematopoietic cells.

For compounds giving negative results, the completion of this 3-test battery, performed and evaluated in accordance with current recommendations, will usually provide a sufficient level of safety to demonstrate the absence of genotoxic activity (see Note 6). Compounds giving positive results in the standard test battery may, depending on their therapeutic use, need to be tested more extensively (see ICH S2A ''Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals'').

The suggested standard set of tests does not imply that other genotoxicity tests are generally considered inadequate or inappropriate (e.g., tests for measurement of DNA adducts, DNA strand breaks, DNA repair or recombination). Such tests serve as options in addition to the standard battery for further investigation of genotoxicity test results obtained in the standard battery. Furthermore, molecular techniques to study mechanisms of genotoxicity in the standard battery systems may be useful for risk assessment. Only under extreme conditions in which one or more tests comprising the standard battery cannot be employed for technical reasons, alternative validated tests can serve as substitutes. For this to occur, sufficient scientific justification should be provided to support the argument that a given standard battery test is not appropriate.

The standard battery does not include an independent test designed specifically to test for aneuploidy. However, information on this type of damage may be derived from the tests for chromosomal damage in vitro and in vivo. Elements of the standard protocols that provide such information are elevations in the mitotic index, polyploidy induction and micronucleus evaluation. There is also limited experimental evidence that aneuploidy inducers can be detected in the mouse lymphoma tk assay (see Note 4). In such cases, further testing may be needed.

4. Modifications of the 3-Test Battery

The following sections give situations where the standard 3-test battery may need modification.

4.1 Limitations to the Use of Bacterial Test Organisms

There are circumstances where the performance of the bacterial reverse mutation test does not provide appropriate or sufficient information for the assessment of genotoxicity. This may be the case for compounds that are excessively toxic to bacteria (e.g., some antibiotics) and compounds thought or known to interfere with the mammalian cell replication system (e.g., topoisomerase inhibitors, nucleoside analogues, or inhibitors of DNA metabolism). For these cases, usually two in vitro mammalian cell tests should be performed using two different cell types and of two different endpoints (gene mutation (see Note 1) and chromosomal damage). Nevertheless, it is still important to perform the bacterial reverse mutation test (see Note 7); either a full test or a limited (range-finding) test (see section 5 of this document) may be appropriate.

4.2 Compounds Bearing Structural Alerts for Genotoxic Activity

Structurally alerting compounds (see Note 8) are usually detectable in the standard 3-test battery. However, compounds bearing structural alerts that have given negative results in the standard 3-test battery may necessitate limited additional testing. The choice of additional test(s) or protocol modification(s) depends on the chemical nature, the known reactivity, and metabolism data on the structurally alerting compound under question (see Note 9 and ICH S2A ''Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals'').

4.3 Limitations to the Use of Standard In Vivo Tests

There are compounds for which standard in vivo tests do not provide additional useful information. These include compounds for which data from studies on toxicokinetics or pharmacokinetics indicate that they are not systemically absorbed and therefore are not available for the target tissues in standard in vivo genotoxicity tests. Examples of such compounds are some radioimaging agents, aluminum-based antacids, and some dermally applied pharmaceuticals. In cases where a modification of the route of administration does not provide sufficient target tissue exposure, it may be appropriate to base the evaluation only on in vitro testing.

4.4 Additional Genotoxicity Testing in Relation to the Carcinogenicity Bioassay

4.4.1 Evidence for Tumor Response

Additional genotoxicity testing in appropriate models may be conducted for compounds that were negative in the standard 3-test battery but which have shown effects in carcinogenicity bioassay(s) with no clear evidence for a nongenotoxic mechanism. To help understand the mechanism of action, additional testing can include modified conditions for metabolic activation in in vitro tests or can include in vivo tests measuring genetic damage in target organs of tumor induction (e.g., liver UDS test, 32P-postlabeling, mutation induction in transgenes, molecular characterization of genetic changes in tumor-related genes).

4.4.2 Structurally Unique Chemical Classes

On rare occasions, a completely novel compound in a unique structural chemical class will be introduced as a pharmaceutical. When such a compound will not be tested in chronic rodent carcinogenicity bioassays, further genotoxicity evaluation may be invoked.

5. Standard Procedures for In Vitro Tests

Reproducibility of experimental results is an essential component of research involving novel methods or unexpected findings; however, the routine testing of chemicals with standard, widely used genotoxicity tests need not always be completely replicated. These tests are sufficiently well characterized and have sufficient internal controls that repetition can usually be avoided if protocols with built-in confirmatory elements, such as those outlined below, are used.

For both bacterial and mammalian cell gene mutation tests, the results of a range-finding test can be used to guide the selection of concentrations to be used in the definitive mutagenicity test. By these means, a range-finding test may supply sufficient data to provide reassurance that the reported result is the correct one. In bacterial mutagenicity tests, preliminary range-finding tests performed on all bacterial strains, with and without metabolic activation, with appropriate positive and negative controls, and with quantification of mutants, may be considered a sufficient replication of a subsequent complete test. Similarly, a range-finding test may also be a satisfactory substitute for a complete repeat of a test in gene mutation tests with mammalian cells other than the mouse lymphoma tk assay (see below) if the range-finding test is performed with and without metabolic activation, with appropriate positive and negative controls, and with quantification of mutants (see Note 10).

For the cytogenetic evaluation of chromosomal damage in vitro, the test protocol includes the conduct of tests with and without metabolic activation, with appropriate positive and negative controls, where the exposure to the test articles is 3 to 6 hours and a sampling time of approximately 1.5 normal cell cycles from the beginning of the treatment. A continuous treatment without metabolic activation up to the sampling time of approximately 1.5 normal cell cycles is needed in case of a negative result for the short treatment period without metabolic activation. Certain chemicals may be more readily detected by longer treatment or delayed sampling times, e.g., some nucleoside analogues or some nitrosamines. Negative results in the presence of a metabolic activation system may need confirmation on a case-by-case basis (see Note 11). In any case, information on the ploidy status should be obtained by recording the incidence of polyploid cells as a percentage of the number of metaphase cells. An elevated mitotic index or an increased incidence of polyploid cells may give an indication of the potential of a compound to induce aneuploidy. In such cases, further testing may be needed.

For the mouse lymphoma tk assay, the test protocol includes the conduct of tests with and without metabolic activation, with appropriate positive and negative controls, where the exposure to the test articles is 3 to 4 hours. A continuous treatment without metabolic activation for approximately 24 hours is needed in case of a negative result for the short treatment without metabolic activation (see Note 4). Negative results in the presence of a metabolic activation system may need confirmation on a case by case basis (see Note 11). In any case, an acceptable mouse lymphoma tk assay includes (i) the incorporation of positive controls, which induces mainly small colonies and (ii) colony sizing for positive controls, solvent controls, and at least one positive test compound dose (should any exist), including the culture that gave the greatest mutant frequency.

Following such testing, further confirmatory testing in the case of clearly negative or positive test results is not usually needed.

Ideally, it should be possible to declare test results as clearly negative or clearly positive. However, test results sometimes do not fit the predetermined criteria for a positive or negative call and therefore are declared ''equivocal.'' The application of statistical methods aids in data interpretation, however, adequate biological interpretation is of critical importance. Nonetheless, further testing is usually indicated for equivocal results.

6. Notes

(1) Test approaches currently accepted for the assessment of mammalian cell *gene* mutation involve the *tk* locus using mouse lymphoma L5178Y cells or human lymphoblastoid TK6 cells, the *hprt* locus using CHO cells, V79 cells, or L5178Y cells, or the *gpt* locus using AS52 cells.

(2) The molecular dissection of mutants induced at the *tk* locus shows a broad range of genetic events including point mutations, deletions, translocations, recombinations, etc. Small colony mutants have been shown to predominantly lack the tk_b allele as a consequence of structural or numerical alterations or recombinational events. There is some evidence that other loci, such as *hprt* or *gpt* are also sensitive to large deletion events. However, due to the X-chromosomal origin of the *hprt* gene which is probably flanked by essential genes, large scale deletion events or numerical alterations often do not give rise to mutant colonies, thus limiting the sensitivity of this genetic locus relative to the *tk* locus for the detection of a wide range of genetic changes.

(3) With respect to the cytogenetic evaluation of chromosomal damage, it is not uncommon for the systems currently in use, i.e., several systems with permanent mammalian cells in culture and human lymphocytes either isolated or in whole blood, to give different results for the same test compound. However, there is evidence that some of the differences observed have been due to protocol differences. This may be minimized by using the procedures described in section 5 of this document.

For the great majority of presumptive genotoxic compounds that were negative in a bacterial reverse mutation assay, the data on chromosomal damage in vitro and mouse lymphoma tk results are in agreement. Several reliable studies indicate that the mouse lymphoma tk assay is able to detect compounds that induce structural and numerical chromosomal damage. For safety testing of pharmaceuticals, the mouse lymphoma tk assay is considered an acceptable alternative to the direct analysis of chromosomal damage in vitro. Although colony sizing is an essential element of the mouse lymphoma tk assay test protocol, it gives only limited information on the type of damage induced in mutant colonies. Further mechanistic investigations may be used to assess the nature of cytogenetic changes induced by clastogens and aneuploidy inducers in the mouse lymphoma tk assay. Such information could be provided by studies to demonstrate the loss of the *tk* gene or the loss of the chromosome carrying the *tk* gene.

(4) The detection of a number of different nucleoside analogues and base analogues is enhanced for the mouse lymphoma tk assay when the treatment protocol for both agar and microtitre methods includes a 24-hour treatment regimen in the absence of an exogenous metabolic activation system. Similarly, the detection of aneuploidy inducers is enhanced if a 24-hour treatment regimen is used with the microtitre method. Currently, there is no evidence to support this conclusion for the soft agar method. The specificity of the test protocol, i.e., to obtain correct test results for presumptive nongenotoxic compounds, does not change significantly using a 24-hour treatment in the microtitre method. For the soft agar method, there appears to be a reduction in specificity under the same treatment regimen. Based on this information, the microtitre method is recommended for use in the standard battery.

(5) There are a small but significant number of genotoxic carcinogens that are reliably detected by the bone marrow tests for chromosomal damage that have yielded negative/weak/conflicting results in the pairs of in vitro tests outlined in the standard battery options, e.g., bacterial reverse mutation plus one of a selection of possible tests with cytogenetic evaluation of chromosomal damage or bacterial mutation plus the mouse lymphoma tk assay. Carcinogens such as procarbazine, hydroquinone, urethane and benzene fall into this category.

(6) The continuing evolution of short-term tests and test methodologies will afford new,

more sensitive, more practical, more expeditious, and more economical techniques for detection of genotoxic compounds. Some of these may ultimately replace the genotoxicity tests used for regulatory purposes. Among the more promising tests, the in vitro micronucleus test appears to offer potential for screening purposes.

(7) Some antibacterial agents, albeit highly toxic to the tester strains, are detected as genotoxic at very low, sublethal concentrations in the bacterial reverse mutation test (e.g., nitrofuran antibiotics).

(8) Certain structurally alerting molecular entities are recognized as being causally related to the carcinogenic and/or mutagenic potential of chemicals. Examples of structural alerts include alkylating electrophilic centers, unstable epoxides, aromatic amines, azo-structures, N-nitroso-groups, aromatic nitro-groups.

(9) For some classes of compounds with specific structural alerts, it is established that specific protocol modifications/additional tests are necessary for optimum detection of genotoxicity (e.g., molecules containing an azo-group, glycosides, compounds such as nitroimidazoles requiring nitroreduction for activation, compounds such as phenacetin requiring another rodent S9 for metabolic activation). The additional testing needed when the chosen 3-test battery yields negative results for a structurally alerting test compound could consist of such modifications.

(10) The dose range-finding study should: (i) Give information on the shape of the toxicity dose-response curve if the test compound exhibits toxicity, (ii) include highly toxic concentrations, and (iii) include quantification of mutants in the cytotoxic range. If a compound is not toxic, then mutants should nevertheless be quantified.

(11) A repetition of a test using the identical source and concentration of the metabolic activation system is usually not necessary. A modification of the metabolic activation system may be indicated for certain chemical classes where knowledge is available on specific requirements of metabolism. This would usually invoke the use of an external metabolizing system which is known to be competent for the metabolism/activation of the class of compound under test.

7. Glossary

Cytogenetic evaluation: Chromosome structure analysis in mitosis or meiosis by light microscopy.

DNA adduct: (Covalent) binding of chemicals to DNA.

DNA repair: Reconstitution of damaged DNA sequence.

DNA strand breaks: Single or double strand scissions in the DNA.

Numerical chromosome changes: Chromosome numbers different from the original haploid or diploid set of chromosomes; for cell lines, chromosome numbers different from the modal chromosome set.

Recombination: Breakage and balanced or unbalanced rejoining of DNA.

Transgene: An exogenous or foreign gene inserted into the host genome, into either somatic cells or germ line cells.

Dated: November 15, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

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Friday
November 21, 1997

Part VI

Department of Housing and Urban Development

The HUD 2020 Management Reform Plan; Notice of New HUD Field Structure; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4266–N–02]

The HUD 2020 Management Reform Plan; Notice of New HUD Field Structure

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of the New Field Structure under the HUD 2020 Management Reform Plan and Cost-Benefit Analysis.

SUMMARY: On August 12, 1997, HUD published in the **Federal Register** notice of the ''HUD 2020 Management Reform Plan.'' The HUD 2020 Management Reform Plan is HUD's plan for significant management reforms at the Department. The reforms contained in the plan are directed toward (1) empowering people and communities to improve themselves and (2) restoring HUD's reputation and credibility by improving the efficiency and effectiveness of the Department's programs, operations and provision of services.

This notice presents the new HUD Field structure under the HUD 2020 Management Reform Plan, including an analysis of the costs and benefits of that plan. The new Field structure is designed to reallocate the Department's resources to strengthen service delivery from HUD's current 81 Field Offices. The HUD 2020 Management Reform Plan does not result in the closing of any HUD offices and calls for no reduction or transfer in the location or in the amount of services currently provided by the Department to its constituents.

FOR FURTHER INFORMATION CONTACT: For further information, contact the Office of Departmental Operations and Coordination, the Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410, (202) 708–0988. (This is not a toll free number.) Comments or questions can be submitted through the Internet to Candis__B.__Harrison@hud.gov. More information on HUD's Management Reform Plan can be found on HUD's Home Page on the World Wide Web at http://www.hud.gov, and the plan is available at http://www.hud.gov/reform/mrindex.html.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On August 12, 1997 (62 FR 43204), HUD published in the **Federal Register** notice of the ''HUD 2020 Management Reform Plan.'' The HUD 2020 Management Reform Plan is HUD's plan for significant management reforms at the Department. This plan is directed to restoring HUD's reputation and credibility by improving the efficiency and effectiveness of the Department's programs, operations and delivery of services. The restructuring of HUD's internal operations (as distinct from its services to its constituency) is needed to resolve a series of management deficiencies identified by the Secretary, the General Accounting Office, and the Office of the Inspector General. The restructuring of HUD's internal operations includes restructuring of the Department's Field Offices. Indeed, HUD's internal operations at its Field Offices will undergo significant change under the HUD 2020 Management Reform Plan. The change is designed to strengthen HUD's field operations.

For some time, the Department has needed to find new and more efficient ways to carry out its mission because of budget constraints and related downsizing pressures. One strategy that HUD will pursue in this connection is the consolidation of certain internal operations and moving the responsibility for these operations to field locations. Consolidation of operations in field locations does not constitute a novel way of doing business. Many private sector companies reorganized and restructured under this type of model over a decade ago. Models of this type in the financial services industry are particularly compelling and relevant to HUD. Over the past decades, many banks, such as Citibank and NationsBank, consolidated their routine functions into centralized ''back office'' processing centers and established ''store-front'' customer offices closer to their markets. HUD's consolidated operation centers outlined in the HUD 2020 Management Reform Plan are based in part on these private sector models.

Therefore, to address the Department's current outdated and outmoded top-down Headquarters/Field structure, the HUD 2020 Management Reform Plan reallocates the Department's resources in a way that is designed to strengthen HUD's current 81 Field Offices, and improve service delivery capacity. The plan does this by creating at every Field Office a Community Builder Staff with the ability to provide the full range of HUD programs, liaison, and customer services to individuals, community organizations, and governments. This makes the Field Offices more customer-friendly and community-oriented. In creating these offices, there is no reduction or transfer in the location or amount of services provided by the Department to the recipients of its services. Additionally, no offices are being closed as a result of this restructuring. The design of the plan is for HUD's 81 Field Offices to remain and to be better focused in serving their constituents. Section III of this notice provides a cost-benefit analysis of the new field structure.

II. Description of Changes

The HUD 2020 Management Reform Plan will fundamentally alter the structure of HUD and the way it serves America's communities. The current field structure has State offices with a staff of program-specific employees. This structure will be replaced by Field Offices staffed with Community Builders and Public Trust Officers. While none of the Field Offices will close, their internal operations will change dramatically, becoming processing centers and new Service Centers. In this way, HUD will maintain an enhanced presence in the communities while improving the allocation of its resources.

Consolidated Operations Centers

The HUD 2020 Management Reform Plan provides for the consolidation of several major functions of the Department. The most important consolidation efforts involve creating both department-wide and program-specific centers. Overall, the HUD 2020 Management Reform Plan calls for the establishment of 17 types of consolidated operation centers in the field. The location of these centers reflects a geographic balance throughout the United States. The major consolidations include an Enforcement Center, a Real Estate Assessment Center, Section 8 Financial Management Center, Single Family Homeownership Centers and the Chief Financial Officer's (CFO) Accounting Center. The specific operations of these centers were discussed in more detail in the August 12, 1997 **Federal Register** notice. (See 62 FR 43212–43213.)

The consolidation of operations and functions in certain centers is exclusively a redesign of internal processing. While the consolidation may include the transfer of certain internal functions from Headquarters to the field or from one Field Office to another, there will be no impact on the level of government services to the local area since these functions by nature are not location specific. Since the consolidation of processing functions is designed to speed processing times and increase accuracy, the generalized impact is expected to be beneficial to

program customers, regardless of geographic location. The establishment of consolidated operations centers in the field will bring HUD services closer to the customers who need these services, and closer to the customers who can help ensure that HUD is making the best decisions that it can with respect to its services and operations. A complete list of HUD's Consolidated Operations follows:

HUD'S CONSOLIDATED OPERATIONS CENTERS

Consolidated operation	Function
Assessment Center	Standardizes the financial and physical evaluations of housing and public housing portfolios.
Enforcement Center	Takes aggressive action against troubled housing and public housing portfolios that fail physical and financial inspections, along with enforcement actions for FHEO and CPD grantees.
Section 8 Financial Management Center	Integrates and restructures the financial management systems and payment processes for all Section 8 programs.
Title I Asset Recovery Center	Manages the collection of deficiency balances owed to FHA as a result of buyer defaults.
FHA/Single Family Homeownership Centers (4)	Manage insurance endorsements, technical reviews, underwriting, loss mitigation, marketing and outreach, and lender monitoring.
Property Disposition Centers (2)	Manage the foreclosure and disposition of HUD-owned and HUD-assigned properties.
FHA Multifamily Hubs (18)	Supervise multifamily centers and administer all FHA multifamily mortgage insurance, direct loan, and capital grant programs with the exception of Multifamily Property Disposition, Processing of Rent Supplement and Section 8 Voucher/Monthly billings and coinsured loans.
FHA Multifamily Program Operations Centers (33).	Administer all FHA multifamily mortgage insurance, direct loan, and capital grant programs with the exception of Multifamily Property Disposition, the processing of Rent Supplement and Section 8 Voucher/Monthly Billings and coinsured loans.
Field Legal Centers (8)	Provide full range of legal services.
Field Legal Hubs (22)	Provide program specific legal services to Housing and PIH.
PIH Troubled Agency Recovery Centers (2)	Develop and implement strategies to improve the performance of troubled PHAs.
PIH Special Applications Center	Administers the processing of PIH demolition/disposition, mixed-income allocation plans, and 5(h) Homeownership applications.
PIH Grants Processing Center	Manages all aspects of competitive grants, as well as the public housing operating and capital funds.
PIH Hubs (27)	Supervise and perform all PIH functions within a defined geographic area, including program performance, administration, technical assistance and compliance functions.
PIH Program Centers (16)	Perform all PIH program performance, administration, technical assistance and compliance functions.
Fair Housing Hubs (10)	Supervise all FHEO functions within a defined geographic area. Perform all FHEO compliance and enforcement or complaint intake functions for the defined area.
Fair Housing Program Centers (18)	Perform all FHEO compliance and enforcement functions.
Fair Housing Local Sites (24)	Perform all FHEO compliance and enforcement functions for a local jurisdiction.
Economic Development and Empowerment Service.	Coordinates all HUD economic development and job skills programs to provide improved focus on community empowerment.
Administrative Service Centers (3)	Support Field Offices with such services as information technology, human resources, procurement and space planning.
Employee Service Center	Handles all payroll, benefits and counseling services.
CFO Accounting Center	Manages all field program and administrative accounting operations.
HUD Area Office	In addition to being the location of one or more consolidated program operations hubs and centers, Area Office operations will consist of community resource and liaison services for public-private partnerships, marketing and outreach for homeownership, community and economic development, technical assistance and general trouble-shooting. They will also continue to perform the full range of field management functions. Area Offices will continue to perform major management responsibilities (e.g. funding, policy interpretation, monitoring and assistance) relating to FHEO, CPD, Housing, Public and Indian Housing Programs, as well as legal counsel and administrative support.
Community Service Center	Coordinators and Community Builders, with direct linkages to consolidated program operations, will provide the broad range of HUD programs, liaison and customer services to state, local and community organizations, that is, for public and assisted housing, homeownership, community and economic development, fair housing, technical assistance, public-private partnerships and complaints resolution.

Field Office Operations by Location

The restructuring of program operations in the Field Offices is designed substantially to increase the current level and quality of service to local communities. The HUD Management Reform Plan states that ''it is paramount that HUD retain its scope and presence in communities across the country; HUD's 81 Field Offices will remain and be better focused in serving their constituents.'' The plan calls for every HUD Field Office to have a Community Service Center and the establishment of community builders to augment the quality and quantity of service delivery to local communities. With respect to the location of the consolidated centers to be established throughout the U.S., the general criteria for determining the locations of these centers are as follows:

Economy of Scale/Scope. Greater workload productivity and customer service by consolidating program operations at one or more sites as compared with current operations.

Projected Population Bases. Anticipated location of future customers, based on projected metropolitan area growth.

Workload and Portfolio. Current/anticipated concentration of program workload portfolio.

Location of Industry Partners. Sites convenient to the Department's primary program users/facilities.

Accessibility. Convenience of travel/transportation and other business requirements.

Consolidation of functions is designed to achieve consistency and uniformity in the performance of these functions, and to avoid duplication of effort and streamline operations. Consistency and uniformity make these functions easier for HUD employees to perform, and make HUD programs simpler and more understandable for HUD's program participants. Under this restructuring of internal, back office operations, there is no reduction or transfer in the location or amount of services provided by the Department to the recipients of its services as a result of the HUD 2020 Management Reform Plan. A complete description of how HUD's internal operations will be structured at each field location follows:

NEW HUD FIELD STRUCTURE LOCATIONS AND PROGRAM OPERATIONS

Location	Proposed HUD operations
Albany	Community Service Center, Local Administrative Support, Title I Asset Recovery Center.
Albuquerque	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Anchorage	Community Service Center, CPD Field Office, FHA Multifamily Programs Operation Center, Local Administrative Support.
Atlanta	Administrative Service Center, Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA/Single Family Homeownership Center, FHA Multifamily Hub, Field Legal Center, PIH Hub, Property Disposition Center.
Baltimore	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Bangor	Community Service Center.
Birmingham	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Field Legal Hub, Local Administrative Support, PIH Hub.
Boise	Community Service Center.
Boston	Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, Federal Tort Claims Center, FHA Multifamily Hub, Field Legal Center, Local Administrative Support, PIH Hub.
Buffalo	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Burlington	Community Service Center.
Camden	Community Service Center.
Caribbean	Area Office, Community Service Center, CPD Field Office, FHA Multifamily Programs Operation Center, Fair Housing Local Site, Field Legal Hub, Local Administrative Support, PIH Hub.
Casper	Community Service Center.
Charleston	Community Service Center, FHA Multifamily Programs Operation Center, Local Administrative Support.
Chicago	Area Office, Community Service Center, CPD Field Office, Employee Service Center, FHA Multifamily Hub, Field Legal Center, Multifamily Quality Assurance Unit, PIH Special Applications Center, PIH Hub, Fair Housing Hub, Fair Housing Program Center.
Cincinnati	Community Service Center, Local Administrative Support.
Cleveland	Community Service Center, FHA Multifamily Programs Operation Center, Field Legal Hub, PIH Troubled Agency Recovery Center, Local Administrative Support, PIH Hub.
Columbia	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Columbus	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Program Center.
Coral Gables	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Programs Operation Center, Field Legal Hub, Local Administrative Support, PIH Hub.
Dallas	Community Service Center, Local Administrative Support.
Denver	Administrative Service Center, Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA/Single Family Homeownership Center, FHA Multifamily Hub, Field Legal Center, Local Administrative Support, PIH Hub.
Des Moines	Community Service Center, FHA Multifamily Programs Operation Center, Local Administrative Support.
Detroit	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Fargo	Community Service Center.
Flint	Community Service Center.
Fort Worth	Area Office, CFO Accounting Center, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Center, Local Administrative Support, PIH HUB, Property Disposition Center.
Fresno	Community Service Center.
Grand Rapids	Community Service Center, Local Administrative Support.
Greensboro	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Hartford	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Headquarters	Assessment Center, Enforcement Center, PIH Grants Processing Center, Economic Development and Empowerment, Service.

NEW HUD FIELD STRUCTURE LOCATIONS AND PROGRAM OPERATIONS—Continued

Location	Proposed HUD operations
Helena	Community Service Center.
Honolulu	Community Service Center, CPD Field Office, FHA Multifamily Programs Operation Center, Fair Housing Local Site, Local Administrative Support.
Houston	Community Service Center, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Indianapolis	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Jackson	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Jacksonville	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Kansas City, KS	Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Kansas City, MO	Section 8 Financial Management Center.
Knoxville	Area Office, Community Service Center, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Las Vegas	Community Service Center, FHA Multifamily Programs Operation Center, Local Administrative Support.
Little Rock	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Hub.
Los Angeles	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Louisville	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Hub.
Lubbock	Community Service Center, Local Administrative Support.
Manchester	Community Service Center, FHA Multifamily Programs Operation Center, Local Administrative Support.
Memphis	Community Service Center, Field Legal Hub, Local Administrative Support, PIH Troubled Agency Recovery Center.
Milwaukee	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Minneapolis/St. Paul	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Nashville	Community Service Center, CPD Field Office, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
New Orleans	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Hub.
New York City	Administrative Service Center, Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Center, PIH Hub.
Newark	Area Office, Community Service Center, CPD Field Office, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Hub.
Oklahoma City	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Omaha	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Field Legal Hub, Local Administrative Support, PIH Program Center.
Orlando	Community Service Center.
Philadelphia	Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA/Single Family Homeownership Center, FHA Multifamily Hub, Field Legal Center, Local Administrative Support, PIH Hub.
Phoenix	Community Service Center, FHA Multifamily Programs Operation Center, Local Administrative Support.
Pittsburgh	Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Field Legal Hub, Local Administrative Support, PIH Hub.
Portland	Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Providence	Community Service Center, FHA Multifamily Programs Operation Center, Local Administrative Support.
Reno	Community Service Center.
Richmond	Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Sacramento	Community Service Center, Local Administrative Support.
Salt Lake City	Community Service Center, Local Administrative Support.
San Antonio	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Hub.
San Diego	Community Service Center, Local Administrative Support.
San Francisco	Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Center, Local Administrative Support, PIH Hub.

NEW HUD FIELD STRUCTURE LOCATIONS AND PROGRAM OPERATIONS—Continued

Location	Proposed HUD operations
Santa Ana	Community Service Center, FHA/Single Family Homeownership Center, Local Administrative Support.
Seattle	Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Shreveport	Community Service Center, Local Administrative Support.
Sioux Falls	Community Service Center.
Spokane	Community Service Center.
Springfield	Community Service Center.
St. Louis	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Tampa	Community Service Center.
Tucson	Community Service Center.
Tulsa	Community Service Center, Local Administrative Support.
Washington, DC	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, Local Administrative Support, PIH Program Center.
Wilmington	Community Service Center.

III. Impact of Restructuring of Internal Operations

HUD is publishing its cost-benefit analysis of the reorganization with this notice. (The reorganization of HUD proposed by the HUD 2020 Management Reform Plan does not result in the closing of any HUD offices or in the reduction of services. Therefore, publication of this study is not required, but HUD is publishing it as a matter of policy to provide background for its organizational decisions.) HUD considered the costs and benefits that the reorganization would have particularly on HUD's field operations since the restructuring of internal operations in the field is more profound than in Headquarters. HUD's analysis of costs and benefits includes:

(1) An estimate of cost savings supported by the background information detailing the source and substantiating the amount of the savings;

(2) An estimate of the additional cost which will result from the reorganization;

(3) A study of the impact on the local economy; and

(4) An estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

A. Cost-Benefit Analysis

Former Secretary Henry Cisneros committed to the Congress to reduce personnel by 3,000 employees by or near the year 2000. HUD intends to honor that commitment, and the HUD 2020 Management Reform Plan targets the year 2002 as the date by which the reduction will be achieved. By the year 2002, HUD staff will be reduced from its October 1, 1996 level of 10,500 employees to 7,500 employees. The HUD 2020 Management Reform Plan presents a new HUD that is staffed by this workforce of 7,500 employees. This restructuring of internal operations presented in the HUD 2020 Management Reform Plan is based on the principle that HUD's workload can be handled by a reduced workforce. The consolidation of functions is designed to make it possible for a HUD workforce of 7,500 employees to handle effectively and efficiently those functions that HUD must carry out to serve its constituents successfully.

Costs associated with the HUD 2020 Management Reform Plan amount to $289 million. These costs are related to employee buyouts and relocations, facility modifications and information technology for the new centers, and contract support. Reform costs appear only in fiscal years 1998 and 1999 and would be entirely funded within budget requests for those years.

Savings from the HUD 2020 Management Reform Plan begin to accrue in fiscal year 1999 and are primarily realized through reduced personnel costs and related reduced facilities needs. Figure 1 presents the analysis of projected savings from implementation of the Plan. The net present value of savings computed through fiscal year 2012 equates to $1.4 billion. Stated simply, the Department's planned spending for management is less under the Plan than it otherwise would have been. The value of those savings through 2012 is $1.4 billion, in today's dollars.

Because the entire cost of reform will be accommodated within the resources already available or planned for the Department, there is no additional cost of the HUD 2020 Management Reform Plan. The investments necessary to achieve the reforms will be funded by reallocations within the Department's existing budget or by savings generated by the Plan. Hence, there is no recovery period (as that term is commonly used).

B. Impact on Local Economies

The HUD 2020 Management Reform Plan calls for significant redeployment of HUD staff. Nonetheless, the proposed reorganization will have only a minimal economic impact on any single locality. Moreover, HUD expects that as the reforms contained in this Plan take effect, positive economic effects will accrue in all of the communities HUD serves, due to the Department's greater efficiency and responsiveness to addressing their needs.

C. Impact on the Quality of Services

The Department's main goal in implementing the HUD 2020 Management Reform Plan is to improve the quality of services it provides and to do so in the most efficient, fiscally responsible manner possible. The overall effect of the proposed reforms is to change fundamentally the way HUD works. These reforms will make the agency more efficient, competent and capable of carrying out HUD's dual mission—empowering communities and restoring the public trust. HUD expects that its ability to provide services that facilitate community empowerment will be improved through:

—Proposed legislative reforms to create performance-based grants—many communities' planning processes are hampered by the uncertainty associated with the need to apply for competitive grants funds each year. The creation of performance-based formula grant programs for homeless assistance and Public and Indian Housing will enable communities to plan for their futures with an

assurance of funding to make those plans a reality.

—The Community Builder position—in addition to other HUD staff, there will be in every Field Office a cadre of highly trained individuals who are specifically dedicated to working with HUD's partners and customers in helping them to access the full range of HUD services. Since HUD will have consolidated many program operations into ''back-office'' processing centers away from the Field Offices, these staff will be focused only on helping communities to address their housing and community development needs.

Although there will be a reduction in Field Office staff levels, much of this reduction will be reflected in the segregation of processing functions to centers and hubs. Community Builders—linked by state-of-the-art technology to program centers, hubs, back office processing centers, and policy makers—will be responsible for meeting their communities' service needs. This specialization will thus enhance the public's access to high-quality services.

Other reforms—from the consolidation of program operations to the creation of the Enforcement Center and legislative reforms to facilitate enforcement actions—will improve the quality of HUD services by strengthening the integrity of the underlying programs. Moreover, HUD's new Public Trust Officers will focus on oversight, leaving other staff available to provide customer service and processing as their primary functions. Thus, HUD expects to see improvements in all aspects of departmental operations and service delivery to the public.

IV. Conclusion

The HUD 2020 Management Reform Plan states that ''it is paramount that HUD retain its scope and presence in communities across the country; HUD's 81 Field Offices will remain and be better focused in serving their constituents.'' HUD's plan calls for an increase in area community service centers and the establishment of community builders to augment the quality and quantity of service delivery to local communities. Through implementation of the HUD 2020 Management Reform Plan, HUD will maintain its presence in the communities while allocating resources the way a customer-friendly Department should.

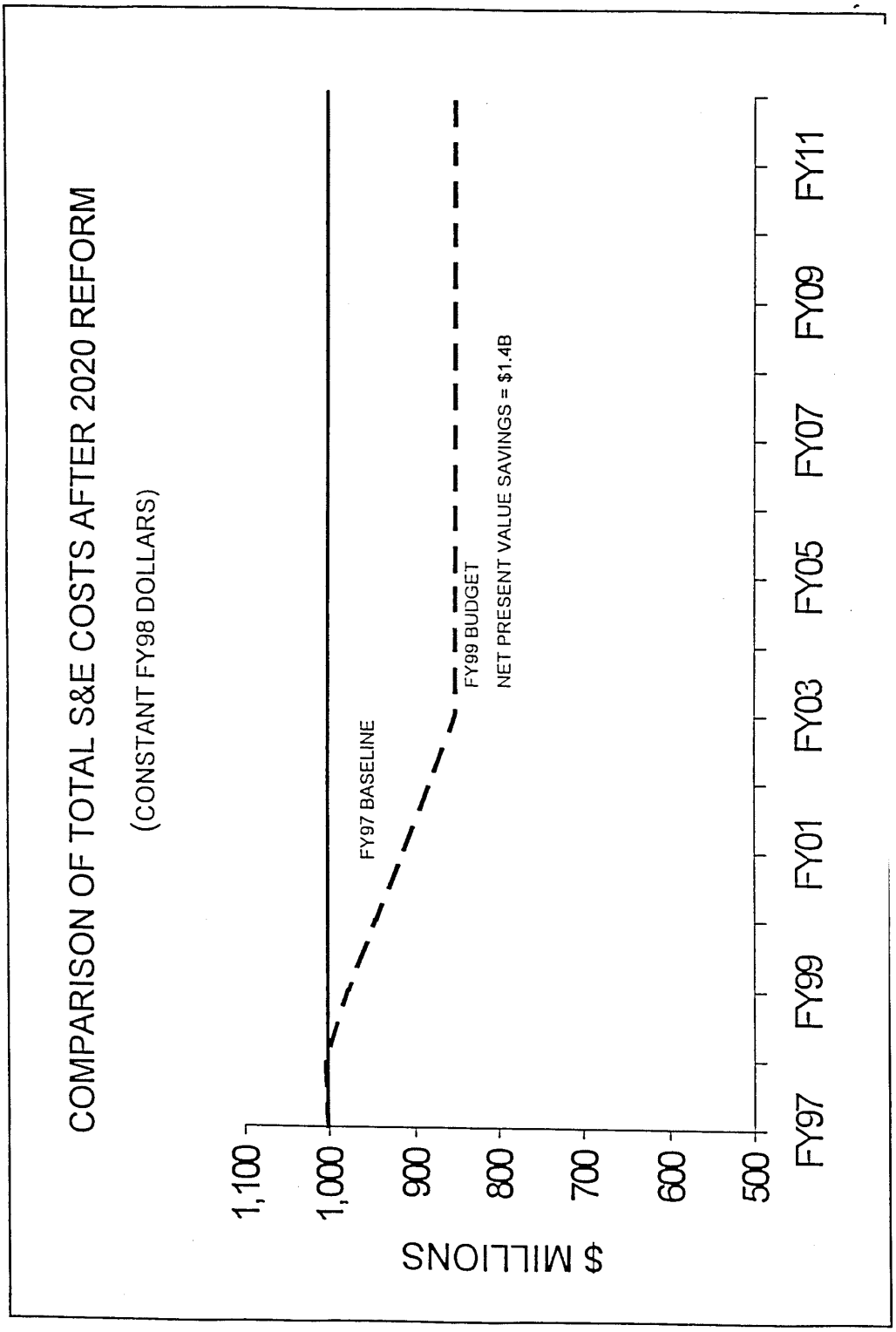
Dated: November 18, 1997.

Andrew Cuomo,

Secretary.

BILLING CODE 4210–32–P

Figure 1



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Friday
November 21, 1997

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Robinson R–22/R–44 Special Training and Experience Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 28095; SFAR No. 73–1; Notice No. 97–15]

RIN 2120–AG47

Robinson R–22/R–44 Special Training and Experience Requirements

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to extend the expiration date of Special Federal Aviation Regulation (SFAR) 73, and to amend the special training and experience requirements for pilots operating the Robinson model R–22 or R–44 helicopters in order to maintain the safe operation of Robinson helicopters. It also proposes special training and experience requirements for certified flight instructors conducting student instruction or flight reviews. This action is proposed to maintain awareness of and training for the potential hazards of particular flight operations for the continued safe operation of Robinson helicopters.

DATES: Comments must be received by December 22, 1997.

ADDRESSES: Comments should be submitted in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 28095, 800 Independence Avenue, S.W., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Robert J. O'Haver, Operations Branch, AFS–820, General Aviation and Commercial Division, 800 Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267–7031.

SUPPLEMENTARY INFORMATION:

Comments Invited

All interested persons are invited to comment on this proposed rule by submitting such written data, views, or arguments as they may desire, including comments relating to the environmental, energy, or economic impacts. Communications should identify the regulatory docket number, and be submitted in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 28095, 800 Independence Ave., Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: 9-nprm-cmts@faa.dot.gov. All communications received will be considered by the Administrator. This proposed rule may be changed as a result of comments received from the public. All comments submitted will be available for examination in the Rules Docket in Room 915–G of the FAA Building, 800 Independence Ave., Washington, DC 20591. Persons wishing to have the FAA acknowledge receipt of their comments must submit a self-addressed, stamped postcard with the following statement: ''Comments to Docket Number 28095.'' The postcard will then be dated, time stamped, and returned by the FAA.

Availability of This Proposed Rule

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service ((703) 321–3339), the **Federal Register**'s electronic bulletin board service ((202 512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service ((800) 322–2722 or (202) 267–5948). Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register**'s web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW, Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the docket number of this proposal.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) details the certification requirements for pilots and flight instructions. Particular requirements for pilots and flight instructors in rotorcraft are found in Subparts C through G, and Appendix B of part 61. These requirements do not address any specific type or model of rotorcraft. However, the FAA determined in 1995 that specific training and experience requirements are necessary for the safe operation of Robinson R–22 and R–44 model helicopters.

The R–22 is a 2-seat, reciprocating engine-powered helicopter that is frequently used as low–cost initial student training aircraft. The R–44 is a 4-seat helicopter with similar operating characteristics and design features of the R–22. The R–22 is the smallest helicopter in its class and incorporates a unique cyclic control and rotor system. Certain aerodynamic and design features of the aircraft cause specific flight characteristics that require particular pilot awareness and responsiveness.

Since the R–22 was certificated, there have been 339 accidents in the U.S. involving R–22's. The FAA found that the R–22 met 14 CFR part 27 certification requirements and issued a type certificate in 1979; however, the R–22 has had a high number of fatal accidents due to main rotor/airframe contact when compared to other piston powered helicopters. Many of these accidents have been attributed to pilot performance or inexperience, leading to low rotor revolutions per minute (RPM) or low ''G'' conditions that resulted in most bumping or main rotor-airframe contact accidents. Its small size and relatively low operating costs result in its use as a training or small utility aircraft, and its operation by a significant population of relatively inexperienced helicopter pilots.

In its analysis of accident data, the FAA has found that apparently qualified pilots may not be properly prepared to safely operate the R–22 and R–44 helicopters in certain flight conditions. The additional pilot training, originally established by SFAR 73, continues to be needed for the safe operation of these helicopters.

Previous Regulatory Action

To address the accident causes, on March 1, 1995, the FAA published SFAR 73 (60 FR 11256) which required certain experience and training to perform pilot-in-command (PIC) and/or certified flight instructor (CFI) duties. SFAR 73 was issued on an emergency basis without the usual public notice and comment; however, the FAA sought comment on the SFAR.

SFAR 73 will expire on December 31, 1997. Since its issuance, no accidents have occurred related to the low rotor RPM and/or tailboom/main rotor contact. Therefore, the FAA is proposing to extend, with a minor amendment, the provisions of SFAR 73.

Comments on SFAR 73

Forty-six comments were received on SFAR 73 from various individuals, associations and businesses. These are discussed by topic below. One comment

received from Helicopter Association International was rescinded at their request, and was later amended and replaced by them. One comment received made reference to the potential noise problem of low flying helicopters; this comment had no relevance to the SFAR and is therefore considered to be outside the scope of the request for comment.

Twenty-one comments received in the docket supported the SFAR. One commenter expressed approval of the SFAR as an interim measure while engineering studies are completed. Two commenters suggested the SFAR was deficient or weak. Two commenters disagreed with the SFAR, stating that it was unnecessary or that they disagreed with the intent. The remaining commenters stated general support for the SFAR.

Scope of the SFAR

Some commenters recommended removing the reference to Robinson helicopters, and/or stating that SFAR, particularly in the area of awareness training, should apply to all helicopters, not only Robinson helicopters. However, five comments were received refuting this position stating that the SFAR should apply only to Robinson helicopters; in addition, they suggested the intent of the FAA was to apply the SFAR across the board for all light helicopters.

FAA Response: It was the FAA's intent that SFAR 73 apply only to Robinson Helicopters in that the R–22 and R–44 are the only U.S. manufactured, light helicopters utilizing a two blade teetering rotor system, combined with a high tail rotor mount position that has a history of this common type of accident. Therefore, the SFAR is directed to the Robinson helicopter models R–22 and R–44.

Awareness Training

One commenter noted that awareness training was not appropriate for beginning students and should not be required until just prior to solo and after 10 hours of dual instruction.

FAA Response: The FAA disagrees with this comment. Awareness training for helicopter operations should begin with the first flight. Students should be made aware from the outset of training of the hazards of abrupt control movements, rapid or abnormal control inputs, and the recognition of potential problems encountered in normal operations which could lead to an emergency. Such training is appropriate at all levels of proficiency, while the technical details surrounding such information increases in complexity and detail as understanding and experience increases.

Additionally, the subject matter of the training required by the SFAR pertaining to low ''G'' maneuvers, rotor RPM control, and the dangers of mast bumping applies to all helicopters. Therefore, the FAA has made significant and permanent changes to various advisory material publications (e.g. practical test standards) as well as standards for certification.

Required Experience and Training

Eight comments were received with regard to newly certificated flight instructors who had completed all, or the majority of their training in the Robinson helicopter. The commentors stated that those instructors who had received all their training in the R–22, even though they had a minimum time of 150 hours, should be authorized to conduct training (or continue to do so) in Robinson helicopters, if properly authorized and endorsed.

FAA Response: The FAA disagrees with this comment. While it is true that some newly certificated flight instructors who meet the minimum experience requirements established for certification may be eminently qualified to teach others, there are others whose skills may only meet minimum performance standards. Some who aspire to be flight instructors can and do occasionally acquire a flight instructor's certificate with as little as 50 hours of actual rotorcraft time, and little more than 150 hours of total flight time. The accidents that precipitated the issuance of SFAR 73 were attributed to pilot performance or experience, leading to low rotor RPM or low ''G'' conditions that resulted in mast bumping or main-rotor/airframe contact accidents. In its analysis of accident data, the FAA has found that apparently qualified pilots may not be properly prepared to operate safely the R–22 and R–44 helicopters in certain flight conditions. As was stated in the preamble to SFAR 73, there is a clear relationship between pilot inexperience in the R–22 and R–44 helicopters and main-rotor/airframe contact accidents. In 23 of the 30 fatal accidents, the pilot apparently manipulating the controls has less than 200 flight hours in helicopters or less than 50 flight hours in the model of Robinson helicopter they were operating.

Creditable Training

Robinson Helicopter Company (RHC) and 15 additional commentors provided support for a RHC proposal to allow a reduction in the hours of dual instruction required by paragraphs 2(b)(1)(ii) and 2(b)(2)(ii) from 10 hours to 5 hours for those persons who had an experience level of more than 200 flight hours in helicopters.

FAA Response: The FAA agrees with this comment and incorporated it into this proposal. SFAR 73 was originally written to provide for adequate training of instructional and evaluator cadre by separating the two models of aircraft (R–22 and R–44), noting that the model R–44 had, at that point, not been marketed in the United States. At that time, it was determined that 10 hours of dual instruction in each model would accomplish the goal of those who had been trained exclusively in one model of Robinson helicopter, the R–22 for United States pilots, and the Model R–44 for foreign operators. The 10 hour requirement could have been fulfilled by any dual flight instruction acquired in the appropriate model of aircraft over any period of time. The stipulation was that some dual flight instruction would entail the specific training provisions of the SFAR.

Since the R–44 is now being marketed in the United States, the training now entails transition or differences training, rather than initial training. The instruction provisions that applied to the model R–22, along with the acquired experience in that model of aircraft have provided a suitable increase in operational skills for pilots of the smaller aircraft which are applicable to the larger model R–44 aircraft.

For these reasons, the FAA determined that the safety aspects of the SFAR as they apply to flight experience in the model R–22 should be credited toward the flight experience requirements in the R–44.

The Proposed Amendment

Prior to the issuance of SFAR 73, there had been 339 accidents involving the Robinson R–22 helicopters. Many of these accidents were related to the hazardous condition encountered in low ''G'' maneuvers resulting in main-rotor/tailboom contact. The situation was so serious that on March 1, 1995, the FAA took corrective action and published SFAR 73 setting out specific training and experience requirements to perform PIC or CFI duties in the R–22 or R–44 Robinson helicopters.

Since the issuance of SFAR 73, there has been a dramatic drop in the accident rate of Robinson helicopters associated with low ''G'' maneuvers or main rotor/tailboom contact. Also in the interim, the FAA has taken steps to improve the airworthiness of the R–22 and R–44 through the issuance of a number of airworthiness directives.

With this remarkable decline in the accident rate, the FAA is proposing to extend the provisions of SFAR 73. As a result of the comments received on SFAR 73, there is a general consensus that the training is beneficial to those operating Robinson helicopters. Recognizing that there is a constant recurrence of training requirements to meet the ongoing influx of new rotary wing pilots, the FAA believes there is benefit to continuing the requirements of SFAR 73.

This proposal also provides a minor amendment to the previous provisions of SFAR 73 to clarify paragraph 2(b)(5) regarding the instructor experience required to conduct training in either the R–22 or R–44. The FAA has recognized that the R–44, which wasn't operated in the U.S. in large numbers when SFAR 73 was originally promulgated, is being operated in greater numbers now. The FAA has also recognized that the R–44 is a more stable aircraft than the R–22. Therefore, the FAA is proposing to allow the crediting of up to 25 flight hours acquired in the model R–22 helicopter towards the 50 flight hour experience requirements of paragraph 2(b)(2)(i) for the R–44, and up to 5 hours of dual instruction received in the R–22 credited toward the 10 hour dual flight instruction requirement of 2(c)(2)(ii) for R–44.

In addition, paragraph 2(b)(5)(ii) is clarified in this proposal. The FAA has received many inquiries as to the intent of this paragraph. Callers have mistaken the intent of the paragraph and concluded upon reading the SFAR, that instructors may be endorsed to provide flight instruction in the R–22 or R–44 if they comply with paragraph 2(b)(1)(ii) or 2(b)(2)(ii) of the SFAR. They contend that the reference in paragraph 2(b)(5)(ii) to the experience requirements of 2(b)(1)(i) or 2(b)(2)(i) include the ''or,'' at the end of the sentence.

This was not the FAA's intent, paragraph 2(b)(5)(i) specifically refers to a numbered line only. The FAA is proposing a change to paragraph 2(b)(5)(i) to provide clarification.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on small entities and changes on international trade. In conducting these analyses, the FAA has determined that this proposal. (1) Is cost-beneficial; (2) is not ''a significant regulatory action'' as defined in the Executive Order, (3) is not significant as defined in Department of Transportation's Regulatory Policies and Procedures; (4) will not have a significant impact on a substantial number of small entities, and (5) will not constitute a barrier to international trade. All of these analyses have been prepared as a regulatory evaluation and are summarized below. A copy of the regulatory evaluation has also been placed into the docket.

Benefits

The benefits of the proposed rule would be a reduction of the number of fatal accidents that occur in Robinson helicopters associated with low ''G'' maneuvers that can result in main rotor contact with the airframe. The estimated reduction in the number of accidents is expected from the increased level of safety related to specific flight training and awareness training requirements for all individuals operating Robinson R–22 and R–44 aircraft.

Between the years 1985 and 1994 there were a total of 43 fatal accidents involving Robinson helicopters, resulting in 63 fatalities. Accidents due to main rotor contact with the airframe accounted for 16 of the 43, or approximately 37 percent of the total accidents. There were 26 fatalities that resulted from those 16 accidents prior to the issuance of SFAR 73. The 26 fatalities represent 41 percent of all fatalities on Robinson helicopters prior to issuance of the SFAR. Since the SFAR was issued in 1995, however, there have been no accidents or fatalities involving R–22 or R–44 aircraft associated with low ''G'' operations or main rotor contact with the airframe. Although there is not yet sufficient historical data to statistically demonstrate that the almost three year period of no fatal accidents of this type is a result of SFAR 73, it is the judgement of the FAA after reviewing all available information that this is the case.

Assuming that SFAR 73 is effective at preventing the above types of rotorcraft accidents, the FAA has estimated the benefit associated with preventing these accidents. A value of $2.7 million was applied to each statistical fatality avoided. This computation resulted in an estimate of approximately $35.1 million in five year casualty costs. Also, the estimated value of the 16 destroyed aircraft was $587,000. If this rulemaking helps prevent the recurrence of the 26 fatalities associated with low ''G'' maneuvers then expected safety benefits would be approximately $35.7 million (present value, $29.3 million) over five years, in 1996 dollars.

Costs

In this analysis, the FAA has estimated the cost of the proposed rule over the five year period from 1998 through 2002. All of the costs incurred as a result of changes to existing procedures will begin when the proposed rule becomes effective. Costs are computed in 1996 dollars and are discounted by seven percent. The Office of Management and Budget (OMB) requires using a discount factor of seven percent when calculating the present value.

The groups that incur costs from the proposed rule are rated pilots who aspire to be flight instructors or newly certificated flight instructors who desire to conduct student instruction or flight reviews in the Robinson model R–22 or R–44 helicopter. In addition, students that receive their instruction in the R–22 or R–44, such as pilots adding a rotorcraft rating and new rotorcraft students, will also incur costs from the proposed rule. All the cost estimates pertaining to the acquisition of a rotorcraft category rating are based on the minimum times required to receive the category rating, as published in 14 CFR Part 61.

Flight Instructor Costs

Occasionally a flight instructor can acquire his or her certificate with as little as 50 hours of actual rotorcraft time and little more than 150 hours of total flight time. However, the SFAR established criteria for flight instructors who wish to continue to instruct or conduct flight reviews in a Robinson helicopter. The criteria were based on a combination of experience and training, which require more than the minimum amount required for certification as an instructor. Further, the criteria were established to ensure that the instructors are knowledgeable and competent to conduct the awareness and flight training the FAA believes are necessary for Robinson helicopters. Therefore, no grandfathering was permitted for evaluators or flight instructors.

While it is still possible for an individual to obtain a flight instructor certificate for aircraft other than Robinson helicopters in the minimum published time, those aspiring a flight instructor certificate in the Robinson

model helicopters will require an additional 50 hours of flight time. However, because some flight experience requirements in the model R–22 also apply to flight experience requirements in the R–44, a credit of up to 25 flight hours acquired in the model R–22 helicopter can apply to the 50 flight hour experience requirement for the R–44.

For a rated pilot to become certificated as a flight instructor in the R–22, the pilot will need an additional 50 flight hours in the R–22, at a cost of $150 an hour, or $7,500. Likewise, for a rated pilot to become certificated as a flight instructor in the R–44, the pilot will need an additional 50 flight hours (25 hours credit in the R–22) in the R–44, at an additional cost of $300 an hour for 25 hours in a R–44 and $150 an hour for 25 hours in a R–22, or a total of $11,250 per person. However, for a person to become certificated as a flight instructor on both models of Robinson helicopters, the pilot will need 75 additional flight hours, 50 hours in the 422 and 25 hours in the R–44. The added cost for 75 additional flight hours to become certificated in both the R–22 and the R–44 is $15,000 per person. The FAA assumes that a rated pilot seeking to become a flight instructor would want to be certificated on both models of Robinson helicopters, therefore the FAA has based the cost estimate to become a flight instructor on the 75 additional flight hours.

For several reasons, the FAA believes that only a small number of potential flight instructors will be affected by the proposed rule. First, most certificated flight instructors have been rated pilots for some time, and as a consequence, have far more than the minimum total flight time. In addition many pilots have an instrument rating, which requires significantly more flight experience. Second, most FAA-approved schools require flight instructors to have considerably more experience than the required minimums to become a flight instructor.

Finally, the FAA believes that the number of individuals seeking a new flight instructor certificate for a specific Robinson model helicopter is small relative to the total of new flight instructor certificates issued. To estimate the number of people seeking a flight instructor certificate for the Robinson model helicopters, the FAA determined the ratio of rotorcraft-only certificates held to the total airmen certificates held (less student and glider-only certificates). The ratio was then applied to the change in flight instructor certificates between 1995 and 1996. These relationships may be summarized as follows:

Estimate of Rotorcraft only Flight Instructor Certificates=$\Sigma IC_t - \Sigma IC_{t=1} * \Sigma RC_t / \Sigma PC_t$

where:

IC_t=instructor certificates held in time period t;

IC_{t-1}=instructor certificates held in time period t=1;

PC_t=pilot certificates held in time period t;

RC_t=rotorcraft certificates held in time period t.

Applying the above formula, the FAA estimates that in 1996 there was the potential for 13 individuals to seek a flight instructor certificate based on the minimum requirements for a helicopter only rating. Based on the addition of 75 flight hours at an added cost of $15,000 per individual, the total cost for 13 people seeking a rotorcraft only flight instructor certificate in a Robinson helicopter is approximately $189,000 annually. The estimated cost over the next five years is approximately $900,000 (present value, $800,000), in 1996 dollars.

Student Costs

The costs encompass two classes of students: (1) pilots that currently have a class certificate who wish to add a rotorcraft rating, and (2) new students receiving rotorcraft only training. However, to be included in the cost estimate, students (new students or those adding a rotorcraft rating) must be receiving instruction in the Robinson model R–22 or R–44 helicopter.

New students receiving instruction in the Robinson helicopters would be required to receive an additional 5 hours of dual instruction. Because the small size, low purchase price, and low maintenance costs make the R–22 attractive to flight schools, the FAA assumes that new students will receive their instruction in the Robinson model R–22 helicopter. The added cost per student, assuming $150 an hour for instruction in the R–22, will amount to $750 (5 hours times $150 an hour).

Estimation of the total added cost for all students receiving instruction in the Robinson helicopter was calculated in several steps. First, the FAA estimated the ratio of original rotorcraft certificates issued to original student certificates issued. That ratio was applied to the total student pilot certificates held in 1996, which produced an estimate of the number of student rotorcraft certificates held. The student rotorcraft certificates held was multiplied by an estimate of the number of new students receiving instruction on Robinson helicopters. That estimate was then applied to the added cost per student to derive the total added cost for all students. These relationships may be summarized as follows:

Total Added Cost for all Students = $\{2*H*C_{R-22}*[\Sigma SPC*\Sigma(ORI/OSI)]\}/3$

where:

H = added hours;

C = added cost per hour;

SPC = student pilot certificates held;

OSI = original student certificates issued;

ORI = original rotorcraft certificates issued.

Applying the above procedure, the FAA estimates that approximately 4,000 new students will receive instruction in the Robinson R–22 model helicopter at an estimated cost of approximately $3.0 million annually. The total new student costs are approximately $14.9 million ($12.2 million, present value) over the next five years in 1996 dollars.

Pilots that have a current class certificate who wish to add a rotorcraft rating and receive instruction in the Robinson helicopters will be required to take an additional 5 hours of dual instruction the same as new students. However, unlike the new students, the FAA assumes that a portion of the pilots seeking to add a rotorcraft rating will receive instruction in the Robinson model R–44. Therefore, in addition to estimating the total number of pilots seeking to add a rotorcraft rating in Robinson helicopters in general, the FAA estimated the percentage of those seeking a rating only in the R–44.

Experienced pilots who wish to add a rotorcraft rating to a current class certificate could receive more advanced instruction, or instruction in more advanced equipment, than a new pilot. For example, they could receive instruction in a larger, more sophisticated turbine helicopter, or they could receive instruction to add the instrument rating to their class certificate. To determine the number of rotorcraft ratings that apply only to the R–44, the FAA multiplied the ratio of R–44s to the helicopter fleet by the added rotorcraft ratings for 1996. To estimate the added cost of instruction in the R–44, the number of R–44 ratings was multiplied by the number of required added hours of instruction, and by the R–44 cost per hour. As with the R–44, the added cost of the R–22 was estimated by applying the R–22 ratings to the added rotorcraft ratings for 1996. The number of R–22 ratings was multiplied by the number of added hours of instruction and by the R–22 cost per hour. Finally, the two products were added together to estimate the

annual cost or pilots to add a rotorcraft rating using a Robinson helicopter.

These relationships may be summarized as follows:

Total added cost to add a rotorcraft rating = $\Sigma ARR_t*(R44/F)*H*C_{R44} + \Sigma ARR_t*[(R–R–44)/F]*H*C_{R22}$

where:

R = U.S. active Robinson fleet;
F = U.S. active helicopter fleet;
R44 = Robinson Model R–44 helicopter;
ARR_t = added rotorcraft ratings in time period t;
H = added hours;
C = added cost per hour.

Applying the above description, the total additional cost to receive instruction in a Robinson helicopter for the purpose of adding a rotorcraft rating to a pilot certificate is approximately $448,000 annually. The estimated cost over the next five years is approximately $2.2 million (present value, $1.8 million) in 1996 dollars.

Cost Summary

The proposed rule would impose costs to those receiving instruction in Robinson model R–22 and R–44 helicopters. Before they could be certificated, affected individuals would be required to receive additional model-specific training and experience for each model of Robinson helicopter. Individuals affected by the proposal are rated pilots who aspire to be flight instructors or newly certificated flight instructors who desire to conduct student instruction or flight reviews in the Robinson model R–22 and R–44 helicopter, new rotorcraft students, and certificated pilots seeking to add a rotorcraft rating. Both the new student and the pilot seeking to add a rotorcraft rating must be receiving instruction in a Robinson helicopter to incur the added cost. The proposed rule would impose total estimated costs of approximately $18.1 million (present value, $14.8 million) over the next five years, in 1996 dollars.

All of the costs described in this analysis would be incurred voluntarily. These added costs are not being forced on any individual that wishes to receive rotorcraft training. If an individual wishes to avoid the additional costs of rotorcraft instruction delineated above, they can receive their instruction in a rotorcraft other than a Robinson model, and not incur any of the costs that are described in this analysis.

Comparison of Costs and Benefits

The proposal would require those who receive or provide instruction in a Robinson helicopter to incur additional costs related to specific flight training and awareness training. The addition of those proposed requirements would impose costs of approximately $18.1 million (present value, $14.8 million) over five years in 1996 dollars. Benefits from the proposed rule would be a reduction in the number of fatal accidents that occur in Robinson helicopters associated with low ''G'' maneuvers that may result in main rotor/airframe contact. The estimated reduction in the number of accidents is due to the increased level of safety due to specific flight training and awareness training requirements for all individuals operating Robinson model R–22 and R–44 aircraft. If the proposed action prevents the 26 fatalities that occurred during the past 10-year period, the estimated benefits would be $71.4 million ($50.1 million, present value). Since this SFAR will be in effect for only 5 years, the estimated benefits would be $35.7 million ($29.3 million, present value) for this rulemaking, resulting in benefits exceeding costs by a factor of about two.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The Act requires that whenever an agency publishes a general notice of proposed rulemaking, an initial regulatory flexibility analysis identifying the economic impact on small entities, and considering alternatives that may lessen those impacts must be conducted if the proposed rule would have a significant economic impact on a substantial number of small entities.

This notice is to extend SFAR 73 published on March 1, 1995, which was issued on an emergency basis without the usual public notice period, but the FAA sought comments after issuance. No comments were received from small entities indicating that they would suffer a significant adverse economic impact. Further, the SFAR is limited to experience and training requirements to perform pilot-in-command and certified flight instructor duties, thereby impacting individuals rather than entities. So in view of the above, the FAA concluded that this proposed rule, if extended, will not have a significant economic impact on a substantial number of small entities. The Agency, however, invites comments on this conclusion.

International Trade Impact Statement

This proposed rule is not expected to impose a competitive disadvantage to either US air carriers doing business abroad or foreign air carriers doing business in the United States. This assessment is based on the fact that this proposed rule would impose additional costs only on those receiving instruction on Robinson helicopters. This proposal would have no effect on the sale of foreign aviation products or services in the United States, nor would it affect the sale of United States aviation products or services in foreign countries.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The SFAR proposed herein will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this proposed rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

The OMB control number assigned to the collection of information for this proposed rule is 2120–0021.

Conclusion

For the reasons previously discussed in the preamble, the FAA has determined that this SFAR is not significant under Executive Order 12866. Based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA certifies that this proposed rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This SFAR is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

The Proposal

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

SFAR 73 [Amended]

2. Paragraphs 2(b)(2), 2(b)(5), and 3 of Special Federal Aviation Regulation (SFAR) No. 73 to part 61 are revised to read as follows:

SPECIAL FEDERAL AVIATION REGULATIONS

* * * * *

SFAR No. 73—ROBINSON R–22/R–44 SPECIAL TRAINING AND EXPERIENCE REQUIREMENTS

* * * * *

2. *Required training, aeronautical experience, endorsements, and flight review.*

(b) * * *

(2) No person may act as pilot in command of a Robinson model R–44 unless that person:

(i) has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–44. The pilot in command may credit up to 25 flight hours in the Robinson model R–44 toward this 50 hour requirement; or

(ii) has had at least 10 hours dual instruction in a Robinson helicopter, at least 5 hours of which must have been accomplished in the Robinson model R–44 helicopter. Beginning 12 calendar months after the date of the endorsement, the individual may not act as pilot in command unless the individual has completed a flight review in an R–44 within the preceding 12 calendar months and obtained an endorsement for that flight review. The dual instruction must include at least the following abnormal and emergency procedures flight training:

(A) enhanced training in autorotation procedures,

(B) engine rotor RPM control without the use of the governor,

(C) low rotor RPM recognition and recovery, and

(D) effects of low G maneuvers and proper recovery procedures.

* * * * *

(5) No certificated flight instructor may provide instruction or conduct a flight review in a Robinson model R–44 or R–44 unless that instructor:

(i) Completes the awareness training in paragraph 2(a) of this SFAR,

(ii) and for the R–22, has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–22, or for the R–44, has had at least 200 flight hours in helicopters, 50 flight hours of which were in Robinson helicopters. Up to 25 flight hours of Robinson model R–22 flight time may be credited toward the 50 hour requirement,

(iii) Has completed flight training in an R–22, R–44, or both, on the following abnormal and emergency procedures:

(A) enhanced training in autorotation procedures,

(B) engine rotor RPM control without the use of the governor,

(C) low rotor RPM recognition and recovery, and

(D) effects of low G maneuvers and proper recovery procedures.

(iv) Been authorized by endorsement from an FAA aviation safety inspector or authorized designated examiner that the instructor has completed the appropriate training, meets the experience requirements and has satisfactorily demonstrated an ability to provide instruction on the general subject areas of paragraph 2(a)(3) of this SFAR, and the flight training identified in paragraph 2(b)(5)(iii) of this SFAR.

* * * * *

(3) *Expiration date.* This SFAR terminates on December 31, 2002, unless sooner superseded or rescinded.

Issued in Washington, D.C. on November 18, 1997.

Richard O. Gordon,

Acting Director, Flight Standards Service.

[FR Doc. 97–30772 Filed 11–20–97; 8:45 am]

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Federal Register

Friday
November 21, 1997

Part VIII

Department of Housing and Urban Development

Additional Funding Availability and Program Guidelines for Homeownership Zones; FY 1997; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4238–N–05]

Notice of Funding Availability (NOFA) and Program Guidelines for Homeownership Zones; Fiscal Year 1997; Notice of Additional Funding

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA); Notice of additional funding.

SUMMARY: This notice announces the availability of an additional $10 million in funding for Homeownership Zones, bringing the total amount available to $20 million. HUD will, therefore, accept new applications and amendments to applications previously submitted in response to the initial NOFA through December 22, 1997. On July 7, 1997, HUD published the fiscal year (FY) 1997 Notice of Funding Availability (NOFA) and program guidelines for Homeownership Zones, initially announcing that $10 million in funding was available for Homeownership Zones. HUD will consider applications received in response to the initial NOFA in the competition for the total $20 million.

DEADLINE DATE: One original and two copies of each application must be received by HUD Headquarters at the address provided below by the deadline date. One additional copy must be received by the HUD Field Office by the deadline date. All four copies may be used in reviewing the application.

Applications Delivered. Applications are due before midnight on December 22, 1997. Before the deadline date, and on normal workdays between the hours of 8:30 a.m. and 4:30 p.m., completed applications will be accepted at the Processing and Control Unit, Room 7255, Community Planning and Development at the address provided below.

After 4:30 p.m. on the deadline date, hand-delivered applications will be received at the South Lobby of the Department of Housing and Urban Development at the address provided below. HUD will treat as ineligible for consideration hand-delivered applications that are received after midnight on December 22, 1997.

Applications Mailed. HUD will consider applications as received by the deadline if they are postmarked before midnight on December 22, 1997, and received by HUD Headquarters within ten (10) calendar days after that date.

Applications Sent by Overnight Delivery. HUD will consider applications sent by overnight delivery as having been received by the deadline upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than December 22, 1997.

Applications Sent by Facsimile (FAX). HUD will NOT accept any application sent by FAX.

Applications Sent to HUD Field Offices. One copy of the application must be received by the HUD field office serving the area in which the applicant's Homeownership Zone is located. The field office must receive this copy by the deadline date, but a determination that an application was received on time will be made solely according to the receipt of the application at HUD Headquarters in Washington.

ADDRESSES: One original and two copies of the completed application must be submitted to HUD Headquarters at the following address: Processing and Control Unit, Room 7255, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410. One additional copy of the application must be sent to the Director of Community Planning and Development, at the HUD field office serving the State in which the Homeownership Zone is located (see Appendix A of the July 7, 1997 NOFA (62 FR 36412, 36419)).

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Taffet, Office of Affordable Housing Programs, Room 7168, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410; telephone (202) 708–3226 (this is not a toll free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at (800) 877–TDDY, which is a toll free number. Interested persons should consult the July 7, 1997 NOFA for information concerning basic program requirements and eligibility, and may also contact the appropriate HUD field office at the number and address provided in Appendix A of the July 7, 1997 NOFA. General background information about homeownership zones is also available through Community Connections by calling (800) 998–9999.

SUPPLEMENTARY INFORMATION: On July 7, 1997 (62 FR 36412), HUD published the FY 1997 NOFA and program guidelines for Homeownership Zones. The July 7, 1997 NOFA announced the availability of $10 million to help reclaim distressed neighborhoods by creating homeownership opportunities for low- and moderate-income families, and to serve as a catalyst for private investment, business creation, and neighborhood revitalization. The NOFA contained information concerning basic program requirements, eligible applicants, funding availability, and application requirements and procedures. HUD issued a correction to the July 7, 1997 NOFA and extended the application deadline until September 30, 1997, through a notice published on July 28, 1997 (62 FR 40370).

This notice announces the availability of an additional $10 million, for a total of $20 million in funding for Homeownership Zones. This notice also announces that HUD is accepting additional applications and amendments to applications submitted in response to the initial NOFA through December 22, 1997, as provided above in the ''Deadline Date'' section of this notice. All of the other provisions of the July 7, 1997 NOFA, as corrected by the notice published on July 28, 1997, apply to the availability and awarding of this additional $10 million. Therefore, applicants for this additional $10 million should refer to the July 7, 1997 NOFA and the July 28, 1997 notice for information regarding eligible applicants, the definition of a Homeownership Zone, the characteristics of a successful Homeownership Zone, eligible activities, income targeting, Section 108 loan guarantees and other funding sources, application format, criteria for rating applications, the selection process, environmental review requirements, program threshold criteria, technical deficiencies and technical assistance, other Federal requirements, and other matters. HUD will consider applications received in response to the July 7, 1997 NOFA by the deadline under that NOFA (September 30, 1997) in the competition for this additional $10 million available for Homeownership Zones.

Dated: November 8, 1997.

Jacquie Lawing,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 97–30596 Filed 11–20–97; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1119/P.L. 105–85

National Defense Authorization Act for Fiscal Year 1998 (Nov. 18, 1997; 111 Stat. 1629)

H.R. 2160/P.L. 105–86

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